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Transcript Exhibit(s)

2016 JUN 22 A 10: 00

AZ CORP COMMISSION  
DOCKET CONTROL

Docket #(s): S-20948A-15-0422

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Arizona Corporation Commission

DOCKETED

JUN 22 2016

DOCKETED BY KA

Exhibit #: S-1a-58, 60-62, 64, 65, 68-93

M-01-04

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# STATE OF ARIZONA

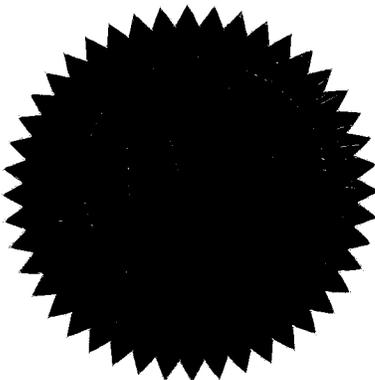


## Corporation Commission

### CERTIFICATION

I, Mark Dinell, certify that I am the Assistant Director of the Arizona Corporation Commission's Securities Division and that I have legal custody of the records of the Securities Division. I certify that I have directed a diligent search of the Securities Division records and the records reflect that during the period of **January 1, 2009 to December 31, 2014, SHADOW BEVERAGES AND SNACKS, LLC** has not filed with the Arizona Corporation Commission a notice pursuant to A.R.S. § 44-1850 of the Securities Act of Arizona or Article 12 of the Arizona Investment Management Act (A.R.S. § 44-3321 *et seq.*); has not registered securities with the Arizona Corporation Commission by description pursuant to Article 6 of the Securities Act of Arizona (A.R.S. § 44-1871 *et seq.*) or by qualification pursuant to Article 7 of the Securities Act of Arizona (A.R.S. § 44-1891 *et seq.*); has not registered with the Arizona Corporation Commission as a dealer pursuant to Article 9 of the Securities Act of Arizona (A.R.S. § 44-1941 *et seq.*); and has not made a notice filing or licensed with the Arizona Corporation Commission as an investment adviser pursuant to Article 4 of the Arizona Investment Management Act (A.R.S. § 44-3151 *et seq.*)

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED THE OFFICIAL SEAL OF THE ARIZONA CORPORATION COMMISSION, AT THE CAPITOL, IN THE CITY OF PHOENIX, THIS 19<sup>th</sup> DAY OF April, 2016.



BY

A handwritten signature in black ink, appearing to read "Mark Dinell", written over a horizontal line.

Mark Dinell  
Assistant Director  
Securities Division



# STATE OF ARIZONA

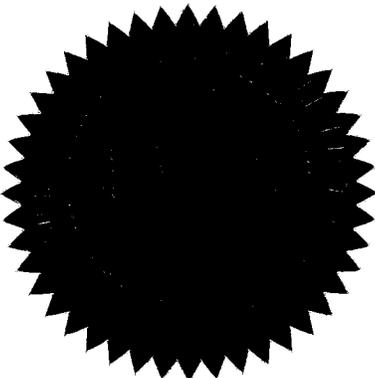


## *Corporation Commission*

### CERTIFICATION

I, Mark Dinell, certify that I am the Assistant Director of the Arizona Corporation Commission's Securities Division and that I have legal custody of the records of the Securities Division. I certify that I have directed a diligent search of the Securities Division records and the records reflect that during the period of **January 1, 2009** to **December 31, 2014**, **LUCIO GEORGE MARTINEZ** has not registered with the Arizona Corporation Commission as a securities salesman or dealer pursuant to Article 9 of the Securities Act of Arizona (A.R.S. § 44-1941 *et seq.*); and has not made a notice filing or licensed with the Arizona Corporation Commission as an investment adviser or investment adviser representative pursuant to Article 4 of the Arizona Investment Management Act (A.R.S. § 44-3151 *et seq.*)

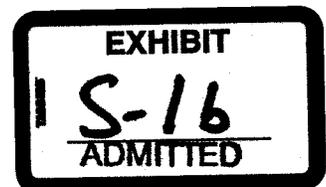
IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED THE OFFICIAL SEAL OF THE ARIZONA CORPORATION COMMISSION, AT THE CAPITOL, IN THE CITY OF PHOENIX, THIS 19<sup>th</sup> DAY OF April, 2016.



BY

A handwritten signature in cursive script, appearing to read "Mark Dinell", is written over a horizontal line.

Mark Dinell  
Assistant Director  
Securities Division



# STATE OF ARIZONA



Office of the  
**CORPORATION COMMISSION**

The Executive Director of the Arizona Corporation Commission does hereby certify that the attached copy of the following document:

**ARTICLES OF ORGANIZATION, 07/25/2008**

consisting of 2 pages, is a true and complete copy of the original of said document on file with this office for:

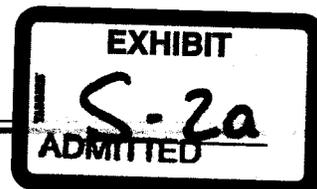
**SHADOW BEVERAGES AND SNACKS, LLC**  
ACC file number: L-1466110-2

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Arizona Corporation Commission on this date: April 4, 2016.



*Jodi A. Jerich*  
\_\_\_\_\_  
Jodi A. Jerich, Executive Director

By: *Jeffrey A. Barker*  
\_\_\_\_\_  
JEFFREY A. BARKER



AZ CORPORATION COMMISSION  
FILED

JUL 25 2008

**ARTICLES OF ORGANIZATION**  
**A.R.S. § 29-632**

FILE NO. L-14661102

1. Name of the organization:

A. \_\_\_\_\_  
LLC Name Reservation File Number (If one has been obtained). If not, leave this line blank.

B. Shadow Beverages and Snacks, LLC  
Limited Liability Company Name

2. Known Place of Business in Arizona. The address of the company's known place of business in Arizona is:

14650 N. 78<sup>th</sup> Way, Building B  
Scottsdale, AZ 85260

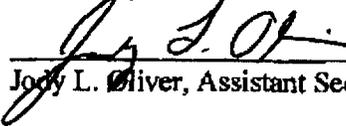
3. The name and street address of Statutory Agent in Arizona.

M & H Agent Services, Inc.  
1850 N. Central Avenue, Suite 2100  
Phoenix, Arizona 85004-4584

**ACCEPTANCE OF APPOINTMENT BY STATUTORY AGENT**

M & H Agent Services, Inc., having been designated to act as Statutory Agent, hereby consents to act in that capacity until removed or resignation is submitted in accordance with the Arizona Revised Statutes.

M & H Agent Services, Inc.

  
\_\_\_\_\_  
Jody L. Oliver, Assistant Secretary

4. Dissolution. The limited liability company is perpetual.

5. Management Structure. (Check one box only) A.R.S. § 29-632(5)

A.  Reserved to the member(s). The names and addresses of each member is:

B.  Vested in Manager(s). The names and addresses of each person who is a manager AND each person who owns a twenty percent (20%) or greater interest are:

MANAGER:

Sam Jones  
14650 N. 78<sup>th</sup> Way, Building B  
Scottsdale, AZ 85260

MEMBERS:

Sam Jones  
14650 N. 78<sup>th</sup> Way, Building B  
Scottsdale, AZ 85260

George Martinez  
14650 N. 78<sup>th</sup> Way, Building B  
Scottsdale, AZ 85260

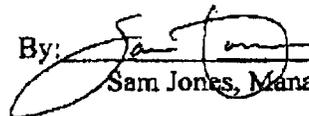
Richard Scherer  
14650 N. 78<sup>th</sup> Way, Building B  
Scottsdale, AZ 85260

6. Organizer. The undersigned organizer shall have no authority, responsibilities, or duties as organizer other than the filing of these Articles of Organization.

Executed this 24 day of July, 2008.

SHADOW BEVERAGES AND SNACKS, LLC

By:

  
\_\_\_\_\_  
Sam Jones, Manager

# STATE OF ARIZONA



Office of the  
**CORPORATION COMMISSION**

The Executive Director of the Arizona Corporation Commission does hereby certify that the attached copy of the following document:

**STATEMENT OF CHANGE, 05/09/2011**

consisting of 3 pages, is a true and complete copy of the original of said document on file with this office for:

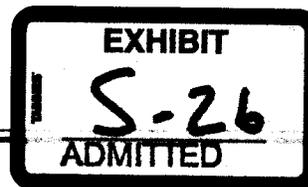
**SHADOW BEVERAGES AND SNACKS, LLC**  
ACC file number: L-1466110-2

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Arizona Corporation Commission on this date:  
April 4, 2016.



*Jodi A. Jerich*  
\_\_\_\_\_  
Jodi A. Jerich, Executive Director

By: *Jeffrey A. Barker*  
\_\_\_\_\_  
JEFFREY A. BARKER



**LIMITED LIABILITY COMPANY  
STATEMENT OF ADDRESS CHANGE  
STATEMENT OF STATUTORY AGENT CHANGE**  
Pursuant to A.R.S. §§ 29-605 and 29-605.01

FILING FEE \$5.00 (A.R.S. § 29-851)

**THIS FORM IS NOT TO BE USED FOR ADDING MEMBERS – IF ADDING MEMBERS PLEASE USE THE AMENDMENT FORM**

It is important that the information you provide on this form be correct. To obtain the correct information about the Limited Liability Company's current known place of business and statutory agent, consult the Customer Phone Bank at (602) 542-3026 or the Division's website at [www.azcc.gov/divisions/corporations](http://www.azcc.gov/divisions/corporations).

1. The exact name of the Limited Liability Company (LLC) currently on file with the Arizona Corporation Commission (ACC) is:

Shadow Beverage and Snacks, LLC

2. The ACC file number is: L-1466110-2

3. The current address of the LLC's known place of business on file with the ACC is:

14650 N. 78th Way Building B

Scottsdale, AZ 85260

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MAY 09 2011  
ARIZONA CORP COMMISSION  
CORPORATION DIVISION

4. The name and **street address\*** of the current statutory agent on file with the ACC are:

N/A

5. If the LLC was not organized in Arizona, the address of the office required to be maintained in the state of its organization or, if not so required, of the principal office of the foreign LLC is:

N/A

6. Is the known place of business in Arizona to be changed?

No

Yes and the address of the new place of business is:

1860 W. University Dr. Suite 114  
Tempe, AZ 85281

\* **street address** must be a physical address. P.O. Box addresses and personal mail boxes (PMB) will not be accepted.

LLC Name Shadow Beverages & Snacks ACC File Number L-1466110-2

7. Is the street address of the current statutory agent to be changed?  
 No.  Yes, the new **street address\*** of the current statutory agent is:

1860 W. University Dr Suite 114  
Tempe AZ 85281

8. Is a new statutory agent to be appointed?  
 No.  Yes. If you checked "yes", you must complete the following information and the new statutory agent must accept his/her appointment (below).

The new statutory agent is: George Martinez

New **street address\*** of the statutory agent is:  
George Martinez  
~~14650 N. 78th Way Building B~~ 1860 W. University Dr.  
~~Scottsdale, AZ 85260~~ Suite 114  
Tempe, AZ 85281

**Acceptance of Appointment  
By Statutory Agent**

The undersigned hereby acknowledges and accepts the appointment as statutory agent of the above-named limited liability company effective this 16 day of May, 2011.

Signature: [Signature]  
Printed Name: George Martinez Title: President  
Shadow Beverages & Snacks LLC  
If signing on behalf of a company, please print the company name here.

9. Is the address of one or more of the LLC's members or managers to be changed?  
 No.  Yes. If you checked "yes", you must complete the following information for each member or manager whose address is to be changed:

Name: \_\_\_\_\_ Member or Manager  
(circle one)  
Current Address: \_\_\_\_\_ New Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

LLC Name Shadow Beverages + Snacks

ACC File Number L-1466110-2

Name: \_\_\_\_\_

Member or Manager  
(circle one)

**Current**  
Address: \_\_\_\_\_

**New**  
Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_

Member or Manager  
(circle one)

**Current**  
Address: \_\_\_\_\_

**New**  
Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_

Member or Manager  
(circle one)

**Current**  
Address: \_\_\_\_\_

**New**  
Address: \_\_\_\_\_

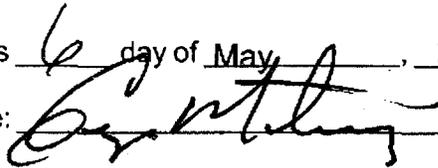
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\* street address must be a physical address. P.O. Box addresses and personal mail boxes (PMB) will not be accepted.

Changes to the statutory agent address must be executed by the statutory agent.

Dated this 6 day of May, 2011

Signature: 

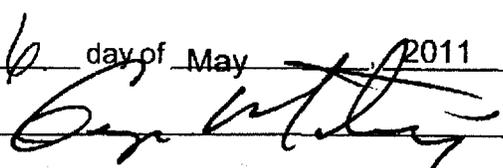
Printed Name: George Martinez

\_\_\_\_\_  
\_\_\_\_\_

If signing on behalf of a company, please print the company name here.

A.R.S §§29-605 and 29-605.01 requires that changes to limited liability companies (except for changes to the statutory agent's address) be executed by a member/manager of the LLC.

Dated this 6 day of May, 2011

Signature: 

Printed Name: George Martinez

Title: Authorized Member

This form must be delivered to:

**ARIZONA CORPORATION COMMISSION**  
Corporations Division  
1300 West Washington  
Phoenix, Arizona 85007-2929

# STATE OF ARIZONA



Office of the  
**CORPORATION COMMISSION**

The Executive Director of the Arizona Corporation Commission does hereby certify that the attached copy of the following document:

**STATEMENT OF CHANGE, 08/13/2013**

consisting of 3 pages, is a true and complete copy of the original of said document on file with this office for:

**SHADOW BEVERAGES AND SNACKS, LLC**  
ACC file number: L-1466110-2

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the Arizona Corporation Commission on this date:  
April 4, 2016.



*Jodi A. Jerich*  
\_\_\_\_\_  
Jodi A. Jerich, Executive Director

By: *Jeffrey A. Barker*  
\_\_\_\_\_  
JEFFREY A. BARKER



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ARIZONA CORPORATION COMMISSION  
CORPORATION DIVISION

DO NOT WRITE ABOVE THIS LINE; RESERVED FOR ACC USE ONLY.

**LLC STATEMENT OF CHANGE  
OF KNOWN PLACE OF BUSINESS ADDRESS OR STATUTORY AGENT**

Read the Instructions L020i

**NOTE** - no matter what is being changed, numbers 1, 2, 3.1, 4.1, and 4.2 must be completed. The form will be rejected if those sections are not completed.

1. **ENTITY NAME** - give the exact name of the LLC as currently shown in A.C.C. records:

Shadow Beverages and Snacks, LLC

2. **A.C.C. FILE NUMBER:**

L-14661102

Find the A.C.C. file number on the upper corner of filed documents OR on our website at: <http://www.azcc.gov/Divisions/Corporations>

**3. ARIZONA KNOWN PLACE OF BUSINESS ADDRESS:**

**3.1 REQUIRED** - list the known place of business address currently shown in A.C.C. records (before any changes):

**3.2 Optional** - List the NEW known place of business address in Arizona (must be a street or physical address):

Attention (optional)

1860 W University Dr.

Address 1

Suite 114

Address 2 (optional)

City Tempe

State AZ

Zip 85281

Attention (optional)

4650 E Cotton Center Blvd.

Address 1

Suite 240

Address 2 (optional)

City Phoenix

State AZ

Zip 85040

**3.3** If you completed 3.2, is the NEW known place of business address in Arizona the same as the street address of the statutory agent? Yes  No

**4. CURRENT OR EXISTING STATUTORY AGENT** - list the name and addresses of the statutory agent as shown in the records of the Arizona Corporation Commission *before any changes* (this is the existing statutory agent):

**4.1 REQUIRED** - list the **name** and **physical or street address** (not a P.O. Box) in Arizona of the existing statutory agent:

**4.2 REQUIRED** - list the **mailing address** (if one exists in A.C.C. records) in Arizona of the existing Statutory Agent:

Statutory Agent Name

George Martinez

Attention (optional)

1860 W University Dr

Address 1

Suite 114

Address 2 (optional)

City Tempe

State AZ

Zip 85281

Attention (optional)

1860 W. University Dr

Address 1

Suite 114

Address 2 (optional)

City Tempe

State AZ

Zip 85281

**4.3**  **CHANGE IN EXISTING STATUTORY AGENT NAME ONLY** – if the *name only* of the existing statutory agent listed in number 4.1 above has changed, but a new agent has not been appointed, check the box and give the new name of the existing statutory agent below:

**4.4** **CHANGE IN EXISTING STATUTORY AGENT ADDRESS** – check all that apply and follow instructions:

- STREET ADDRESS CHANGED** – complete number 4.5.
- MAILING ADDRESS CHANGED** – complete number 4.6.

<b>4.5 NEW STREET ADDRESS</b> – give the NEW physical or street address (not a P.O. Box) in Arizona of the existing statutory agent:			<b>4.6 NEW MAILING ADDRESS</b> – give the NEW mailing address in Arizona of the existing statutory agent (can be a P.O. Box):		
Attention (optional)			Attention (optional)		
4650 E Cotton Center Blvd			4650 E Cotton Center Blvd		
Address 1			Address 1		
Suite 240			Suite 240		
Address 2 (optional)			Address 2 (optional)		
City	State	Zip	City	State	Zip
Phoenix	Az	85040	Phoenix	Az	85040

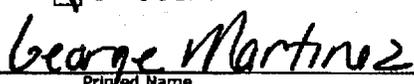
**5.**  **NEW STATUTORY AGENT** – if a new statutory agent is being appointed, check the box and complete the following for the **NEW** statutory agent:

<b>5.1 REQUIRED</b> – give the name (can be an individual or an entity) and physical or street address (not a P.O. Box) in Arizona of the NEW statutory agent:			<b>5.2 OPTIONAL</b> – mailing address in Arizona of NEW Statutory Agent (can be a P.O. Box):		
Statutory Agent Name					
Attention (optional)			Attention (optional)		
Address 1			Address 1		
Address 2 (optional)			Address 2 (optional)		
City	State	Zip	City	State	Zip
<b>5.3 REQUIRED</b> – if you are appointing a new statutory agent, the <u>Statutory Agent Acceptance</u> form M002 must be submitted along with this Statement of Change form.					

**SIGNATURE** – see *Instructions L020i* for who is authorized to make changes:

If the person signing this form is the existing statutory agent changing its own address, then by the signature appearing below, the existing statutory agent certifies *under penalty of perjury* that he or she has given the LLC named in number 1 above written notice of the address change.

By checking the box marked "I accept" below, I acknowledge *under penalty of perjury* that this document together with any attachments is submitted in compliance with Arizona law.

  I ACCEPT    
Signature Printed Name Date

**REQUIRED** – check only one and fill in the corresponding blank if signing for an entity:

<input type="checkbox"/> I am the individual <b>Manager</b> of this manager-managed LLC or I am signing for an <b>entity manager named:</b>	<input type="checkbox"/> I am a <b>Member</b> of this member-managed LLC or I am signing for an <b>entity member named:</b>	<input checked="" type="checkbox"/> I am a <b>Statutory Agent</b> changing only my own address and/or my own name.
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Filing Fee: \$5.00 (regular processing) Expedited processing – add \$35.00 to filing fee. All fees are nonrefundable – see Instructions.	Mail: Arizona Corporation Commission - Corporate Filings Section 1300 W. Washington St., Phoenix, Arizona 85007 Fax: 602-542-4100
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Please be advised that A.C.C. forms reflect only the **minimum** provisions required by statute. You should seek private legal counsel for those matters that may pertain to the individual needs of your business.  
All documents filed with the Arizona Corporation Commission are **public record** and are open for public inspection.  
If you have questions after reading the Instructions, please call 602-542-3026 or (within Arizona only) 800-345-5819.

AMENDED AND RESTATED OPERATING AGREEMENT

OF

SHADOW BEVERAGES AND SNACKS, LLC

The Membership Interests referred to in this Amended and Restated Operating Agreement have not been registered under the Securities Act of 1933, as amended (the "Securities Act"), or any other securities laws, and such Membership Interests may not be Transferred without appropriate registration or the availability of an exemption from such registration requirements.



Martinez, EXHIBIT 1  
DATE 010-15-15  
Colette E. Ross  
CR No. 50658

SPH-2042417-4

SHADOW005738

**AMENDED AND RESTATED OPERATING AGREEMENT  
OF  
SHADOW BEVERAGES AND SNACKS, LLC**

THIS AMENDED AND RESTATED OPERATING AGREEMENT OF SHADOW BEVERAGES AND SNACKS, LLC (this "Agreement"), made and entered into this 17th day of August, 2011 (the "Effective Date"), by and among the Members set forth on Schedule A attached hereto.

A. Shadow Beverages and Snacks, LLC (the "Company") was formed as an Arizona limited liability pursuant to Articles of Organization executed and filed with the Arizona Corporation Commission in and for the State of Arizona (the "Filing Office") on July 25, 2008, as amended.

B. The Company is governed by the Operating Agreement effective as of July 25, 2008, as amended by the First Amendment to the Operating Agreement dated July 8, 2009 (the "Initial Agreement").

C. The Company is authorized and has agreed to admit Spyglass Capital Partners, LLC, a Colorado limited liability company ("Spyglass") as a Member of the Company.

D. The Members desire to amend and restate the Initial Agreement in order to more fully set forth the rights, duties, and obligations of the Members to each other and to the Company.

NOW THEREFORE, in consideration fully received, the parties hereto agree as follows:

**AGREEMENT:**

In consideration of the premises and the mutual agreements contained herein, the parties hereto agree as follows:

**ARTICLE I - DEFINITIONS**

**1.1 Terms Defined Herein.** In addition to other terms defined in this Agreement, the following terms shall have the following meanings, unless the context otherwise specifies:

"**Act**" means the Arizona Limited Liability Company Act, as amended from time to time.

"**Adjusted Capital Account Deficit**" means, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments: (i) increased for any amounts such Member is unconditionally obligated to restore and the amount of such Member's share of Company Minimum Gain and Member Minimum Gain after taking into account any changes during such year; and (ii) reduced by the items described in Treasury Regulation § 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

"**Agreement**" means the Amended and Restated Operating Agreement of the Company, as amended from time to time.

"**Articles**" means the Articles of Organization of the Company filed with the Arizona Corporation Commission, as amended from time to time.

"**Available Cash**" means the aggregate amount of cash on hand or in bank, money market or similar accounts of the Company as of the end of each fiscal quarter derived from any source (other than

Capital Contributions and Liquidation Proceeds) that the Board of Managers determines is available for Distribution to the Members less all expenses and capital expenditures of the Company for such period, all payments of principal and interest on account of any Company indebtedness.

**"Bankruptcy,"** with respect to any Person, means the entry of an order for relief with respect to such Person under the Federal Bankruptcy Code or the insolvency of such Person under any state insolvency act.

**"Board of Managers"** means the group of Managers elected by the Members pursuant to Article V to manage the business and affairs of the Company.

**"Capital Account"** means the separate account established and maintained by the Company for each Member and each Transferee pursuant to Section 3.3 of this Agreement.

**"Capital Contribution"** means with respect to a Member the total amount of cash and the agreed upon net Fair Value of Property contributed by such Member (or such Member's predecessor in interest) to the capital of the Company for such Member's Membership Interest.

**"Code"** means the Internal Revenue Code of 1986, as amended from time to time, or the corresponding provisions of future laws.

**"Company"** means Shadow Beverages and Snacks, LLC, an Arizona limited liability company.

**"Company Minimum Gain"** shall have the same meaning as partnership minimum gain set forth in Treasury Regulation § 1.704-2(d)(1). Company Minimum Gain shall be determined, first, by computing for each Nonrecourse Debt any gain that the Company would realize if the Company disposed of the Property subject to that liability for no consideration other than full satisfaction of such liability and, then, aggregating the separately computed gains. For purposes of computing gain, the Company shall use the basis of such Property that is used for purposes of determining the amount of the Capital Accounts under Section 3.3 hereof. In any taxable year in which a Revaluation occurs, the net increase or decrease in Company Minimum Gain for such taxable year shall be determined by: (1) calculating the net decrease or increase in Company Minimum Gain using the current year's book value and the prior year's amount of Company Minimum Gain, and (2) adding back any decrease in Company Minimum Gain arising solely from the Revaluation.

**"Distributions"** means any distributions by the Company to the Members of Available Cash or Liquidation Proceeds or other amounts.

**"Event of Withdrawal"** means an event upon the occurrence of which a Member ceases to be a Member of the Company pursuant to Section 7.7 of this Agreement.

**"Fair Value"** of Property means its fair market value.

**"Income"** and **"Loss"** mean, respectively, for each fiscal year or other period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Code § 703(a), except that for this purpose (i) all items of income, gain, deduction or loss required to be separately stated by Code § 703(a)(1) shall be included in taxable income or loss; (ii) tax exempt income shall be added to taxable income or loss; (iii) any expenditures described in Code § 705(a)(2)(B) (or treated as Code § 705(a)(2)(B) expenditures pursuant to Treasury Regulation § 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing taxable income or loss shall be subtracted; and (iv) taxable income or loss shall be adjusted to reflect any item of Income or Loss specifically allocated in Article IV.

**"Initial Capital Contributions"** means the Capital Contributions made by the Members pursuant to Section 3.1 of this Agreement.

**"Initial Members"** means all Persons who are parties to the Initial Agreement.

**"Liquidation Proceeds"** means all Property at the time of liquidation of the Company and all proceeds thereof.

**"Majority in Interest"** means any Member or group of Members holding an aggregate of more than fifty percent (50%) of the Percentage Interests held by all Members.

**"Manager"** means each natural Person elected by the Members pursuant to Article V to serve on the Board of Managers.

**"Member"** means each Person executing this Agreement and each Person who is subsequently admitted to the Company as a Member pursuant to Section 7.3 or Section 7.5 of this Agreement, other than a Person who ceases to be a Member of the Company pursuant to Section 7.7 of this Agreement as a result of an Event of Withdrawal.

**"Member Minimum Gain"** shall have the same meaning as partner nonrecourse debt minimum gain as set forth in Treasury Regulation § 1.704-2(i)(3). With respect to each Member Nonrecourse Debt, Member Minimum Gain shall be determined by computing for each Member Nonrecourse Debt any gain that the Company would realize if the Company disposed of the Property subject to that liability for no consideration other than full satisfaction of such liability. For purposes of computing gain, the Company shall use the basis of such Property that is used for purposes of determining the amount of the Capital Accounts under Section 3.3 of this Agreement. In any taxable year in which a Revaluation occurs, the net increase or decrease in Member Minimum Gain for such taxable year shall be determined by: (1) calculating the net decrease or increase in Member Minimum Gain using the current year's book value and the prior year's amount of Member Minimum Gain, and (2) adding back any decrease in Member Minimum Gain arising solely from the Revaluation.

**"Member Nonrecourse Debt"** shall have the same meaning as partner nonrecourse debt set forth in Treasury Regulation § 1.704-2(b)(4).

**"Member Nonrecourse Deductions"** shall have the same meaning as partner nonrecourse deductions set forth in Treasury Regulation § 1.704-2(i)(2). Generally, the amount of Member Nonrecourse Deductions with respect to a Member Nonrecourse Debt for a fiscal year equals the net increase during the year in the amount of the Member Minimum Gain (determined in accordance with Treasury Regulation § 1.704-2(i)) reduced (but not below zero) by the aggregate Distributions made during the year of proceeds of Member Nonrecourse Debt and allocable to the increase in Member Minimum Gain determined according to the provisions of Treasury Regulation § 1.704-2(i).

**"Membership Interest"** refers to all of a Member's rights and interests in the Company in such Member's capacity as a Member, all as provided in the Articles, this Agreement and the Act, including, without limitation, the Member's interest in the capital, income, gain, deductions, and losses of the Company.

**"Membership Interest Incentive Plan"** means any one or more Membership Interest incentive plans adopted by the Company before or after the Effective Date and administered by the Board of Managers to provide an incentive to Members, employees or officers of the Company.

**"Nonrecourse Debt"** means a Company liability with respect to which no Member bears the economic risk of loss as determined under Treasury Regulation §§ 1.752-1(a)(2) and 1.752-2.

**"Nonrecourse Deductions"** shall have the same meaning as nonrecourse deductions set forth in Treasury Regulation § 1.704-2(c). Generally, the amount of Nonrecourse Deductions for a fiscal year equals the net increase in the amount of Company Minimum Gain (determined in accordance with Treasury Regulation § 1.704.2(d)) during such year reduced (but not below zero) by the aggregate Distributions made during the year of proceeds of a Nonrecourse Debt that are allocable to the increase in Company Minimum Gain, determined according to the provisions of Treasury Regulation § 1.704-2(c) and (h).

**"Other Enterprise"** shall include, without limitation, any other limited liability company, corporation, partnership, joint venture, trust or employee benefit plan or such other enterprise designated by the Board of Managers.

**"Percentage Interest"** of each Member shall be as forth on Schedule A attached hereto, as adjusted from time to time as required or permitted by the provisions of this Agreement.

**"Person"** means any individual, partnership, limited liability company, corporation, cooperative, trust or other entity.

**"Property"** means all properties and assets that the Company may own or otherwise have an interest in from time to time.

**"Revaluation"** shall mean the occurrence of any event described in clause (x), (y) or (z) of Section 3.3 of this Agreement in which the book basis of Property is adjusted to its Fair Value.

**"Tax Matters Member"** means the Person designated pursuant to Section 6.4 to represent the Company in matters before the Internal Revenue Service.

**"Transfer"** means (i) when used as a verb, to give, sell, exchange, assign, transfer, pledge, hypothecate, bequeath, devise or otherwise dispose of or encumber, and (ii) when used as a noun, the nouns corresponding to such verbs, in either case voluntarily or involuntarily, by operation of law or otherwise.

**"Treasury Regulations"** means the regulations promulgated by the Treasury Department with respect to the Code, as such regulations are amended from time to time, or the corresponding provisions of future regulations.

## ARTICLE II - BUSINESS PURPOSES AND OFFICES

**2.1 Name; Business Purpose.** The name of the Company shall be Shadow Beverages and Snacks and business purpose of the Company shall be to manufacture, market and distribute certain non-alcoholic beverages, beverage concentrates, power and nutrition bars, snacks, meal replacements and dietary supplements and to conduct such other business that is authorized under the Act. The Company is formed only for such business purpose and to conduct shall not be deemed to create any agreement among the Members with respect to any other activities whatsoever other than the activities within such business purpose.

**2.2 Powers.** In addition to the powers and privileges conferred upon the Company by law and those incidental thereto, the Company shall have the same powers as a natural Person to do all things necessary or convenient to carry out its business and affairs.

**2.3 Principal Office.** The principal office of the Company shall be located at 1860 W. University Drive, Suite 114, Tempe, AZ 85281, or at such other place(s) as the Board of Managers may determine from time to time.

**2.4 Registered Office and Registered Agent.** The location of the registered office and the name of the registered agent of the Company in the State of Arizona shall be George Martinez with an address of 1860 W. University Drive, Suite 114, Tempe, AZ 85281. The registered office and registered agent of the Company in the State of Arizona may be changed, from time to time, by the Board of Managers.

**2.5 Amendment of the Articles.** The Company shall amend the Articles at such time or times and in such manner as may be required by the Act and this Agreement.

**2.6 Effective Date.** This Agreement shall be effective as of the date first written above.

**2.7 Liability of Members.** No Member or Manager, solely by reason of being a Member or Manager, or both, shall be liable, under a judgment, decree or order of a court, or in any other manner, for a debt, obligation or liability of the Company, whether arising in contract, tort or otherwise, or for the acts or omissions of any other Member, Manager, agent, or employee of the Company. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Agreement or the Act shall not be grounds for imposing liability on any Member or Manager for the debts, obligations, or liabilities of the Company.

**2.8 Interest Not Acquired for Resale.** Each Member hereby represents and warrants to the Company and to each other Member that: (a) in the case of a Member who is not a natural Person, that the Member is duly organized, validly existing, and in good standing under the law of its state of organization and that it has the requisite power and authority to execute this Agreement and to perform its obligations hereunder; (b) the Member is acquiring a Membership Interest for such Member's own account as an investment and without an intent to distribute such Membership Interest; and (c) the Member acknowledges that the Membership Interests have not been registered under the Securities Act of 1933 or any state securities laws, and such Member's Membership Interest may not be resold or Transferred by the Member without appropriate registration or the availability of an exemption from such requirements. Upon issuance, the Membership Interests issued such Member shall be duly authorized, validly issued, fully paid and non-assessable.

**2.9 Admission of Spyglass.** Spyglass is hereby admitted to the Company as of the date hereof and agrees to be bound by the terms of this Agreement. The admission of Spyglass shall be evidenced by the execution of this Agreement.

### ARTICLE III - CAPITAL CONTRIBUTIONS AND LOANS

#### 3.1 Capital Contributions.

(a) Each Initial Member has made or, upon the execution of this Agreement shall make, an initial Capital Contribution of the Company in the amount set forth opposite such Initial Member's name on Schedule A attached hereto.

(b) Spyglass shall make an initial Capital Contribution to the Company in the aggregate amount of Two Million and 00/100 Dollars (\$2,000,000.00):

(i) The first installment of One Million and 00/100 Dollars (\$1,000,000.00) shall be made upon execution of this Agreement; and

(ii) The second installment of One Million and 00/100 Dollars (\$1,000,000.00) shall be made on or before September 1, 2011.

### 3.2 Additional Capital Contributions.

(a) The Members recognize that the Company may require capital from time to time, in addition to that contributed pursuant to Section 3.1 above, in order to accomplish the purpose and business for which it is formed. Subject to Section 5.10(e), upon the determination, from time to time, by the Board of Managers that additional Capital Contributions are necessary for the Company, the Board of Managers shall determine the amount of the needed additional Capital Contribution and the net Fair Value of the Company's Property as of the time immediately preceding the contemplated additional Capital Contributions. The Board of Managers shall then, by written notice, call for any such additional contributions to be made by the Members to the capital of the Company and set forth in such notice its determination of the net Fair Value of the Company's Property as of the time immediately preceding the contemplated additional Capital Contributions. Within thirty (30) days following such notice, each Member shall be entitled to contribute, in cash, to the capital of the Company an amount (the "Additional Contribution") equal to such Member's Percentage Interest multiplied by the aggregate additional Capital Contributions to be made by all Members. No Member shall be obligated to make any Additional Contributions to the Company and, accordingly, no Member shall be liable for damage to the Company or any other Member as a result of the failure of such Member to make any such Additional Contributions. The remedies set forth in this Section shall be the sole remedies for any such failure.

(b) If any Member fails for any reason to make in a timely manner any part or all of an Additional Contribution (the "Unpaid Additional Contribution"), such Member shall be deemed to be a "Non-Contributing Member" and the Board of Managers shall first allow the other Members, which elect to do so, in proportion to their Percentage Interests or in such other percentages as they may agree to make such Additional Contribution within ten (10) days of the expiration of the thirty (30) day notice, to contribute as an Additional Contribution the amount of the Unpaid Additional Contribution. Each Additional Contribution by a Member pursuant to this Section 3.2(b) shall be credited to such Member's Capital Account as of the date of payment to the Company. Upon the expiration of the ten (10) day election period, the Percentage Interests of each Member shall be adjusted in accordance with the provisions of subsection (c) below, effective as of the date of the Non-Contributing Member's failure to contribute. The Board of Managers shall cause Schedule A to this Agreement to be amended to reflect any adjustment in the Percentage Interests of the Members in accordance with this Section 3.2(b).

(c) If there is an Unpaid Additional Contribution, the Percentage Interests shall be adjusted to the same ratio that the Member's total Capital Accounts immediately after all of the Additional Capital Contributions have been made (taking into account any adjustments to the Capital Accounts due to a Revaluation) bears to the total Capital Accounts of all Members as of the adjustment date. The Board of Managers shall cause Schedule A to this Agreement to be amended to reflect any adjustment in the Percentage Interests of the Members in accordance with this Section 3.2(c).

### 3.3 Capital Accounts.

(a) A separate Capital Account shall be maintained for each Member and each Transferee. Each Member's Capital Account shall be (a) increased by (1) the amount of money contributed by such Member, (2) the Fair Value of Property contributed by such Member (net of liabilities secured by such contributed Property that the Company is considered to assume or take subject to under Code § 752), (3) allocations to such Member, pursuant to Article IV, of Company income and gain (or items thereof), and (iv) to the extent not already netted out under clause (b)(B) below, the amount of any Company liabilities assumed by the Member or which are secured by any Property distributed to such Member; and decreased by (A) the amount of money distributed to such Member, (B) the Fair Value of Property distributed to such Member (net of liabilities secured by such distributed Property that such Member is considered to assume or take subject to under Code § 752), (C) allocations to such Member, pursuant to Article IV, of Company loss and deductions (or items thereof), and (D) to the extent not already netted out under clause (a)(2) above, the amount of any liabilities of the Member assumed by the Company or which are secured by any Property contributed by such Member to the Company.

(b) In the event any Membership Interest is Transferred in accordance with the terms of this Agreement, the Transferee shall succeed to the Capital Account of the Transferor to the extent it relates to the Transferred Membership Interest and the Capital Account of each Transferee shall be increased and decreased in the manner set forth above.

(c) In the event of (i) an Additional Contribution by an existing or an additional Member of more than a de minimis amount that results in a shift in Percentage Interests, (ii) the Distribution by the Company to a Member of more than a de minimis amount of Property as consideration for an Interest or (iii) the liquidation of the Company within the meaning of Treasury Regulation § 1.704-1(b)(2)(ii)(g), the book basis of the Property shall be adjusted to Fair Value and the Capital Accounts of all the Members shall be adjusted simultaneously to reflect the aggregate net adjustment to book basis as if the Company recognized gain or loss equal to the amount of such aggregate net adjustment; provided, however, that the adjustments resulting from clause (i) or (ii) above shall be made only if the Members determine that such adjustments are necessary or appropriate to reflect the relative economic interests of the Members.

**3.4 Capital Withdrawal Rights, Interest and Priority.** Except as expressly provided in this Agreement, no Member shall be entitled to withdraw or reduce such Member's Capital Account or to receive any Distributions. No Member shall be entitled to demand or receive any Distribution in any form other than in cash. No Member shall be entitled to receive or be credited with any interest on the balance in such Member's Capital Account at any time. Except as may be otherwise expressly provided herein, no Member shall have any priority over any other Member as to the return of the balance in such Member's Capital Account.

**3.5 Loans.** Any Member may make a loan to the Company in such amounts, at such times and on such terms and conditions as may be approved by a Majority in Interest. Loans by any Member to the Company shall not be considered as contributions to the capital of the Company.

## ARTICLE IV - ALLOCATIONS AND DISTRIBUTIONS

**4.1 Minimum Distribution to Pay Tax.** On or before the date upon which Members are required to make each payment of their federal estimated income taxes (assuming for this purposes that are all Members are on a calendar year for federal income tax purposes), prior to making any Distributions under Section 4.2, the Company shall distribute to each Member an amount with respect to the period covered by such required payment so that the aggregate amounts distributed to such Member during the calendar year (excluding Distributions under this Section 4.1 with respect to January estimated tax payments) equals the lesser of the following: (a) the Member's pro-rata share (based upon the Members' relative amounts under the following clause (b)) of Available Cash; and (b) the product of the Member's allocable share of the estimated net Income and Loss of the Company through the date of the Distribution multiplied by the sum of (i) the highest marginal federal income tax rate applicable to any Member for such period, plus (ii) the highest state income tax rate applicable to any Member for such period in the state where the Company earned the largest percentage of its state taxable income during such period. The amount of any Distributions to a Member pursuant to this Section 4.1 shall be treated as an advance against and shall be applied to reduce Distributions that such Member would otherwise be entitled to receive under this Agreement (in the order that such Distributions would be made).

**4.2 Non-Liquidation Cash Distributions.** The amount, if any, of Available Cash shall be determined by the Board of Managers quarterly and shall be distributed to the Members within forty-five (45) days following the end of each fiscal quarter in accordance with their respective Percentage Interests.

**4.3 Liquidation Distributions.** Liquidation Proceeds shall be distributed in the following order of priority:

(a) To the payment of debts and liabilities of the Company (including to Members to the extent otherwise permitted by law) and the expenses of liquidation.

(b) Next, to the setting up of such reserves as the Person required or authorized by law to wind up the Company's affairs may reasonably deem necessary or appropriate for any disputed, contingent or unforeseen liabilities or obligations of the Company, provided that any such reserves shall be paid over by such Person to an independent escrow agent, to be held by such agent or its successor for such period as such Person shall deem advisable for the purpose of applying such reserves to the payment of such liabilities or obligations and, at the expiration of such period, the balance of such reserves, if any, shall be distributed as hereinafter provided.

(c) The remainder to the Members in accordance with and to the extent of their respective Capital Account balances after taking into account the allocation of all Income or Loss pursuant to this Agreement for the fiscal year(s) in which the Company is liquidated.

**4.4 Income, Losses and Distributive Shares of Tax Items.** The Company's Income or Loss, as the case may be, for each fiscal year of the Company, as determined in accordance with such method of accounting as may be adopted for the Company pursuant to Article VI hereof, shall be allocated to the Members for both financial accounting and income tax purposes as set forth in this Article IV, except as otherwise provided for herein or unless all Members agree otherwise.

**4.5 Allocation of Income and Loss.**

(a) Income (other than from transactions in liquidation of the Company) for each fiscal year shall be allocated at the end of such year among the Members in the following order of priority:

(i) To the Members, in an amount equal to the Loss allocated to such Members pursuant to Section 4.4(b)(ii) (and not previously offset by Income allocated pursuant to this Section 4.4(a)(i));

(ii) To the Members, in an amount equal to the Loss allocated to such Members pursuant to Section 4.4(b)(ii) (and not previously offset by Income allocated pursuant to this Section 4.4(a)(i)), among the Members in the proportion that each Member's unoffset Loss bears to the total aggregate unoffset Loss of all Members; and

(iii) To the Members in accordance with their respective Percentage Interests.

(b) Loss (other than from transactions in liquidation of the Company) for each fiscal year shall be allocated at the end of such year among the Members in the following order of priority:

(i) To the Members who made cash contributions, in an amount equal to the aggregate cash contributions made (reduced by the amount of Loss previously allocated to such Member for prior fiscal years pursuant to this Section 4.4(b)(i) and increased by the amount of Income allocated to such Members pursuant to Section 4.4(a)(ii) above), among the Members in the proportion that each Member's aggregate cash contributions bears to the total aggregate cash contributions of all Members; and

(ii) To the Members in accordance with their respective Percentage Interests.

(c) Income from transactions in liquidation of the Company shall be allocated among the Members in the following order of priority:

(i) To the Members, in an amount equal to the Loss allocated to such Members pursuant to Section 4.4(b)(ii) (and not previously offset by Income allocated pursuant to Section 4.4(a)(i));

(ii) To the Members, in an amount equal to the Loss allocated to such Members pursuant to Section 4.4(b)(i) (and not previously offset by Income allocated pursuant to Section 4.4(a)(ii)), among the Members in the proportion that each Member's unoffset Loss bears to the total aggregate unoffset Loss of all Members; and

(iii) To the Members in accordance with their respective Percentage Interests.

(d) Loss from transactions in liquidation of the Company shall be allocated among the Members in the following order of priority:

(i) To those Members, if any, with positive Capital Account balances (determined prior to taking into account any Distributions pursuant to Section 4.2) in the ratio that such positive balances bear to each other until all such Members' Capital Account balances equal zero; then

(ii) The remainder to the Members in accordance with their respective Percentage Interests.

**4.6 Special Rules Regarding Allocation of Tax Items.** Notwithstanding the foregoing provisions of Article IV, the following special rules shall apply in allocating tax items of the Company:

(a) **Section 704(c) and Revaluation Allocations.** In accordance with Code § 704(c) and the Treasury Regulations thereunder, income, gain, loss and deduction with respect to any Property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such Property to the Company for federal income tax purposes and its Fair Value at the time of contribution. In the event of a Revaluation, subsequent allocations of income, gain, loss and deduction with respect to such Property shall take account of any variation between the adjusted basis of such Property to the Company for federal income tax purposes and its Fair Value immediately after the adjustment in the same manner as under Code § 704(c) and the Treasury Regulations thereunder. Any elections or other decisions relating to such allocations shall be made by the Board of Managers in a manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Section 4.5(a) are solely for income tax purposes and shall not affect, or in any way be taken into account in computing, for book purposes, any Member's Capital Account or share of Income or Loss, pursuant to any provision of this Agreement.

(b) **Minimum Gain Chargeback.** Notwithstanding any other provision of this Article IV, if there is a net decrease in Company Minimum Gain during a Company taxable year, each Member shall be allocated items of income and gain for such year (and, if necessary, for subsequent years) in an amount equal to that Member's share of the net decrease in Company Minimum Gain during such year (hereinafter referred to as the "Minimum Gain Chargeback Requirement"). A Member's share of the net decrease in Company Minimum Gain is the amount of the total decrease multiplied by the Member's percentage share of the Company Minimum Gain at the end of the immediately preceding taxable year. A Member is not subject to the Minimum Gain Chargeback Requirement to the extent: (i) the Member's share of the net decrease in Company Minimum Gain is caused by a guarantee, refinancing or other change in the debt instrument causing it to become partially or wholly recourse debt or a Member Nonrecourse Debt, and the Member bears the economic risk of loss for the newly guaranteed, refinanced or otherwise changed liability; (ii) the Member contributes capital to the Company that is used to repay the Nonrecourse Debt and the Member's share of the net decrease in Company Minimum Gain results from the repayment; or (iii) the Minimum Gain Chargeback Requirement would cause a distortion and the Commissioner of the Internal Revenue Service waives such requirement.

A Member's share of Company Minimum Gain shall be computed in accordance with Treasury Regulation § 1.704-2(g) and as of the end of any Company taxable year shall equal: (i) the sum of the Nonrecourse Deductions allocated to that Member up to that time and the Distributions made to that Member up to that time of proceeds of a Nonrecourse Debt allocable to an increase of Company Minimum Gain, minus (ii) the sum of that Member's aggregate share of net decrease in Company Minimum Gain plus that Member's aggregate share of decreases resulting from revaluations of Property subject to Nonrecourse Debts. In addition, a Member's share of Company Minimum Gain shall be adjusted for the conversion of recourse and Member Nonrecourse Debts into Nonrecourse Debts in accordance with Treasury Regulation § 1.704-2(g)(3). In computing the above, amounts allocated or distributed to the Member's predecessor in interest shall be taken into account.

(c) **Member Minimum Gain Chargeback.** Notwithstanding any other provision of this Article IV other than Section 4.5(b), if there is a net decrease in Member Minimum Gain during a Company taxable year, each Member who has a share of the Member Minimum Gain (determined under Treasury Regulation § 704-2(i)(5) as of the beginning of the year) shall be allocated items of income and gain for such year (and, if necessary, for subsequent years) equal to that Member's share of the net decrease in Member Minimum Gain. In accordance with Treasury

Regulation § 1.704-2(i)(4), a Member is not subject to this Member Minimum Gain Chargeback requirement to the extent the net decrease in Member Minimum Gain arises because the liability ceases to be Member Nonrecourse Debt due to a conversion, refinancing or other change in the debt instrument that causes it to be partially or wholly a Nonrecourse Debt. The amount that would otherwise be subject to the Member Minimum Gain Chargeback requirement is added to the Member's share of Company Minimum Gain.

(d) **Qualified Income Offset.** In the event any Member unexpectedly receives an adjustment, allocation or Distribution described in Treasury Regulation § 1.704-1(b)(2)(ii)(d)(4), (5) or (6) that causes or increases such Member's Adjusted Capital Account Deficit, items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate such Adjusted Capital Account Deficit as quickly as possible, provided that an allocation under this Section 4.5(d) shall be made if and only to the extent such Member would have an Adjusted Capital Account Deficit after all other allocations under this Article IV have been made.

(e) **Curative Allocations.** Any special allocations of items of income, gain, deduction or loss pursuant to Sections 4.5(b), (c), and (d) shall be taken into account in computing subsequent allocations of income and gain pursuant to this Article IV, so that the net amount of any items so allocated and all other items allocated to each Member pursuant to this Article IV shall, to the extent possible, be equal to the net amount that would have been allocated to each such Member pursuant to the provisions of this Article IV if such adjustments, allocations or Distributions had not occurred.

(f) **Loss Allocation Limitation.** Notwithstanding the other provisions of this Article IV, unless otherwise agreed to by all of the Members, no Member shall be allocated Loss in any taxable year that would cause or increase an Adjusted Capital Account Deficit as of the end of such taxable year.

(g) **Share of Nonrecourse Liabilities.** Solely for purposes of determining a Member's proportionate share of the "excess nonrecourse liabilities" of the Company within the meaning of Treasury Regulation § 1.752-3(a)(3), each Member's interest in Company profits is equal to such Member's respective Percentage Interest.

(h) **Compliance with Treasury Regulations.** The foregoing provisions of this Section 4.5 are intended to comply with Treasury Regulation §§ 1.704-1(b), 1.704-2 and 1.752-1 through 1.752-5, and shall be interpreted and applied in a manner consistent with such Treasury Regulations. In the event it is determined by the Members that it is prudent or advisable to amend this Agreement in order to comply with such Treasury Regulations, the Board of Managers, upon being so directed by the Members, is empowered to amend or modify this Agreement, notwithstanding any other provision of this Agreement.

(i) **General Allocation Provisions.** Except as otherwise provided in this Agreement, all items that are components of Income or Loss shall be divided among the Members in the same proportions as they share such Income or Loss, as the case may be, for the year. For purposes of determining the Income, Loss or any other items for any period, Income, Loss or any such other items shall be determined on a daily, monthly or other basis, as determined by the Board of Managers using any permissible method under Code § 706 and the Treasury Regulations thereunder.

**4.7 Withholding of Distributions.** Notwithstanding any other provision of this Agreement, the Board of Managers (or any Person required or authorized by law to wind up the Company's affairs) may suspend, reduce or otherwise restrict Distributions of Available Cash and Liquidation Proceeds when, in its sole opinion, such action is in the best interests of the Company.

**4.8 No Priority.** Except as may be otherwise expressly provided herein, no Member shall have priority over any other Member as to Company capital, income, gain, deductions, loss, or Distributions.

**4.9 Tax Withholding.** Notwithstanding any other provision of this Agreement, the Board of Managers is authorized to take any action that it determines to be necessary or appropriate to cause the Company to comply with any withholding requirements established under any federal, state or local tax law, including, without limitation, withholding on any Distribution to any Member. For all purposes of this Article IV, any amount withheld on any Distribution and paid over to the appropriate governmental body shall be treated as if such amount had in fact been distributed to the Member.

## ARTICLE V- MANAGEMENT

**5.1 Management.** The business and affairs of the Company shall be managed by a Board of Managers which initially shall consist of five (5) Managers. The Board of Managers shall have the power to change the number of Managers. Each Manager shall serve on the Board of Managers until his successor is duly elected or until his earlier death or resignation. A Manager need not be a Member of the Company or a resident of the State of Arizona. Except as expressly limited by law, the Articles or this Agreement, the Property and the business of the Company shall be controlled and managed by the Board of Managers. The Board of Managers shall have and is vested with all powers and authorities, except as expressly limited by law, the Articles, or this Agreement, to do or cause to be done any and all lawful things for and in behalf of the Company, to exercise or cause to be exercised any or all of its powers, privileges and franchises, and to seek the effectuation of its objects and purposes.

**5.2 Election of the Board of Managers.** George Martinez, Samuel Jones, Richard Amrozowicz, Bill Robinson, and Brian Charneski are hereby elected by the Members to serve as the initial Managers. Within ninety (90) days of the Effective Date, the Initial Members and Spyglass agree to replace either Richard Amrozowicz or Bill Robinson with a Manager the parties mutually agree upon. Such Managers shall serve until the next annual meeting of the Members or until their earlier death, removal or resignation. All elections of Managers after the date hereof shall be held in accordance with Section 5.17 and Section 5.19 hereof.

**5.3 Meetings of the Board of Managers; Place of Meetings.** An annual meeting of the Board of Managers shall be held immediately following the annual meeting of the Members required by Section 5.17 hereof, at the place of the annual meeting of the Members. Meetings of the Board of Managers also shall be held upon the call of the President or any three (3) of the Managers. Except for the annual meeting of the Board of Managers, all meetings of the Board of Managers shall be held at the principal office of the Company or at such other place, either within or without the State of Arizona, as shall be designated by the Managers calling the meeting and stated in the notice of the meeting or in a duly executed waiver of notice thereof. Managers may participate in a meeting of the Board of Managers by means of conference telephone equipment or similar communications equipment whereby all Managers participating in the meeting can hear each other and participation in a meeting in this manner shall constitute presence in Person at the meeting.

**5.4 Quorum; Voting Requirement.** At all meetings of the Board of Managers, a majority of the number of Managers then serving shall constitute a quorum for the transaction of business. The act of

a majority in number of the Managers present at any meeting of the Board of Managers at which a quorum is present shall be the act of the Board of Managers.

**5.5 Notice of Meeting.** Notice of each meeting of the Board of Managers, stating the place, day and hour of the meeting shall be given to each Manager at least three days before the day on which the meeting is to be held. Notice of the annual meeting of the Board of Managers shall be given by the President; all other notices of meetings of the Board of Managers shall be given by the Person(s) having authority to call the meeting. "Notice" and "call" with respect to such meetings shall be deemed to be synonymous.

**5.6 Waiver of Notice.** Whenever any notice is required to be given to any Manager under the provisions of this Agreement, a waiver thereof in writing signed by such Manager, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance of a Manager at any meeting shall constitute a waiver of notice of such meeting except where a Manager attends a meeting for the express purposes of objecting to the transaction of any business because the meeting is not lawfully called or convened.

**5.7 Action Without a Meeting.** Any action that is required to be or may be taken at a meeting of the Board of Managers may be taken without a meeting if consents in writing, setting forth the action so taken, are signed by a majority of the Managers. The consents shall have the same force and effect as a unanimous vote at a meeting duly held.

**5.8 Compensation of Managers.** Managers shall not receive any compensation for their services as such, unless approved by a Majority in Interest. Nothing herein contained shall be construed to preclude any Manager from serving the Company in any other capacity and receiving compensation therefor.

**5.9 Authority of the Board of Managers.** Notwithstanding any other provision of this Agreement to the contrary, the Board of Managers shall be authorized to act (without obtaining the affirmative vote, approval or consent of the Members) in connection with the following:

- (a) Subject to Section 5.10(a), the approval of a merger or consolidation with another Person;
- (b) Subject to Section 5.10(c), sale, lease, exchange, or other disposition, other than by mortgage, deed of trust, or pledge, of all, or substantially all, the Property, with or without the goodwill of the Company;
- (c) Determine, modify compromise or release the amount and character of the contributions that a Member shall make as the consideration for the issuance of a Membership Interest; or
- (d) Determine the goals, policies, and strategic direction of the Company.

**5.10 Major Decisions.** Notwithstanding Section 5.9 or anything in this Agreement to the contrary, the following actions shall require the consent of eighty percent (80%) of the Managers:

- (a) The approval of a merger or consolidation with another Person;
- (b) The voluntary Bankruptcy of the Company;

- (c) The sale, exchange or other disposition of all or substantially all of the Company's Property;
- (d) The Transfer of a Majority in Interest or the implementation of any Drag Along Rights;
- (e) Any additional Capital Contributions of Members;
- (f) Any material change to the scope of the Company's business or product lines;
- (g) Any dissolution, liquidation or termination of the Company;
- (h) Any amendment to this Agreement or the Articles, except in accordance with Section 2.5 or to update Schedule A;
- (i) Any issuance of additional Membership Interests, except pursuant to Section 3.2(b), Section 3.2(c) and Section 9.6(a);
- (j) Any borrowing of money, incurring of indebtedness or otherwise committing the credit of the Company;
- (k) Any Transfer of any Membership Interest, except for a Transfer pursuant to Section 7.2(b); and
- (l) Any admission of new Members into the Company, including a Substitute Member.

**5.11 Designation of Officers.**

(a) The officers of the Company shall be a Chief Executive Officer, a President, a Chief Operating Officer and a Chief Financial Officer. The initial officers of the Company are as follows:

<u>Officer</u>	<u>Office</u>
Richard Amrozowicz	Chief Executive Officer
George Martinez	President
Samuel Jones	Chief Operating Officer/Secretary

The Board of Managers shall elect a President and Secretary at each annual meeting of the Members. The Board of Managers then, or from time to time, may also elect one or more of the other prescribed officers as it shall deem advisable, but need not elect any officers other than a President and a Secretary. The Board of Managers may, if it desires, elect or appoint additional officers and may further identify or describe any one or more of the officers of the Company.

(b) The officers of the Company need not be members of the Board of Managers. Any two (2) or more offices may be held by the same Person.

(c) An officer shall be deemed qualified when such Person enters upon the duties of the office to which such Person has been elected or appointed and furnishes any bond required by

the Board of Managers; but the Board may also require such Person's written acceptance and promise faithfully to discharge the duties of such office.

**5.12 Term of Office.** Each officer of the Company shall hold such Person's office at the pleasure of the Board of Managers or for such other period as the Board of Managers may specify at the time of such Person's election or appointment, or until such Person's death, resignation or removal by the Board of Managers, whichever first occurs. In any event, each officer of the Company who is not reelected or reappointed at the annual meeting of the Board of Managers next succeeding such Person's election or appointment shall be deemed to have been removed by the Board of Managers, unless the Board of Managers provides otherwise at the time of such Person's election or appointment.

**5.13 Removal.** Any officer or agent elected or appointed by the Board of Managers, and any employee, may be removed or discharged by the Board of Managers whenever in its judgment the best interests of the Company would be served thereby, but such removal or discharge shall be without prejudice to the contract rights, if any, of the Person so removed or discharged.

**5.14 Salaries and Compensation.** The Board of Managers shall establish a compensation and bonus structure for all elected officers of the Company, which shall be based upon objective targets and goals of the Company and shall be consistent with industry standards. The Board of Managers shall engage an independent compensation consultant with experience in developing executive compensation programs to identify applicable industry standards. Salaries and compensation of all appointed agents and employees of the Company may be fixed, increased, or decreased by the Board of Managers, but until action is taken with respect thereto by the Board of Managers, the same may be fixed, increased or decreased by the Chief Executive Officer or by such other officer or officers as may be empowered by the Board to do so.

**5.15 Strategic Advisor.**

(a) Appointment of Strategic Advisor. Spyglass may appoint an individual to serve as a Strategic Advisor (the "Advisor") to the Company. In the event the Advisor is removed by the Board of Managers pursuant to this Section 5.14, Spyglass may appoint a new Advisor.

(b) Services. The Advisor shall (i) meet with the Board of Managers weekly and perform any duties assigned by the Board of Managers, (ii) consult monthly with the Chief Executive Officer, and (iii) provide the Company with advisory and related services, including but not limited to, assistance in business and strategic planning, corporate development, the identification of strategic partners and capitalization matters (the "Services"). The Advisor shall be permitted to, as reasonably necessary, utilize the Company's administrative staff in performing the Services.

(c) Compensation.

(i) Compensation. The Board of Managers and the Advisor may mutually agree on compensation which may be paid to the Advisor in connection with the Services and/or any additional services requested by the Board of Manager from time to time. Any compensation payable to the Advisor shall be memorialized by written agreement executed by the Company and the Advisor.

(ii) Reimbursement of Expenses. The Company shall reimburse the Advisor each month, without prior approval, for reasonable expenses related to mileage, postage, fax, long-distance or cellular telephone charges and other reasonable expenses incurred or

paid by the Advisor in connection with, or related to, the performance of the Services. The Advisor shall submit on a monthly basis to the Board of Managers itemized statements, in a form reasonably satisfactory to the Board of Managers, of such expenses incurred. The Company shall pay to the Advisor amounts shown on each such statement within thirty (30) days after receipt thereof.

(iii) Benefits. The Advisor, in connection with the performance of the Services hereunder, shall be covered by any applicable insurance the Company may maintain. The Advisor shall not be entitled to any other benefits, coverage or privileges, including, without limitation, social security, unemployment, medical or pension payments, made available to employees of the Company.

(iv) Taxes. All applicable taxes with respect to the Advisor's performance of the Services for the Company shall be the sole responsibility of the Advisor.

(d) Independent Contractor Status. The Advisor shall perform all Services as an independent contractor and not as an employee or agent of the Company. The Advisor is not authorized to assume or create any obligation or responsibility, express or implied, on behalf of, or in the name of, the Company or to bind the Company in any manner.

(e) Confidentiality. Before beginning any Services for the Company, the Advisor shall agree in writing to be bound by the provisions of Section 9.1.

(f) Termination. Upon the Advisor's failure to perform the Services or other requests by the Board of Managers, the Board of Managers may remove the Advisor upon thirty (30) days written notice to the Advisor. In the event the Advisor is removed, the Company shall reimburse the Advisor for all costs and expenses incurred by the Advisor through the effective date of the removal upon receipt of a final itemized statement in accordance with this Section 5.14.

**5.16 Right to Indemnification - Manager / Officer.** The Company shall indemnify each Person who has been or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, investigative or appellate (regardless of whether such action, suit or proceeding is by or in the right of the Company or by third parties) by reason of the fact that such Person is or was a Manager or officer of the Company, or is or was serving at the request of the Company as a director, officer or in any other comparable position of any Other Enterprise against all liabilities and expenses, including, without limitation, judgments, amounts paid in settlement, attorneys' fees, excise taxes or penalties, fines and other expenses, actually and reasonably incurred by such Person in connection with such action, suit or proceeding (including, without limitation, the investigation, defense, settlement or appeal of such action, suit or proceeding); provided, however, that the Company shall not be required to indemnify or advance expenses to any Person from or on account of such Person's conduct that was finally adjudged to have been knowingly fraudulent, deliberately dishonest or willful misconduct; provided, further, that the Company shall not be required to indemnify or advance expenses to any Person in connection with an action, suit or proceeding initiated by such Person unless the initiation of such action, suit or proceeding was authorized in advance by the Board of Managers; provided, further, that a Manager or officer shall be indemnified hereunder only for those actions taken or omitted to be taken by such Manager or officer in the discharge of such Manager's or officer's obligations for the management of the business and affairs of the Company and that the provisions of this Section 5.16 are not intended to extend indemnification to such Manager or officer for any obligations of such Manager or officer undertaken in this Agreement in such Manager's or officer's capacity as a Member. The termination of any action, suit or proceeding by judgment, order, settlement,

conviction or under a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that such Person's conduct was finally adjudged to have been knowingly fraudulent, deliberately dishonest or willful misconduct.

**5.17 Right to Indemnification - Member.** The Company shall indemnify each Person who has been or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, investigative or appellate (regardless of whether such action, suit or proceeding is by or in the right of the Company or by third parties) by reason of the fact that such Person is or was a Member of the Company, against all liabilities and expenses, including, without limitation, judgments, amounts paid in settlement, attorneys' fees, excise taxes or penalties, fines and other expenses, actually and reasonably incurred by such Person in connection with such action, suit or proceeding (including, without limitation, the investigation, defense, settlement or appeal of such action, suit or proceeding); provided, however, that the Company shall not be required to indemnify or advance expenses to any Person from or on account of such Person's conduct that was finally adjudged to have been knowingly fraudulent, deliberately dishonest or willful misconduct; provided, further, that the Company shall not be required to indemnify or advance expenses to any Person in connection with an action, suit or proceeding initiated by such Person unless the initiation of such action, suit or proceeding was authorized in advance by the Board of Managers. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or under a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that such Person's conduct was finally adjudged to have been knowingly fraudulent, deliberately dishonest or willful misconduct.

**5.18 Meetings of Members; Place of Meetings.** An annual meeting of the Members shall be held on the first Tuesday in April of each year, if not a legal holiday, and if a legal holiday, then on the next secular day following, at 10:00 a.m. Central Standard Time. At each annual meeting of Members, the Members shall elect Managers in the manner set forth herein. Vacancies on the Board of Managers may be filled by an election held at any meeting of Members. Each Manager shall be elected to serve until the next succeeding annual meeting of the Members or until his earlier death, removal, or resignation. The Managers shall be elected as follows:

- (a) Spyglass shall, in its sole discretion, elect one (1) Manager;
- (b) The Initial Members and Spyglass shall mutually agree upon and elect one (1) Manager; and
- (c) Three (3) Managers shall be elected by an affirmative vote of a Majority in Interest.

Upon the death, removal, or resignation of any Manager, a replacement Manager shall be elected in the same manner in which the former Manager was elected. Each replacement Manager shall agree in writing to be bound by the terms of this Agreement as they relate to the Managers.

At the annual meeting, the Members may transact such other business as they may desire, whether or not the same was specified in the notice of the meeting. Except as otherwise provided in this Agreement, all other meetings of the Members may be held for any purpose or purposes and may be called by the Members holding not less than thirty percent (30%) of the Percentage Interests. All meetings of the Members shall be held at the principal office of the Company or at such other place, within or without the State of Arizona, as shall be designated from time to time by the Members and stated in the notice of the meeting or in a duly executed waiver of the notice thereof. Members may participate in a meeting of the Members by means of conference telephone or similar communications

equipment whereby all Members participating in the meeting can hear each other and participation in a meeting in this manner shall constitute presence in person at the meeting.

**5.19 Removal of Managers.** At a meeting called expressly for such purpose, one or more Managers or the entire Board of Managers may be removed, with or without cause, by a vote of the holders of a Majority in Interest.

**5.20 Quorum; Voting Requirement.** The presence, in person or by proxy, of a Majority in Interest shall constitute a quorum for the transaction of business by the Members. If less than a Majority in Interest are represented at a meeting, a majority of the Membership Interests so represented may adjourn the meeting to a specified date not longer than ninety (90) days after such adjournment, without further notice. At such adjourned meeting at which a quorum shall be present or represented by proxy, any business may be transacted that might have been transacted at the meeting as originally noticed. The Members present at a duly convened meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to constitute less than a quorum. Each Member shall have the right to vote in accordance with such Member's Percentage Interest. The affirmative vote of a Majority in Interest shall constitute a valid decision of the Members, except where a larger vote is required by the Act, the Articles or this Agreement. At any time that no Person shall have the right to vote or to participate in the management of the business and affairs of the Company with respect to a particular Membership Interest, then the Percentage Interest represented by such Membership Interest shall be disregarded for the purposes of determining whether a quorum is present at a meeting of Members and in determining whether the requisite Percentage Interest necessary for a valid decision of the Members has been obtained.

**5.21 Proxies.** At any meeting of the Members, every Member having the right to vote thereat shall be entitled to vote in person or by proxy appointed by an instrument in writing signed by such Member and bearing a date not more than eleven (11) months prior to such meeting.

**5.22 Action Without Meeting.** Any action required or permitted to be taken at any meeting of the Members of the Company may be taken without a meeting if the action is evidenced by one or more written consents setting forth the action to be taken and signed by a Majority in Interest entitled to vote.

**5.23 Notice of Meetings.** Notice stating the place, day, hour and the purpose for which the meeting is called shall be given, not less than ten (10) days nor more than sixty (60) days before the date of the meeting, by or at the direction of the Members calling the meeting, to each Member entitled to vote at such meeting. A Member's attendance at a meeting:

(a) Waives objection to lack of notice or defective notice of the meeting, unless such Member, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting; and

(b) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the notice of meeting, unless such Member objects to considering the matter when it is presented.

**5.24 Waiver of Notice.** When any notice is required to be given to any Member of the Company hereunder, a waiver thereof in writing signed by the Person entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

**5.25 Execution of Documents Filed with the Arizona Corporation Commission and Waiver of Receipt of Copy of Filed Documents.** The Chief Executive Officer and any other Manager or

officer of the Company authorized by the Board of Managers shall be authorized to execute and file with the Arizona Corporation Commission any document permitted or required by the Act. Such documents shall be executed and filed only after the Members or the Board of Managers have approved or consented to such action in the manner provided herein. The Members hereby waive any requirement under the Act of receiving a copy of any document filed with the Secretary of State of Arizona.

**5.26 Voting by Certain Holders.** In the case of a Member that is a corporation, its Membership Interest may be voted by such officer, agent or proxy as the by-laws of such corporation may prescribe, or, in the absence of such provision, as the board of directors of such corporation may determine. In the case of a Member that is a general or limited partnership, its Membership Interest may be voted, in person or by proxy, by such Person as is designated by such Member. In the case of a Member that is another limited liability company, its Membership Interest may be voted, in person or by proxy, by such Person as is designated by the operating agreement of such other limited liability company, or, in the absence of such designation, by such Person as is designated by the limited liability company.

**5.27 Contracts with Members, Managers, or their Affiliates.** No contract or transaction between the Company and one of its Members or Managers or between the Company and any Person in which one of its Members or Managers is a director or officer, or has a financial interest, shall be void or voidable solely for this reason, or solely because such Member is present at or participates in any meeting of the Members or the Board of Managers at which the contract or transaction is authorized, or solely because such Member's or Manager's vote is counted for such purpose, if, in connection with any such meeting of the Members, the material facts as to such Member's or Manager's relationship are known to the Members and the Members holding a Majority in Interest held by those Members who are disinterested with respect to such contract or transaction authorize such contract or transaction, even though the disinterested Members be less than a quorum, or if, in connection with any such meeting of the Board of Managers, the material facts as to such Member's or Manager's relationship are known to the Board of Managers and the majority of the Managers who are disinterested with respect to such contract or transaction authorize such contract or transaction, even though the disinterested Managers be less than a quorum. Interested Members may be counted in determining the presence of a quorum at a meeting of the Members at which the contract or transaction is authorized.

**5.28 Other Business Ventures.** Any Member or Manager may engage in, or possess an interest in, other business ventures of every nature and description, independently or with others, whether or not similar to or in competition with the business of the Company, and neither the Company nor the Managers shall have any right by virtue of this Agreement in or to such other business ventures or to the income or profits derived therefrom. Neither the Members nor the Managers shall be required to devote all of their time or business efforts to the affairs of the Company, but shall devote so much of their time and attention to the Company as is reasonably necessary and advisable to manage the affairs of the Company to the best advantage of the Company.

## ARTICLE VI - ACCOUNTING AND BANK ACCOUNTS

**6.1 Fiscal Year.** The fiscal year and taxable year of the Company shall end on December 31 of each year, unless a different date is required by the Code.

**6.2 Books and Records.** At all times during the existence of the Company, the Company shall cause to be maintained full and accurate books of account, which shall reflect all Company transactions and be appropriate and adequate for the Company's business. The books and records of the Company shall be maintained at the principal office of the Company. Each Member (or such Member's designated representative) shall have the right during ordinary business hours and upon reasonable notice to inspect and copy (at such Member's own expense) all books and records of the Company.

### **6.3 Financial Reports.**

(a) Commencing January 1, 2012, within thirty (30) days after the end of each fiscal month, there shall be prepared and delivered to each Member:

(i) a balance sheet as of the end of such month and related financial statements for the month then ended; and

(ii) other pertinent information regarding the Company.

(b) Within forty-five (45) days after the end of each fiscal quarter, there shall be prepared and delivered to each Member:

(i) a balance sheet as of the end of such fiscal quarter and related financial statements for the fiscal quarter then ended; and

(ii) other pertinent information regarding the Company.

(c) Within seventy-five (75) days after the end of each fiscal year, there shall be prepared and delivered to each Member:

(i) a balance sheet as of the end of such year and related financial statements for the year then ended; and

(ii) other pertinent information regarding the Company.

(d) Within seventy-five (75) days after the end of each fiscal year, there shall be prepared and delivered to each Member all information with respect to the Company necessary for the preparation of the Members' Federal and state income tax returns.

**6.4 Tax Returns and Elections; Tax Matters Member.** The Company shall cause to be prepared and timely filed all Federal, state and local income tax returns or other returns or statements required by applicable law. George Martinez is hereby designated as the Company's "Tax Matters Member," to serve with respect to the Company in the same capacity as a "tax matters partner" as defined in the Code, and in such capacity is hereby authorized and empowered to act for and represent the Company and each of the Members before the Internal Revenue Service.

**6.5 Section 754 Election.** In the event a Distribution of Company assets occurs that satisfies the provisions of Section 734 of the Code or in the event a Transfer of a Membership Interest occurs that satisfies the provisions of Section 743 of the Code, upon the determination of the Board of Managers, the Company shall elect, pursuant to Section 754 of the Code, to adjust the basis of the Property to the extent allowed by such Sections 734 or 743 and shall cause such adjustments to be made and maintained.

**6.6 Bank Accounts.** All funds of the Company shall be deposited in a separate bank, money market or similar account(s) approved by the Board of Managers and in the Company's name.

## **ARTICLE VII - TRANSFERS OF MEMBERSHIP INTERESTS AND EVENTS OF WITHDRAWAL**

**7.1 General Restrictions.** Except as expressly provided in this Agreement, no Member may Transfer all or any part of such Member's Membership Interest. Any purported Transfer of a Membership

Interest in violation of the terms of this Agreement shall be null and void and of no effect. A permitted Transfer shall be effective as of the date specified in the instruments relating thereto. Any Transferee desiring to make a further Transfer shall become subject to all of the provisions of this Article VII to the same extent and in the same manner as any Member desiring to make any Transfer.

## **7.2 Permitted Transfers.**

(a) Subject to Section 5.10(k) and Section 7.9, each Member (a "Transferor") shall have the right to Transfer (but not to substitute the assignee as a Substitute Member in such Member's place, except in accordance with Section 7.3), by a written instrument, all or any part of such Member's Membership Interest, provided that the Transfer would not result in the "termination" of the Company pursuant to Section 708 of the Code. Any assignee of a Membership Interest as allowed by this Section 7.2 who does not become a Substitute Member as provided in Section 7.3 (a "Transferee") shall not be a Member and shall not have any right to vote as a Member or to participate in the management of the business and affairs of the Company, such right to vote such Membership Interest and to participate in the management of the business and affairs of the Company continuing with the Transferor. The Transferee shall, however, be entitled to Distributions and allocations of the Company, as provided in Article IV of this Agreement, attributable to the Membership Interest that is the subject of the Transfer to such Transferee.

(b) Each Member who is a natural Person shall have the right to Transfer from time to time all or any portion of the Membership Interests owned by him or her to (i) any revocable trust voluntarily established by him or her primarily for his or her benefit or the benefit of an Immediate Family (as hereinafter defined) member and for which the Transferring Member is the trustee; (ii) any limited partnership in which the Transferring Member is a general partner and all other partners are members of the Member's Immediate Family; or (iii) a member of the Member's Immediate Family. For purposes of this Section 7.2(b), "Immediate Family" shall mean any Member's child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, and shall include adoptive relationships. Transfers made pursuant to this Section 7.2(b) shall not be subject to Section 7.9.

**7.3 Substitute Members.** No assignee of all or part of a Member's Membership Interest shall become a Member in place of the Transferor (a "Substitute Member") unless and until:

(a) The Transferor (if living) has stated such intention in the instrument of assignment;

(b) The Transferee has executed an instrument accepting and adopting the terms and provisions of this Agreement;

(c) The Transferor or Transferee has paid all reasonable expenses of the Company in connection with the admission of the Transferee as a Substitute Member; and

(d) Subject to Section 5.10(l), the Board of Managers in its sole and absolute discretion, shall have consented in writing to such Transferee becoming a Substitute Member.

Upon satisfaction of all of the foregoing conditions with respect to a Transferee, the Board of Managers shall cause this Agreement to be duly amended to reflect the admission of the Transferee as a Substitute Member.

**7.4 Effect of Admission as a Substitute Member.** Unless and until admitted as a Substitute Member pursuant to Section 7.3, a Transferee of a Membership Interest shall not be entitled to exercise any rights of a Member in the Company, including the right to vote, grant approvals or give consents with respect to such Membership Interest, the right to require any information or accounting of the Company's business or the right to inspect the Company's books and records, but a Transferee shall only be entitled to receive, to the extent of the Membership Interest Transferred to such Transferee, the Distributions to which the Transferor would be entitled. A Transferee who has become a Substitute Member has, to the extent of the Membership Interest Transferred to such Transferee, all the rights and powers of the Member for whom such Transferee is substituted and is subject to the restrictions and liabilities of a Member under this Agreement and the Act. Upon admission of a Transferee as a Substitute Member, the Transferor shall cease to be a Member of the Company to the extent of such Membership Interest. A Person shall not cease to be a Member upon assignment of all of such Member's Membership Interest unless and until the Transferee becomes a Substitute Member.

**7.5 Additional Members and Membership Interests.** Subject to Section 5.10(i) and Section 5.10(l), additional Members may be admitted to the Company and additional Membership Interests may be issued only upon the consent of the Board of Managers or pursuant to Section 3.2(b) or Section 3.2(c). Whenever any additional Member is admitted to the Company or any additional Membership Interest is issued in accordance with this Section 7.5, the Board of Managers shall cause Schedule A to this Agreement to be amended to reflect any adjustment in the Percentage Interests of the Members.

**7.6 Redemption of Membership Interests.** Any Membership Interest may be redeemed by the Company, by purchase or otherwise, upon the consent of the holder of such Membership Interest and the Board of Managers. Whenever any Membership Interest is redeemed by the Company in accordance with this Section 7.6, the Board of Managers shall cause Schedule A to this Agreement to be amended to reflect any adjustment in the Percentage Interests of the Members.

**7.7 Withdrawal of Member.**

(a) **Covenant Not to Withdraw or Dissolve.** Notwithstanding any provision of the Act, each Member recognizes that the Members have entered into this Agreement based on their mutual expectation that all Members will continue as Members and carry out the duties and obligations undertaken by them hereunder and that, except as otherwise expressly required or permitted hereby, each Member hereby covenants and agrees not to (i) take any action to file a certificate of dissolution or its equivalent with respect to itself, (ii) take any action that would cause a Bankruptcy filing of such Member, (iii) voluntarily withdraw or attempt to withdraw from the Company, (iv) exercise any power under the Act to dissolve the Company, (v) petition for judicial dissolution of the Company or (vi) demand a return of such Member's contributions or profits without the unanimous consent of the Members (collectively hereinafter referred to as an "Event of Withdrawal"). Except as provided in Section 8.1 of this Agreement, upon the occurrence of an Event of Withdrawal, the Company shall not be dissolved.

(b) **Consequences of Withdrawal.** If a Member attempts to take any action in breach of Section 7.7(a) hereof, such Member (the "Breaching Member") shall immediately cease to be a Member and shall have no further power to act for or bind the Company and Breaching Member shall be liable in damages, without requirement of a prior accounting, to the Company for all costs and liabilities that the Company or any Member may incur as a result of such breach. In addition:

(i) The Company shall have no obligation to pay the Breaching Member his contributions, capital or Income, but may, by notice to the Breaching Member within thirty (30) days of its withdrawal, elect to make Breach Payments (as hereinafter defined) in complete satisfaction of the Breaching Member's Membership Interest;

(ii) If the Company does not elect to make Breach Payments, the Company shall treat the Breaching Member as if he were an unadmitted assignee of the Membership Interest of the Breaching Member and shall make Distributions to the Breaching Member only of those amounts otherwise payable with respect to such Membership Interest hereunder;

(iii) The Company may apply any Distributions otherwise payable with respect to such Membership (including Breach Payments) to satisfy any claims it may have against the Breaching Member; and

(iv) The Breaching Member shall continue to be liable to the Company for any unpaid Capital Contributions required hereunder with respect to such Membership Interest.

(v) Notwithstanding anything to the contrary hereinabove provided, unless the Company has elected to make Breach Payments to the Breaching Member in satisfaction of his Membership Interest, the Company may offer and sell (on any terms that are not manifestly unreasonable) the Membership Interest of the Breaching Member to any other Members or other Persons on the Breaching Member's behalf, provided that any Person acquiring such Membership Interest becomes a Member with respect to such Membership Interest and agrees to perform the duties and obligations imposed by this Agreement on the Breaching Member.

(c) **Breach Payments.** For purposes hereof, Breach Payments (as defined below) shall be made in four (4) installments, each equal to one-fourth (1/4<sup>th</sup>) of the Breach Amount (as defined below), payable on the next four (4) consecutive anniversaries of the breach by the Breaching Member, with simple interest accrued from the date of such breach through the date each such installment is paid on the unpaid balance of such Breach Amount at percent (5%) per annum (each, a "Breach Payment"). The Breach Amount shall be an amount equal to the greater of \$1.00 or one-half the Net Equity of the Breaching Member's Membership Interest on the day of such breach. The "Net Equity" of a Member's Membership Interest shall be the amount that would be distributed to such Member in liquidation if the Company sold all of its Properties for their net Fair Value. Net Equity shall be determined, without audit or certification, from the books and records of the Company by the accountants regularly employed by the Company. The Net Equity determination of such accountants shall be final and binding in the absence of a showing of gross negligence or willful misconduct. The Company may, at its sole election, prepay all or any portion of the Breach Payments or interest accrued thereon at anytime without penalty.

(d) **No Bonding.** Notwithstanding anything to the contrary in the Act, the Company shall not be obligated to secure the value of the Breaching Member's Membership Interest by bond or otherwise; provided, however that if a court of competent jurisdiction determines that, in order to continue the business of the Company such value must be so secured, the Company may provide such security. If the Company provides such security, the Breaching Member shall not have any right to participate in Company Income or Distributions during the term of the breach or to receive any interest on the value of such Membership Interest.

(e) **Permitted Withdrawal.** A "Permitted Withdrawal" of a Member, as that term is used in this Agreement, shall mean the death, mental incapacity, or disability of a Member. The terms "mental incapacity" and "disability" shall have the following meanings:

(i) "Mental incapacity" shall mean the entry of an order by a court of competent jurisdiction adjudicating the Member mentally incapacitated to manage his Person or estate or written certificates from two (2) physicians, each certifying that the physician has examined the Member and has concluded that the Member has become unable to act rationally and prudently in his own financial best interest. Each certificate must be duly executed, witnessed and acknowledged. Should a Member dispute any non-judicial determination of mental incapacity, such determination shall be made through a court proceeding.

(ii) "Disability" of a Member means that the Member, because of a physical or mental disability, is unable to perform his customary duties as a Member (or is unable to engage in any substantial gainful activity) for an indefinite period.

#### **7.8 Transfer of Membership Interests upon a Permitted Withdrawal.**

(a) Upon a Permitted Withdrawal of a Member, the Company may purchase such Member's Membership Interest for an amount equal to the sum of (i) any positive balance of the withdrawing Member's Capital Account and his proportionate share of accrued and undistributed net income or loss of the Company to the date of the Member's withdrawal from the Company and (ii) the Fair Market Value (as defined below) of the Company multiplied by the withdrawing Member's Percentage Interest. Within thirty (30) days of a Permitted Withdrawal of a Member, the certified public accountants then employed by the Company shall propose a Fair Market Value of the Company consistent with Section 7.8(b), below. If, within ten (10) days of receiving written notice of such valuation by the Company's accountants, the withdrawing Member (or the personal representative or successor in interest of the withdrawing Member, whichever the case may be) objects in writing delivered to the accountants, then the Fair Market Value of the Company shall be determined by both the withdrawing Member (or the personal representative or successor in interest of the withdrawing Member, whichever the case may be) and the Company each selecting a disinterested, qualified appraiser familiar with valuation of commercial businesses to appraise the value of the Company, and the average of the two (2) closest valuations (i.e. that of each appraiser and the Company accountants) shall be considered the Fair Market Value of the Company. The Company and withdrawing Member shall select their appraiser within ten (10) days the objection to the Fair Market Value of the Company accountants, and such chosen appraisers shall make and submit to the Company accountants their valuation within sixty (60) days of their appointment. If the withdrawing Member (or the personal representative or successor in interest of the withdrawing Member, whichever the case may be) does not select an appraiser within such ten (10) day time period, the Member shall lose the right to submit such an appraised valuation and the Fair Market Value shall be determined by an average of any timely appraisal and the value as determined by the Company accountants.

(b) As used in this Section 7.8, "Fair Market Value" shall mean the price at which a withdrawing Member's Membership Interest could be sold in a bona fide arms-length transaction to an unrelated third party provided that neither the seller nor the purchaser are under any undue constraints or pressure to buy or sell the withdrawing Member's Membership Interest. Fair Market Value shall be determined based on an assessment of the business as an ongoing concern, taking into consideration both the assets and liabilities of the Company. Liabilities shall include for this purpose, but are not limited to, loans by Members to the Company and all unpaid interest

thereon; and shall further assume the Company is obligated to distribute and pay, if not first paid and distributed to each Member, their respective share of accrued and undistributed net income and any positive balance in the Capital Account for each Member.

(c) If the Company declines to purchase the withdrawing Member's Membership Interest, the Company shall be continued, and the personal representative or successor in interest of the withdrawing Member (whichever the case may be) shall take the Membership Interest of the withdrawing Member, subject to all the terms and conditions of this Agreement, and shall be admitted as a Member in the Company in place of the withdrawing Member, provided that he or she adopts and agrees to be bound by this Agreement, as though he or she was an original party hereto.

#### **7.9 Right of First Refusal on Transfer of Membership Interests.**

(a) If a Member receives from or otherwise negotiates with a third party in a private transaction a bona fide offer to purchase any or all of the Membership Interest owned or held by such Member (a "Third Party Offer") and such Member intends to pursue a Transfer of such Membership Interest to such third party, such Member shall provide to the Company written notice of such Third Party Offer (a "Third Party Offer Notice"). The Third Party Offer Notice shall identify the third party making the Third Party Offer, the Membership Interest subject to the Offer, the price at which a sale is proposed to be made (the "Third Party Offer Price") and all other material terms and conditions of the Third Party Offer.

(b) The receipt of a Third Party Offer Notice by the Company from a Member shall constitute an offer (the "Company Offer") to sell to the Company the Membership Interest subject to the Third Party Offer at the Third Party Offer Price. Such offer shall be irrevocable for thirty (30) days after receipt of such Third Party Offer Notice by the Company. During such thirty (30) day period, the Company shall have the right to accept the Company Offer as to all of the Membership Interest by giving a written notice of acceptance to the Member prior to the expiration of such thirty (30) day period. If the Company does not give its notice of acceptance within the thirty (30) day period, it shall be deemed to have rejected the Company offer.

(c) If the Company accepts the Company offer, it shall purchase and pay for the applicable Membership Interest within a thirty (30) day period following acceptance of the Company Offer; provided that if the purchase and sale of such Membership Interest is subject to any prior regulatory approval, the time period during which such purchase and sale may be consummated shall be extended until the expiration of five (5) business days after all such approvals shall have been received.

(d) Upon the full or partial rejection or deemed rejection of the Company Offer by the Company or the failure to obtain any required consent for the purchase of the Membership Interest subject thereto within sixty (60) days of the Company's acceptance of the Company offer, the Member shall have the right to Transfer the Membership Interest in accordance with this Article VII by entering into an agreement with the third party making the Third Party Offer for the sale of any or all of the Membership Interest subject to the Third Party Offer at a price not less than the price indicated in the Third Party Offer; provided that such third party shall have agreed in writing, in form and substance acceptable to the Company, to be bound by all of the terms, conditions, restrictions, and options of this Section 7.9, including the Company's right of first refusal under this Section 7.9, as if such Person were a "Member" solely for purposes of this Section 7.9, and the Transfer to such third party is not in violation of applicable federal or state securities laws. The Member shall have thirty (30) days from the execution of such agreement to

consummate the sale; provided that if the purchase and sale of such Membership Interest is subject to any prior regulatory approval, the time period during which such purchase and sale may be consummated shall be extended until the expiration of five (5) business days after all such approvals shall have been received; provided further that such time period shall not exceed one hundred twenty (120) days without the consent of the Company. If the Member does not consummate the sale of any Membership Interest subject to the Third Party Offer in accordance with the foregoing time limitations, the Member thereafter may not sell any Membership Interest without repeating the foregoing procedures.

#### **7.10 Drag Along/Tag Along Rights.**

##### **(a) Drag Along Rights.**

(i) Subject to the provisions set forth in this Article VII and Section 5.10(d), if Members owning a majority of the Percentage Interests in the Company (such majority of Percentage Interests, the "Majority Membership Interest") agree to Transfer all of their Majority Membership Interest to a bona fide third party purchaser, then the remaining Members shall be required to sell their entire Percentage Interests (such minority of Percentage Interests, the "Minority Membership Interest") in accordance with the provisions of this Section 7.10(a), unless otherwise waived by the Members owning the Majority Membership Interest (the "Drag Along Rights").

(ii) Notwithstanding the provisions of this Section, no sale of Minority Membership Interest shall be required unless: (a) the consideration paid for each increment of Minority Membership Interest and Majority Membership Interest is the same, (b) the terms and conditions of such Transfer are the same for all selling Members, and (c) if all or any portion of the purchase price for Minority Membership Interest and Majority Membership Interest consists of Property or other non-cash consideration, such Property or other non-cash consideration shall be allocated among all of the Members selling their Membership Interests pro rata in accordance with the Membership Interests, based on Percentage Interest.

(iii) The Company shall provide written notice to the Members owning the Minority Membership Interest setting forth the consideration to be paid for the Minority Membership Interest and the material terms of the sale within ten (10) business days after the exercise of the Drag Along Rights pursuant to this Section 7.10(a).

(iv) The closing of a sale pursuant to this Section 7.10(a) shall take place at such time and place as the Members owning the Majority Membership Interest shall specify in reasonable notice to each Member owning a Minority Membership Interest. At the closing of any sale pursuant to this Section 7.10(a), each Member owning a Minority Membership Interest shall deliver such documents as the Members owning the Majority Membership Interest triggering the Drag Along Rights may reasonably request to Transfer the Membership Interests to be sold by the Members against delivery of the applicable consideration. The Members owning the Minority Membership Interest shall receive the applicable consideration of the Membership Interests Transferred by the the Members owning the Majority Membership Interest pursuant to the sale (after deduction of the proportionate share of (a) the expenses associated with such sale that are paid by the Company or the Majority Membership Interest in connection with such sale, (b) amounts paid into escrow or held back, in the reasonable determination of the Board of Managers, for indemnification or post-closing expenses and (c) amounts subject to post-

closing purchase price adjustments) concurrently with the receipt of such consideration by the Members owning the Majority Membership Interest. It is understood and agreed that no holder of Membership Interests shall have any liability to any other holder of Membership Interests arising from, relating to or in connection with any proposed sale in which Drag-Along Rights are triggered (except to the extent such holder shall have failed to comply with the provisions of this Section 7.10(a)).

(b) **Tag Along Rights.**

(i) Notwithstanding anything in this Agreement to the contrary, if the Members owning the Majority Membership Interest desire to Transfer such Majority Membership Interest, and either the Drag Along Rights do not apply or are not exercised by the Majority Membership Interest, then, before consummating the Transfer, the Members owning the Majority Membership Interest shall be obligated, as a condition to the Transfer, to give a notice to the Members (a, "Tag Along Notice") owning the Minority Membership Interest specifying the material terms of the proposed sale (the "Tag Along Rights").

(ii) The Members owing the Minority Membership Interest shall have the right for a period of ten (10) days from receipt of the Tag Along Notice to give notice to the Members owning the Majority Membership Interest of their election to sell their Minority Membership Interest on the same terms and conditions on which the Majority Membership Interest is being purchased. Each such Member owning the Minority Membership Interest shall be entitled to sell in such proposed Transfer, at the same price and on the same terms, its pro rata share in accordance with Percentage Interest of the Membership Interests to be sold in such proposed Transfer. Each Member shall pay its pro rata share of the transaction expenses associated with such Transfer. In the event that any such Member holding the Minority Membership Interest objects to the terms of any such Transfer, such Member's rights under this Section 7.10(b) shall automatically terminate with respect to such Transfer (but not any subsequent Transfers). This Section 7.10(b) shall not apply to any Transfer otherwise permitted under Section 7.2(b).

**7.11 Pre-Emptive Right.**

(a) The Company hereby grants each Member (each, a "Pre-Emptive Member") the right to purchase, pro rata in accordance with its Percentage Interests, its portion of any new Membership Interests (other than (i) Membership Interests issued to the Members in accordance with Section 3.2(b) and Section 3.2(c), (ii) any Membership Interests Transferred in accordance with this Article VII, (iii) the purchase by Sunsweet Growers Inc. in accordance with Section 9.6(a) and the associated pre-emptive right afforded to Spyglass, or (iv) Membership Interests issued in accordance with the Membership Interest Incentive Plan ("New Securities") that the Company may from time to time issue or sell to any Person.

(b) The Company shall give written notice (an "Issuance Notice") of any proposed issuance or sale of New Equity Securities described in Section 7.11(a) to the Pre-Emptive Members within five (5) business days following any meeting of the Board of Managers at which such issuance or sale is approved. The Issuance Notice shall, if applicable, be accompanied by a written offer from any prospective purchaser seeking to purchase New Equity Securities and shall set forth the material terms and conditions of the proposed issuance, including:

(i) the number and description of the New Equity Securities proposed to be issued and the percentage of the Company's outstanding Membership Interests such issuance would represent;

(ii) the proposed issuance date, which shall be at least twenty (20) business days from the date of the Issuance Notice; and

(iii) the proposed purchase price per New Equity Security.

(c) Each Pre-Emptive Member shall for a period of fifteen (15) business days following the receipt of the Issuance Notice (the "Exercise Period") have the right to elect irrevocably to purchase its pro rata portion of the New Equity Securities at the purchase price set forth in the Issuance Notice by delivery of a written notice to the Company. The closing of any purchase by an Pre-Emptive Member shall be consummated concurrently with the consummation of the issuance or sale described in the Issuance Notice.

(d) If any Pre-Emptive Member fails to purchase its full allotment of New Equity Securities within the time period described in Section 7.11(c), the Company shall be free to complete the proposed issuance or sale of New Equity Securities described in the Issuance Notice with respect to which Pre-Emptive members failed to exercise the option set forth in this Section 7.11 on terms no less favorable to the Company than those set forth in the Issuance Notice (except that the amount of the New Equity Securities to be issued or sold by the Company may be reduced); provided, that (i) such issuance or sale is closed within thirty (30) business days after the expiration of the Exercise Period and (ii) for the avoidance of doubt, the price at which the New Equity Securities are sold is at least equal to or higher than the purchase price described in the Issuance Notice. In the event the Company shall not thereafter issue or sell any New Equity Securities without first again offering such New Equity Securities to the Members in accordance with the procedures set forth in this Section 7.11.

(e) Upon the issuance of any New Equity Securities, such New Equity Securities shall be issued free and clear of any liens (other than those arising hereunder and those attributable to purchasers thereof), the Company shall so represent and warrant to the purchasers thereof, and further represent and warrant to such purchasers that such New Equity Securities shall be upon issuance thereof to the Exercising Members and after payment therefor, duly authorized, validly issued, fully paid and non-assessable. Each Exercising Member shall deliver to the Company the purchase price for the New Equity Securities purchased by it by certified or bank check or wire transfer of immediately available funds. Each party to the purchase and sale of New Equity Securities shall take all such other actions as may be reasonably necessary to consummate the purchase and sale including, without limitation, entering into such additional agreements as may be necessary or appropriate.

## ARTICLE VIII - DISSOLUTION AND TERMINATION

**8.1 Events Causing Dissolution.** The Company shall be dissolved upon the first to occur of the following events:

- (a) The expiration of the term of the Company, as set forth in the Articles.
- (b) The written consent of all Members.
- (c) An Event of Withdrawal with respect to the sole remaining Member.

- (d) Subject to Section 5.10(g), the approval of the Board of Managers.
- (e) Upon the entry of a decree of dissolution with respect to the Company by a court of competent jurisdiction.
- (f) When the Company is not the surviving entity in a merger or consolidation under the Act.

**8.2 Effect of Dissolution.** Except with respect to the occurrence of an event referred to in Section 8.1(f), and except as otherwise provided in this Agreement, upon the dissolution of the Company, the Board of Managers shall take such actions as may be required pursuant to the Act and shall proceed to wind up, liquidate and terminate the business and affairs of the Company. In connection with such winding up, the Board of Managers shall have the authority to liquidate and reduce to cash (to the extent necessary or appropriate) the assets of the Company as promptly as is consistent with obtaining Fair Value therefor, to apply and distribute the proceeds of such liquidation and any remaining assets in accordance with the provisions of Section 8.3, and to do any and all acts and things authorized by, and in accordance with, the Act and other applicable laws for the purpose of winding up and liquidation.

**8.3 Application of Proceeds.** Upon dissolution and liquidation of the Company, the Properties of the Company shall be applied and distributed in the order of priority set forth in Section 4.2.

## ARTICLE IX - ADDITIONAL COVENANTS

### 9.1 Covenant Not to Disclose Confidential Information.

(a) No Member or Manager, except with the prior written consent of the Board of Managers, shall directly or indirectly disclose or permit disclosure to any unauthorized Persons, or use for his, her or its own account or for the benefit of any third party, any Confidential Information (as defined herein), whether or not such information is embodied in writing or other physical form or is retained in the memory of such Member or Manager.

(b) Each Member or Manager further agrees to deliver to the Company, at any time the Company may request, all documents, memoranda, notes, plans, records, reports and other documentation, models, components, devices or computer software, whether embodied in a disk or in other form (and all copies of all of the foregoing), that contain Confidential Information and any other Confidential Information that the Member or Manager may then possess or have under his, her or its control.

(c) Each Member and Manager further agrees to at all times (i) keep all Confidential Information strictly confidential, (ii) hold all Confidential Information in trust for the benefit of the Company, (iii) take all reasonable measures to protect the secrecy of and avoid disclosure or use of any Confidential Information in order to prevent it from falling into the public domain or the possession of third parties, and (iv) notify the Board of Managers in writing of any actual or suspected misuse, misappropriation or unauthorized disclosure of Confidential Information which may come to such Member's or Manager's attention.

(d) Each Member and Manager agree that the Confidential Information shall only be used for the sole benefit of the Company and that such Confidential Information shall not be used for any purpose which may create competition with the Company.

(e) Each Member and Manager has carefully read and considered the provisions of this Section 9.1, and having done so, agrees that damages alone may not be adequate protection for Company in the event of a breach or threatened breach or violation of this Section. As such, each Member and Manager agrees that the Company shall, in addition thereto, be entitled to an injunction restraining such breach or violation by such Member or Manager, and, such injunctive remedy shall not be in limitation of, but in addition to, any other remedies authorized by law for the breach or threatened breach of this Section, including the recovery of monetary damages.

(f) For purposes of this Agreement, "Confidential Information" shall mean any of the following information of the Company or any subsidiary: (i) any and all trade secrets concerning the business and affairs, product specifications, data, technical information, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, blue prints, samples, inventions (whether patentable or not) and ideas, past, current and planned research and development, past, current and planned manufacturing or distribution methods and processes, customer lists (past, current or targeted), past, current and anticipated customer requirements, price lists and pricing history, market studies, business plans, computer software and programs (including object code and source code), database technologies, systems, structures, architectural processes, improvements, devices, discoveries, concepts, methods and any other information, however documented, of the Company or any subsidiary that is a trade secret; (ii) any and all information concerning the business and affairs of the Company or any subsidiary (which includes historical financial statements, financial projections, tax returns, accountants' material, financial budgets, historical, current and projected sales, capital spending budgets and plans, business plans, past, current and targeted client and customer lists, client and customer files, the names and backgrounds of key personnel, contractors, agents, suppliers and potential suppliers, and personnel training, techniques and materials, and purchasing methods and techniques, however documented); (iii) all contractual arrangements or corporate or other business opportunities involving the Company or any subsidiary; (iv) any and all original works of authorship fixed in any tangible medium of expression which is the subject matter of copyright (such as videotapes, written presentations on acquisitions, computer programs, drawings, maps, architectural renditions, models, manuals, brochures or the like) relating to the business, products or services of the Company; (v) any United States or foreign applications for patents, copyrights, service marks, trademarks, inventor's certificates or other intellectual property rights that may be filed with respect to any part of the foregoing, including divisions, continuations, continuations-in-part, reissues and/or extensions thereof, and applications for registration of such inventions, works, names and marks; and (vi) any and all data, notes, analysis, compilations, studies, summaries and other material containing or based, in whole or in part, upon any information included in the foregoing; provided, however, the term "Confidential Information" does not include such portions of any of the foregoing which (1) is or becomes generally available to the public other than as a result of disclosure by a Manager or Member or its representatives in breach of this Agreement, (2) was already in possession of the Manager or Member or its representatives, (3) was or is developed by the Member or Manager without the use of Confidential Information, or (4) is or becomes available to a Member or Manager or its representatives from a third party not known to the Member or Manager to be in breach of any confidentiality obligation with respect to such information.

## 9.2 Right of First Refusal for Distribution or Production Services.

(a) Each time the Company incurs additional distribution or production needs, the Company shall provide a written notification to Spyglass identifying such needs and the economic terms applicable to such production or distribution (the "Offer Notice"). For fifteen (15) calendar days after the receipt of the Offer Notice, Spyglass shall have the right, exercisable by delivery of written notice to the Board of Managers (the "Acceptance Notice") to agree to provide such distribution or production services to the Company.

(b) In the event that Spyglass (i) declines such offer set forth in the Offer Notice in writing, (ii) fails to provide the Board of Managers with the Acceptance Notice within fifteen (15) calendar days after the receipt of the Offer Notice, or (iii) otherwise fails to consummate such production or distribution within any applicable timeframe, then Spyglass's right to provide the distribution or production services identified in the Offer Notice shall terminate and the Company may utilize any other Person that the Board of Managers chooses to provide such distribution or production services; provided, however, such distribution or production services shall be on substantially the same economic terms as set forth in the Offer Notice and production or distribution shall be consummated within thirty (30) days of Spyglass's rejection under this Section 9.2. If the Company shall agree to such production or distribution services on terms more favorable than with Spyglass or such production or distribution shall not have commenced within thirty (30) days of Spyglass's rejection, then the Company shall not proceed with any production or distribution services with such Person without first complying with the terms of this Section 9.2.

**9.3 Equity Earn-Out.** Spyglass, but no other Member, will have the option, but not the obligation, to acquire New Brands (as defined below) for the Company allowing Spyglass to obtain a Membership Interest and Percentage Interest (in aggregate) of not more than twenty percent (20%), subject to the following:

(a) Spyglass may, during such time as Spyglass holds a Membership Interest, utilize and deploy Spyglass's assets, capital and resources for the benefit of the Company in an effort to develop or acquire new brands, products or business units that fit within the Company's business purpose (each such development or acquisition, a "New Brand");

(b) Prior to commencing any efforts regarding a New Brand, Spyglass shall advise the Board of Managers of Spyglass's desire to pursue such New Brand;

(c) While Spyglass is engaged in the pursuit of a New Brand, Spyglass shall keep accurate books and records sufficient to demonstrate, to the reasonable satisfaction of the Board of Managers, all expenditures by Spyglass with respect to the New Brand;

(d) Without respect to any efforts or expenditures by Spyglass regarding a New Brand, the decision to utilize such efforts or expenditures and include a New Brand into the business of the Company will be in the sole determination of the Board of Managers;

(e) If the Board of Managers decides to include a New Brand into the Company's business, then upon the execution of such agreements as will establish a satisfactory ownership interest or other acceptable relationship with respect to the New Brand (as determined in the sole discretion of the Board of Managers), the Board of Managers shall, based upon the expenditures of Spyglass described and accounted for in Section 9.3(c) and the other efforts of Spyglass regarding the New Brand, issue to Spyglass additional Percentage Interest (not to exceed such

Percentage Interest that would cause Spyglass to hold a Percentage Interest that in the aggregate exceeded twenty-percent (20%), equal to the Fair Value of such expenditures and effort;

(f) Spyglass acknowledges and agrees that the Company has no obligation to accept any New Brand; as such, not all expenditures or efforts by Spyglass may result in the issuance of additional Percentage Interest;

(g) The Members, other than Spyglass, acknowledge and agree that the decision by the Board of Managers to accept a contribution from Spyglass with respect to a New Brand will result in a pro rata dilution of such Member's Percentage Interests; and

(h) The Board of Managers shall cause Schedule A to this Agreement to be amended to reflect any adjustment in the Percentage Interest of the Members based upon the acceptance of a New Brand.

**9.4 Distribution Agreements.** In the event the Board of Managers decides to include a New Brand that was developed or acquired by Spyglass in the Company's business, the Company and Spyglass shall enter into a mutually agreeable distribution agreement pursuant to which, among other things, the Company and Spyglass will share in the profit and losses relating to such New Brand proportionately. The division of such profits and losses and the other terms set forth in each distribution agreement shall be determined by the Board of Managers.

**9.5 Sale of a New Brand.** In the event the Board of Managers incorporates a New Brand from Spyglass into the Company's business pursuant to Section 9.3 and subsequent to such acceptance, the Board of Managers elects to liquidate or otherwise dispose of such New Brand (a "New Brand Liquidation") then upon consummation of the transaction(s) respecting such New Brand Liquidation:

(a) Spyglass will be allocated from the net proceeds of such New Brand Liquidation (as determined by the Company's outside accountant) (the "New Brand Liquidation Proceeds") an amount equal to the New Brand Liquidation Proceeds multiplied by Spyglass's Percentage Interest at the time such New Brand Liquidation is consummated;

(b) Spyglass will receive a Distribution from the Company equal to the New Brand Liquidation Proceeds multiplied by Spyglass's Percentage Interest at the time such New Brand Liquidation is consummated; and

(c) The Members, including Spyglass, acknowledge and agree that the terms of this Section 9.5 are intended to give Spyglass a priority as to allocations and Distributions resulting from a New Brand Liquidation, but Section 9.5 is not intended to provide Spyglass any excess or special allocations or Distributions; as such, all other allocations and Distributions provided for in Article IV, with respect to Spyglass, will be adjusted, as necessary, to assure that Spyglass will not receive, upon giving effect to Spyglass's priority under this Section 9.5, allocations or Distributions, in the aggregate, that would be greater than those that Spyglass would otherwise receive under this Agreement.

**9.6 Contribution of Additional Capital.**

(a) If the Company does not close on its current investment offer with Sunsweet Growers Inc. within sixty (60) days of the Effective Date, Spyglass will have the exclusive option, but not the obligation, to make an additional Capital Contribution in the Company (in accordance with the amounts set forth below) (the "Additional Capital Contribution Option") which will

increase Spyglass's Percentage Interest in the Company in accordance with the following schedule:

<u>Additional Capital Contribution</u>	<u>Additional Percentage Interest</u>
\$500,000.00	1.33%
\$1,000,000.00	2.67%
\$1,500,000.00	4.00%
\$2,000,000.00	5.33%

(b) Spyglass shall exercise its Additional Capital Contribution Option within fifteen (15) business days of the expiration of the sixty (60) day time period set forth in Section 9.6(a) (the "Option Period") by providing written notice to the Board of Managers of its intent to exercise the Additional Capital Contribution Option (the "Option Notice"). The Option Notice shall set forth the amount of the additional Capital Contribution that Spyglass will make. Spyglass shall make such additional Capital Contribution within five (5) business days of the date of the Option Notice. Upon Spyglass's contribution of the additional Capital Contribution, the Board of Managers shall issue to Spyglass additional Percentage Interest in accordance with the schedule set forth above and amend Schedule A, accordingly.

(c) Each Member, other than Spyglass, acknowledges and agrees that the issuance of additional Percentage Interest to Spyglass in accordance with this Section 9.6 will result in a pro rata dilution of such Member's Percentage Interest.

(d) If Spyglass does not provide an Option Notice to the Board of Managers within the Option Period, Spyglass's right to exercise the Additional Capital Contribution Option shall terminate.

#### ARTICLE X- MISCELLANEOUS

**10.1 Title to the Property.** Title to the Property shall be held in the name of the Company. No Member shall individually have any ownership interest or rights in the Property, except indirectly by virtue of such Member's ownership of a Membership Interest. No Member shall have any right to seek or obtain a partition of the Property, nor shall any Member have the right to any specific assets of the Company upon the liquidation of or any distribution from the Company.

**10.2 Nature of Membership Interest in the Company.** A Membership Interest shall be personal property for all purposes.

**10.3 Organizational Expenses.** Each Member shall pay such Member's own expenses incurred in connection with the creation and formation of the Company and review and negotiation of this Agreement.

**10.4 Notices.** Any notice, demand, request or other communication (a "Notice") required or permitted to be given by this Agreement or the Act to the Company, any Member, or any other Person shall be sufficient if in writing and if hand delivered or mailed by registered or certified mail to the Company at its principal office or to a Member or any other Person at the address of such Member or such

other Person as it appears on Schedule A or sent by facsimile transmission to the telephone number, if any, of the recipient's facsimile machine as such telephone number appears on Schedule A. All Notices that are mailed shall be deemed to be given when deposited in the United States mail, postage prepaid. All Notices that are hand delivered shall be deemed to be given upon delivery. All Notices that are given by facsimile transmission shall be deemed to be given upon receipt, it being agreed that the burden of proving receipt shall be on the sender of such Notice and such burden shall not be satisfied by a transmission report generated by the sender's facsimile machine.

**10.5 Waiver of Default.** No consent or waiver, express or implied, by the Company or a Member with respect to any breach or default by another Member hereunder shall be deemed or construed to be a consent or waiver with respect to any other breach or default by such Member of the same provision or any other provision of this Agreement. Failure on the part of the Company or a Member to complain of any act or failure to act of another Member or to declare such other Member in default shall not be deemed or constitute a waiver by the Company or the Member of any rights hereunder.

**10.6 No Third Party Rights.** None of the provisions contained in this Agreement shall be for the benefit of or enforceable by any third parties, including, but not limited to, creditors of the Company; provided, however, the Company may enforce any rights granted to the Company under the Act, the Articles, or this Agreement.

**10.7 Entire Agreement.** This Agreement, together with the Articles, constitutes the entire agreement between the Members, in such capacity, relative to the formation, operation and continuation of the Company.

**10.8 Amendments to this Agreement.**

(a) Except as otherwise provided herein and subject to Section 5.10(h), this Agreement may be amended by the Board of Managers, without the further consent of any of the Members; provided, that the Manager appointed by Spyglass must approve any amendment to this Agreement.

(b) Subject to Section 10.8(a), Each Member hereby appoints the Board of Managers, with full power of substitution, the attorneys-in-fact of such Members to modify Schedule A upon admission of additional Members, to sign all instruments amending this Agreement, and to sign all other documents that may be appropriate in the reasonable judgment of the Board of Managers to reflect that admission to the Company of any Members or Substitute Members, and an Event of Withdrawal with respect to any Member in the manner prescribed in this Agreement. Each Member authorizes such attorneys-in-fact to take any further action that such attorneys-in-fact shall consider necessary or advisable in connection with the foregoing. The foregoing power of attorney is a special power of attorney coupled with an interest and is irrevocable, and, to the extent exercise of such power of attorney shall be required with respect of a Member who ceases to be a member under the provisions of this Agreement, such power of attorney shall survive the delivery of an assignment by a Member of its Interest in the Company, unless and until the assignee thereof becomes a Substitute Member, and an Event of Withdrawal with respect to such Member in the manner prescribed in this Agreement.

(c) Anything in this Section 10.8 to the contrary notwithstanding, without the written consent of a Majority in Interest, no amendment to this Agreement shall be made by the Board of Managers which may:

(i) add to, detract from or otherwise modify the purposes of the Company as set forth in the Articles;

(ii) enlarge the obligations or alter the rights of any Member under this Agreement; provided, that such Member that is subject to any enlarged obligation shall be a party of the Majority in Interest;

(iii) amend any provisions of Article IV other than an amendment to comply with the relevant tax laws as provided in Section 4.5(j); or

(iv) amend this Section 10.8.

**10.9 Severability.** In the event any provision of this Agreement is held to be illegal, invalid or unenforceable to any extent, the legality, validity and enforceability of the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect and shall be enforced to the greatest extent permitted by law.

**10.10 Binding Agreement.** Subject to the restrictions on the disposition of Membership Interests herein contained, the provisions of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, personal representatives, successors and permitted assigns.

**10.11 Headings.** The headings of the Articles and Sections of this Agreement are for convenience only and shall not be considered in construing or interpreting any of the terms or provisions hereof.

**10.12 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one agreement that is binding upon all of the parties hereto, notwithstanding that all parties are not signatories to the same counterpart. This Agreement may be executed and delivered by facsimile or PDF.

**10.13 Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of Arizona.

**10.14 Remedies.** In the event of a default by any party in the performance of any obligation undertaken in this Agreement, in addition to any other remedy available to the non-defaulting parties, the defaulting party shall pay to each of the non-defaulting parties all costs, damages, and expenses, including reasonable attorneys' fees, incurred by the non-defaulting parties as a result of such default.

**10.15 Dispute Resolution.** Should controversies or disputes arising out of or relating to this Agreement exist or come into existence at a future time during the term of this Agreement and the parties be unable to agree as to a resolution, then the parties hereto agree to submit such matters to non-binding mediation administered by the American Arbitration Association or a mutually agreed upon substitute mediation service. If no resolution is obtained within thirty (30) days after submission of such issue to mediation, any such controversy or dispute shall be settled by final, binding arbitration in Maricopa County, Arizona, administered by the American Arbitration Association in accordance with its rules, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Arbitration shall be by a

panel of three (3) commercial arbitrators which shall be appointed by the American Arbitration Association. The notifying party shall file two (2) copies of a Demand for Arbitration Notice, which shall set forth the nature of the dispute, the amount involved, if any, and the remedy sought and two (2) copies of this arbitration provision, together with the appropriate filing fee, with American Arbitration Association Case Filing Services in Voorhees, New Jersey. The notifying party shall mail one (1) copy of the Demand for Arbitration Notice and one (1) copy of this arbitration provision by Certified Mail - Return Receipt Requested to the other party. The arbitrators shall award to the prevailing party, if any, as determined by the arbitrators, all of its costs and expenses. Costs and expenses shall mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses, such as copying and telephone, witness fees, and attorneys' fees. The consideration of the parties to be bound by arbitration is not only the waiver of trial by jury, but also the waiver of any rights to appeal the arbitration filing.

[COUNTERPART SIGNATURE PAGES FOLLOW]

[COUNTERPART SIGNATURE PAGES TO BE ATTACHED]

SPH-2042417-4

SHADOW005775

**SCHEDULE A**  
**PERCENTAGE INTERESTS**

[TO BE ATTACHED]

[SIGNATURE PAGE - SUBSCRIPTION AGREEMENT]

DATED this 18<sup>th</sup> day of August, 2011.

INVESTOR:

SPYGLASS CAPITAL PARTNERS, LLC

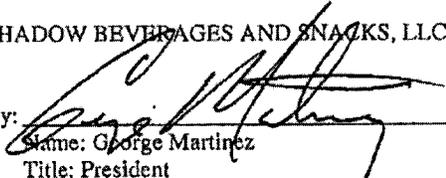
By: \_\_\_\_\_  
Name: Eric Reinhard  
Title: Chief Executive Officer

Percentage of Membership Interests: Eight Percent (8%)

Purchase Price: \$2,000,000

ACCEPTED:

SHADOW BEVERAGES AND SNACKS, LLC

By:   
Name: George Martinez  
Title: President

(THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK)

COUNTERPART SIGNATURE PAGE

AMENDED AND RESTATED OPERATING AGREEMENT  
OF  
SHADOW BEVERAGES AND SNACKS, LLC

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION WHICH MAY BE ENFORCED BY THE PARTIES HERETO AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS.

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Operating Agreement effective as of the date above written.

SPYGLASS CAPITAL PARTNERS, LLC, a  
Colorado limited liability company

By:   
Name: Eric Reinhard  
Title: CEO

PROMISSORY NOTE

\$50,000

Phoenix, Arizona  
June 1, 2009

FOR VALUE RECEIVED, SHADOW BEVERAGES AND SNACKS, LLC, an Arizona limited liability company at [REDACTED] AZ [REDACTED] (the "Maker"), promises to pay George Karas, at [REDACTED] CO (the "Holder") the principal sum of \$50,000, together with interest on the unpaid balance at a rate of fifteen percent (15%) per annum (hereinafter referred to as "Note") until the date of full and final payment. Interest will be calculated on the basis of a year of 360 days.

1. Repayment; Maturity.

a. Interest shall commence on the date hereof and shall continue to accrue on the unpaid principal balance until paid in full.

b. The entire outstanding principal balance, together with accrued interest will be due and payable on December 31, 2009 (the "Maturity Date").

c. Payments will be applied first to interest and then to principal.

2. Prepayment. Makers may prepay all or any portion of the unpaid principal balance of this Note at any time, or from time to time, without penalty or premium.

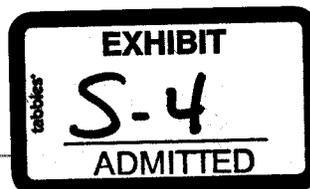
3. Acceleration and other Remedies. Makers will be in default under this Note if Makers fail to timely make any of the payments when due and payable. Upon the occurrence of a default, and before Holder may exercise any of Holder's rights or remedies arising out of this Note, Holder will give Makers written notice of such default and Makers will have ten (10) days from the date Makers receive such notice, to cure the default. If Makers fail to cure the default within this ten (10) day grace period, then, and only then, will an "Event of Default" have occurred under this Note. Upon the occurrence of an Event of Default, the entire principal balance outstanding under this Note, will, at the election of Holder, become immediately due and payable. Interest on the overdue balance shall be computed on the outstanding balance of this Note at the rate of 15% per annum, for the period from the date of default to the date of payment of the delinquent balance.

4. Subordination. This Note is subordinated to any and all debt incurred by the Maker in furtherance of its business and purposes.

5. Collateral and Security. The obligations set forth in this Note are not secured.

6. Waivers. No delay or omission on the part of Holder in exercising any right under this Note will constitute a waiver of any such right or of any other right contained in this

Martinez EXHIBIT 5  
DATE 5-10-15-15  
Colette E. Ross  
CP No. 50658



SHADOW006873

Note. A waiver on any one occasion will not be construed to bar the exercise, or to constitute a waiver of any such right on any future occasion.

7. Assignment. Maker may assign this Note without the prior written consent of Holder. Holder may not assign this Note, in whole or in part, without the prior written consent of Maker. Any assignment in contravention hereof will be null and void.

8. Governing Law. This instrument will be governed by and construed in accordance with the laws of the State of Arizona, without giving effect to the choice of law principles applied in the courts of such state. In any action or proceeding to enforce rights under this Note, the prevailing party will be entitled to recover costs and attorneys' fees.

9. Severability. If any one or more of the provisions in this Note is held or found to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

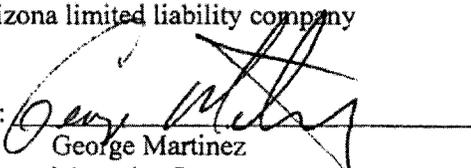
10. Binding Nature. The provisions of this Note will be binding upon Makers and their respective successors and assigns, and will inure to the benefit of Holder and any subsequent holder of all or any portion of this Note, and their respective successors and assigns.

11. Notices. All notices, requests, demands, and other communications required or permitted under this Note will be in writing and will be deemed to have been duly given, made and received when personally delivered or when deposited in the United States mail, first class postage prepaid, return receipt requested, or when sent by overnight express delivery with a signature required upon receipt, or 24 hours after being sent by facsimile with a confirmed copy.

The parties have delivered and executed this Promissory Note; it is effective as of the date first written above.

**MAKER:**

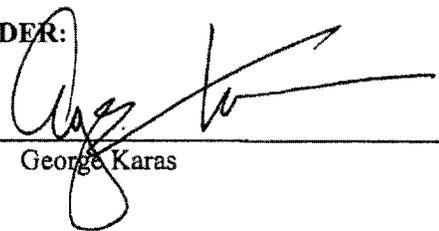
SHADOW BEVERAGES AND SNACKS, LLC, an  
Arizona limited liability company

By: 

George Martinez

Its: Managing Partner

**HOLDER:**

By: 

George Karas

AMENDMENT TO PROMISSORY NOTE

March 19, 2012

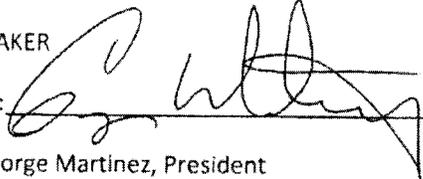
Recitals:

1. Shadow Beverage and Snacks, LLC ("Maker") entered into a Promissory Note dated June 1, 2009 with George Karas ("Holder") in the amount of \$50,000.
2. The Note had a Maturity Date of December 31, 2009.
3. No principal has been paid on the Note and the entire \$50,000 remains outstanding.
4. Interest has been paid in full through December 31, 2011.
5. Maker and Holder desire to extend the Maturity Date to June 30, 2012.

Therefore:

1. The Maturity Date is revised to June 30, 2012.
2. All other provision of the Promissory Note dated June 1, 2009 shall remain unchanged.

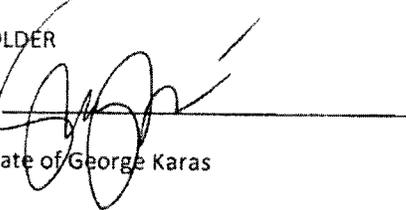
MAKER

By: 

George Martinez, President

Shadow Beverage and Snacks, LLC an Arizona limited liability company

HOLDER

By: 

Estate of George Karas



Martinez EXHIBIT 6  
DATE 10-15-12  
Colette E. Ross  
CR No. 50658

SHADOW006872

SHADOW BEVERAGES AND SNACKS, LLC

George Karas

3800

4,583.33  
50,000.00

8/15/2012

# PAYMENT RECORD

First Fidelity Checking

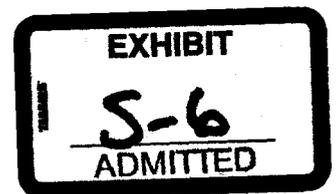
54,583.33

625799 (4/12)

007851

Rev 3/11

Martinez <sup>7</sup> EXHIBIT  
DATE 10-15-15  
Colette E. Ross  
CR No. 50658



SHADOW006870

**Kathy Baker**

---

**From:** Kathy Reiser  
**Sent:** Wednesday, August 15, 2012 7:57 AM  
**To:** Kathy Baker  
**Cc:** Josephine Dizon; George Martinez  
**Subject:** Checks needed

Kathy,

I need to have 3 checks cut this morning.

George Karas - \$54,583.33 - this is for principal and interest

8 Paws - \$5,000.00 - this is for interest thru June 2012

Shannon Ritch - 1000.00 - this is for his monthly sponsorship payment

Thanks,

*Kathy Reiser*  
*Director of Administration*



[Redacted]

[Redacted] AZ [Redacted]

Office: [Redacted]

Fax: [Redacted]

Cell: [Redacted]

kathyr@[Redacted]

shadowbev.com



**PRODUCTION LINE PROMISSORY NOTE**

U.S. \$50,000

Phoenix, Arizona  
February 17, 2010

FOR VALUE RECEIVED, SHADOW BEVERAGES AND SNACKS, LLC, an Arizona limited liability company ("Maker"), promises to pay BRENT TUNNELL ("Holder") at [REDACTED], Arizona [REDACTED], the principal sum of \$50,000 (the "Note"), together with interest at the contracted rate of 25% per annum (calculated from the date of this Note and on a 360 day basis). Principal, interest and all other sums due and payable hereunder will be paid in lawful money of the United States of America.

1. Term. The term of this Note commences on the date first set forth above and continues until August 17, 2010 (the "Maturity Date").

2. Interest. Interest will accrue at a rate of 25% per annum. The total interest payment due and payable to Holder on the Maturity Date will be \$6,623.12.

3. Repayment. Maker will pay Holder \$56,623.12 on or before the Maturity Date, as full and final payment of its obligations under this Note.

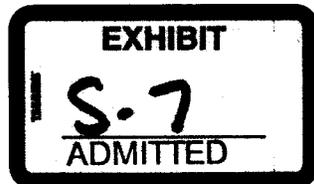
4. Events of Default. If Maker fails to repay the Note on or before the Maturity Date pursuant to Section 3, the entire balance outstanding under this Note will be immediately due and payable and interest will then accrue at a rate equal to 35% per annum.

5. Use of Funds. Maker hereby covenants to Holder that the funds received under this Note will be used only for the production of Iron Clad Energy + Hydration and RiPe Simply Natural Vitamin Enhanced Water.

6. Maintenance of Balance. Maker will deposit the funds received under this Note into a separate bank account owned and maintained by Maker (the "Bank Account"). Before five (5) calendar days after the date first set forth above, Maker will deliver account information to Holder to enable Holder to monitor the Bank Account online. Notwithstanding the foregoing, Holder will have no rights whatsoever to effectuate any withdrawals, deposits, or other transactions with respect to the Bank Account. If Maker draws down the balance of the Bank Account at any time during the term of this Note, it will deposit all payments received from customers until the Bank Account balance is restored, from time to time, to \$50,000.

7. Collateral and Security. The obligations set forth in this Note are secured by the following:

(a) A Personal Guaranty made by Samuel Jones and Andrea Lynn Frohning in favor of Holder, of even date herewith, a copy of which is attached hereto as Exhibit A; and



Martine EXHIBIT 11  
DATE 2/10-15-10  
Colette E. Ross  
CR No. 50658

2376327.1/21655-0001

1

(b) A Personal Guaranty made by George Martinez and Lisa Kay Martinez in favor of Holder, of even date herewith, a copy of which is attached hereto as Exhibit B.

8. Issuance of Membership Interests. As partial consideration for the delivery funds by Holder to Maker in connection with this Note, Maker hereby issues, transfers, and conveys 52,610 of the outstanding Membership Interests of Maker to Holder, effective upon Holder's execution and delivery of the Operating Agreement of Shadow Beverages and Snacks, LLC, a copy of which is attached hereto as Exhibit C.

9. Waivers. No delay or omission on the part of Holder in exercising any right under this Note will constitute a waiver of any such right or of any other right contained in this Note. A waiver on any one occasion will not be construed to bar the exercise, or to constitute a waiver of any such right on any future occasion.

10. Governing Law. This instrument will be governed by and construed in accordance with the laws of the State of Arizona, without giving effect to the choice of law principles applied in the courts of such state. In any action or proceeding to enforce rights under this Note, the prevailing party will be entitled to recover costs and attorneys' fees.

11. Severability. If any one or more of the provisions in this Note is held or found to be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

12. Binding Nature. The provisions of this Note will be binding upon Maker and their respective successors and assigns, and will inure to the benefit of Holder and any subsequent holder of all or any portion of this Note, and their respective successors and assigns.

13. Fees and Costs. Should suit be brought to recover on this Note, or should the same be placed in the hands of an attorney for collection, Maker promises to pay all reasonable attorneys' fees and costs incurred in connection therewith.

14. General.

(a) Maker and any guarantor hereof agree to be jointly and severally bound and severally waive demand, diligence, presentment for payment, protest and notice of demand, protest, nonpayment and exercise of any option hereunder.

(b) Maker and any guarantor hereof further agree that the granting without notice of any extension or extensions of time for payment of any sum or sums due hereunder, or for the performance of any covenant, condition or agreement hereof shall in no way release or discharge the liability of Maker or any guarantor hereof.

(c) Maker and any guarantor hereby waive trial by jury in any action to enforce this Note or to realize on the security of this Note. Any such action shall be tried to a judge without a jury. Any action to enforce the Note may, at the election of Holder, be brought in the Superior Court of Maricopa County, Arizona.



(d) Time is of the essence of this Note and each and every term and provision hereof.

(e) This Note may be executed in multiple counterparts, each of which will be deemed an original, but all of which, when taken together, will constitute one and the same instrument.

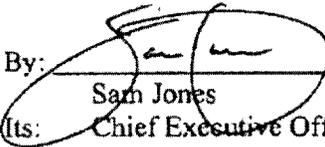
*[Signatures appear on the following page.]*



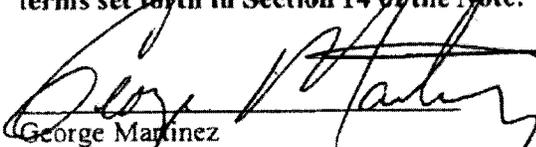
The parties have executed and delivered this Production Line Promissory Note and it is effective as of the date first written above.

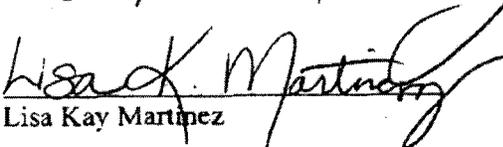
**MAKER:**

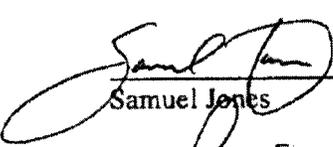
SHADOW BEVERAGES AND SNACKS, LLC, an  
Arizona limited liability company

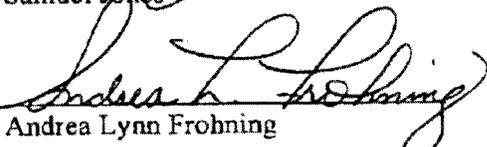
By:   
Sam Jones  
Its: Chief Executive Officer

The undersigned guarantors hereby agree to the terms set forth in Section 14 of the Note:

  
George Martinez

  
Lisa Kay Martinez

  
Samuel Jones

  
Andrea Lynn Frohning



**EXHIBIT A**

**Personal Guaranty  
(Samuel Jones and Andrea Lynn Frohning)**



**EXHIBIT B**

**Personal Guaranty  
(George Martinez and Lisa Kay Martinez)**

Shadow Beverages and Snacks LLC

AZ

Checking Accounts

Account Title: Shadow Beverages and Snacks LLC

Free Small Business Checking 1			0
Account Number	2848	Statement Dates	2/01/10 thru 2/28/10
Previous Balance	500.00	Days This Statement Period	28
1 Deposits/Credits	50,000.00	Average Ledger	4,314.40
3 Checks/Debits	44,790.61	Average Collected	4,314.40
Service Charge	.00		
Interest Paid	.00		
Current Balance	5,709.39		

Deposits and Additions

Date	Description		Amount
2/17	Wire Transfer Credit	BRENT AND MIKO TUNNELL REVOCAB AZ	50,000.00

Withdrawals and Deductions

Date	Description		Amount
2/17	Wire Transfer Fee		10.00-
2/17	Transf to Checking		490.00-
	Confirmation number	217100395	
2/18	Transf to Checking		44,290.61-
	Confirmation number	218100111	

Daily Balance Information

Date	Balance	Date	Balance	Date	Balance
2/01	500.00	2/17	50,000.00	2/18	5,709.39



**GUARANTY**

THIS GUARANTY (hereinafter referred to as this "Guaranty") is made and executed as of this 17th day of February, 2010, by **George Martinez and Lisa Kay Martinez**, husband and wife (hereinafter collectively referred to as "Guarantor"), in favor of **Brent Tunnell**, (hereinafter "Lender")

**RECITALS**

A. Guarantor has requested that Lender make a loan to Shadow Beverages and Snacks, LLC ("Borrower") in the initial principal amount of \$50,000 (hereinafter referred to as the "Loan"), which indebtedness is evidenced and represented by that certain Production Line Promissory Note of even date herewith in said amount payable to Lender (hereinafter the "Note").

B. Lender is unwilling to make the requested Loan to Borrower unless Guarantor guarantees the repayment of the Loan by Borrower. The financial success of Borrower will directly benefit Guarantor, and Guarantor deems it to Guarantor's business and financial advantage and benefit to execute this Guaranty. Because of the direct benefit to Guarantor from the Loan to Borrower, which is fully supportive of and in good and valuable consideration for the execution of this Guaranty, Guarantor agrees to guarantee to Lender the obligations of Borrower as set forth herein.

**AGREEMENT**

NOW THEREFORE, for and in consideration of the premises hereof and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned Guarantor does hereby agree for the benefit of Lender as follows:

1. Guarantor does hereby unconditionally and absolutely guarantee to Lender the full and prompt payment of (i) the indebtedness represented by the Note, together with interest, as provided therein, and (ii) reasonable attorneys' fees and costs incurred by Lender in enforcing its rights under this Guaranty (hereinafter together referred to as the "Indebtedness").

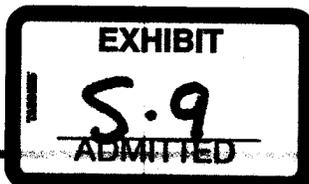
2. This is a guaranty of payment and performance. This is not a guaranty of collection. The obligations of Guarantor under this Guaranty shall be absolute and unconditional irrespective of the validity, legality or enforceability of the Note and shall not be affected by any action taken under the Note or any other agreement between Borrower and Lender in the exercise of any right or power therein conferred; or by any failure or omission to enforce any right conferred thereby; or by any waiver of any covenant or condition therein provided; or by any acceleration of the maturity of the Note; or by the release or other disposal of any security for the Note; or by any other agreement between Borrower and Lender or any other circumstance whatsoever which may or might in any manner or to any extent vary the risks of Guarantor, or might otherwise constitute a legal or equitable discharge of Guarantor; it being the purpose and intent that this Guaranty and the obligations of Guarantor hereunder shall be absolute and unconditional under any and all circumstances and shall not be discharged except by payment as provided herein.

0804/836607.0004/2460223.1 WPO6

1

Martinez EXHIBIT 12  
DATE 10-15-10  
Colette E. Ross  
CR No. 50658

ACC000337  
SHADOW-8507



3. Guarantor agrees that the whole or any part of the security now or hereafter held for the Indebtedness may be exchanged, compromised or surrendered from time to time; that the time or place of payment of the Indebtedness may be changed or extended, in whole or in part, to a time certain or otherwise, and may be renewed or accelerated, in whole or in part; that Borrower may be granted indulgences generally; that any of the provisions of the Note or other documents executed by Borrower or Guarantor in favor of Lender may be modified, amended or waived; that any party liable for the payment thereof may be granted indulgences or released; and that any deposit balance for the credit of Borrower or any other party liable for the payment of the Indebtedness or liable upon any security therefor may be released, in whole or in part, at, before and/or after the stated, extended or accelerated maturity of the Indebtedness, all without notice to or further assent by Guarantor, who shall remain bound thereon, notwithstanding any such exchange, compromise, surrender, extension, renewal, acceleration, modification, indulgence or release.

4. Guarantor expressly waives: (a) notice of acceptance of this Guaranty by Lender and of all extensions of credit to Borrower by Lender; (b) presentment and demand for payment of any of the Indebtedness; (c) protest and notice of dishonor, default, non-payment, or partial payment to Guarantor or to any other party with respect to the Indebtedness or with respect to any security therefor; (d) all other notices to which Guarantor might otherwise be entitled; and (e) demand for payment under this Guaranty. No notice or demand on Guarantor in any case shall entitle Guarantor to any other or further notice or demand in any other circumstances. Guarantor further agrees that there are absolutely no conditions or limitations to this undertaking except those set forth herein.

5. Guarantor does hereby unconditionally agree to indemnify and save Lender harmless from and against any and all loss, damage, cost and expense (including reasonable attorneys' fees) arising from or in connection with the Loan or any advances made by Lender to Borrower in connection with the Loan, the Note and any other documents executed in connection with the Loan.

6. Upon any default in the payment of the Note, or upon default in any of the terms, covenants, warranties, agreements, or undertakings in any other document executed by Borrower or Guarantor in connection with the Loan, or default in any of the terms of this Guaranty, Lender may for the purposes of the guarantee and indemnity herein contained, accelerate all amounts which at that time are due and/or are to become due from Borrower in the future and may proceed against Guarantor, without taking action first against Borrower or against any other person, firm, company, partnership, or corporation, or without proceeding against or exhausting any security held from Borrower, and any liability under this Guaranty shall not be reduced or impaired by reason of Lender's failure to take any action against any collateral of Borrower, against any other guarantor, or with respect to any right or duties Lender may owe Borrower. Settlement of any claim by Lender against Borrower or any other guarantor whether or not in any judicial proceedings, and whether voluntarily or involuntarily, shall not reduce the amount due under any of the terms of this Guaranty.

7. Guarantor hereby subordinates to the Indebtedness of Borrower to Lender any indebtedness of Borrower now or hereafter owed by Borrower to Guarantor. In the event that all or any portion of any such indebtedness of Borrower to Guarantor shall be paid by Borrower to

Guarantor, then Guarantor shall collect, enforce and receive any such amount paid by Borrower to Guarantor as trustee for Lender.

8. In consideration of the benefits accruing to Guarantor from Borrower, and until the Indebtedness has been paid in full, Guarantor hereby expressly waives all rights of subrogation, contribution, indemnification or other similar legal or equitable rights which Guarantor may now or hereafter be otherwise entitled to assert against Borrower, whether arising by contract or operation of law (including, without limitation, any such right arising under the U.S. Bankruptcy Code) or otherwise with respect to or by reason of any payment made by Guarantor under this Guaranty or on account of the Loan secured by this Guaranty. Guarantor hereby agrees that this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment of the Indebtedness, or any part thereof, is rescinded or must otherwise be restored or returned by Lender upon the insolvency, bankruptcy or reorganization of Borrower, or otherwise, all as though such payment had not been made. To the extent Guarantor has an equity interest in Borrower, Guarantor further agrees with Borrower, for the benefit of each of Borrower's creditors, whether existing on the date hereof or hereafter arising, that any such payment by Guarantor shall constitute a contribution of capital by Guarantor to Borrower. The provisions of this paragraph shall survive the repayment of the Indebtedness and the termination of this Guaranty.

9. If at any time or times hereafter Lender employs counsel (a) to pursue collection under this Guaranty, (b) to intervene or to sue for enforcement of the terms hereof, or (c) to file a petition, complaint, answer, motion or other pleading in any suit or proceeding relating to the enforcement of Lender's rights under this Guaranty, then in any such event, all of the reasonable attorneys' fees relating thereto shall be an additional liability of Guarantor to Lender hereunder, payable on demand.

10. This Guaranty shall continue in full force and effect until the Indebtedness is fully paid and discharged.

11. Guarantor warrants and represents to Lender that this Guaranty is enforceable against Guarantor in accordance with its terms and that the execution and delivery of this Guaranty does not violate or constitute a breach of any agreement to which Guarantor is a party.

12. Guarantor represents to Lender that Guarantor has knowledge of Borrower's financial condition and affairs and represents and agrees that Guarantor will keep informed while this Guaranty is in force. Guarantor further agrees that Lender will have no obligation to investigate the financial condition or affairs of Borrower for the benefit of Guarantor nor to advise Guarantor of any fact respecting, or any change in, the financial condition or affairs of Borrower which might come to the knowledge of Lender at any time, whether or not Lender knows or believes or has reason to know or believe that any such fact or change is unknown to Guarantor or might (or does) materially increase the risk of Guarantor as guarantor or might (or would) affect the willingness of Guarantor to continue as guarantor with respect to the Indebtedness.

13. All rights, powers and remedies of Lender hereunder and under any agreement between Borrower and Lender or Guarantor and Lender, now, or at any time hereafter in force,

shall be cumulative and not alternative, and shall be in addition to all rights, powers and remedies given to Lender by law. No exercise of, delay in exercising, or omission to exercise, any rights, powers, remedies and/or discretion by Lender shall be deemed a waiver thereof, and every such right, power, remedy and discretion may be exercised repeatedly. Without limiting the generality of the foregoing, at any time that Lender is entitled to exercise its remedies hereunder, it may in its discretion elect to initiate foreclosure proceedings against Borrower or to demand performance by Borrower under the Note or Guarantor under this Guaranty.

14. This Guaranty shall be deemed to be a contract made under, and for all purposes shall be construed in accordance with, the internal laws and judicial decisions of the State of Arizona. Guarantor and Lender agree that any dispute arising out of this Guaranty shall be subject to the jurisdiction of both the state and federal courts in Arizona. For that purpose, Guarantor hereby submits to the jurisdiction of the state and federal courts of Arizona. Guarantor further agrees to accept service of process out of any of the aforesaid courts in any such dispute by registered or certified mail addressed to Guarantor. Nothing herein contained, however, shall prevent Lender from bringing any action or exercising any rights against (a) Borrower, (b) any security, (c) Guarantor personally, or (d) the assets of Guarantor, within any other state or jurisdiction.

15. It shall be a default hereunder if Borrower or Guarantor shall (a) consent to the appointment of a receiver, trustee or liquidator of all or a substantial part of Borrower's or Guarantor's assets, or (b) be adjudicated as bankrupt or insolvent, or file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they become due, or (c) make a general assignment for the benefit of creditors or (d) file a petition under or take advantage of any insolvency law, or (e) file an answer admitting the material allegations of a petition filed against Borrower or Guarantor in any bankruptcy, reorganization or insolvency proceeding or fail to cause the dismissal of such petition within sixty (60) days after the filing of said petition, or (f) take action for the purpose of effecting any of the foregoing, or (g) if any order, judgment or decree shall be entered upon an application of the creditor of Borrower or Guarantor by a court of competent jurisdiction approving a petition seeking appointment of a receiver or trustee of all or a substantial part of Borrower's or Guarantor's assets and such order, judgment or decree shall continue unstayed and in effect for a period of sixty (60) days.

16. This Guaranty is and shall inure to the benefit of Lender, its successors or assigns, and shall be binding upon Guarantor, and Guarantor's heirs, legal representatives, successors and assigns. Death of a Guarantor shall constitute a default hereunder; provided, however, that notwithstanding the death of a Guarantor, the obligation of this Guaranty shall continue in full force and effect with respect to estate of that Guarantor.

17. Without limiting any of the other waivers contained in this Guaranty, Guarantor specifically waives any right to have Borrower or any other guarantor joined with Guarantor in any suit brought on this Guaranty and further specifically waives any right to require Lender to sue Borrower to collect the indebtedness as a prerequisite to Lender's taking action against Guarantor under this Guaranty.

18. The liability of Guarantor under this Guaranty shall in no manner be impaired, affected or released by the liquidation, dissolution, receivership, insolvency, bankruptcy, the

making of an assignment, compensation, composition or readjustment of Borrower or of any other Guarantor, or by any proceedings affecting the status, existence or assets of Borrower, or of any other Guarantor.

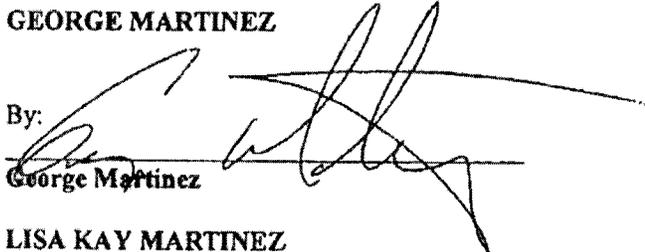
19. The terms of this Guaranty, and the liability of Guarantor hereunder, shall in no way be affected or impaired by any limitation of personal liability of Borrower under the Note or any other document executed by Borrower or Guarantor in connection with the Loan which may now or hereafter be effective.

20. Where two or more persons or entities have executed this Guaranty, unless the context clearly indicates otherwise, all references herein to "Guarantor" shall mean the Guarantors hereunder of each of them. All obligations and liability of said parties shall be joint and several.

IN WITNESS WHEREOF, the undersigned have set their hand and seal this as of the day and year first above written.

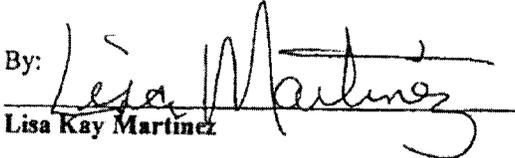
**GUARANTOR:**

**GEORGE MARTINEZ**

By: 

**George Martinez**

**LISA KAY MARTINEZ**

By: 

**Lisa Kay Martinez**

**GUARANTY**

**THIS GUARANTY** (hereinafter referred to as this "Guaranty") is made and executed as of this 17th day of February, 2010, by **Samuel Jones and Andrea Lynn Frohning**, husband and wife (hereinafter collectively referred to as "Guarantor"), in favor of **Brent Tunnell**, (hereinafter "Lender")

**RECITALS**

A. Guarantor has requested that Lender make a loan to Shadow Beverages and Snacks, LLC ("Borrower") in the initial principal amount of \$50,000 (hereinafter referred to as the "Loan"), which indebtedness is evidenced and represented by that certain Production Line Promissory Note of even date herewith in said amount payable to Lender (hereinafter the "Note").

B. Lender is unwilling to make the requested Loan to Borrower unless Guarantor guarantees the repayment of the Loan by Borrower. The financial success of Borrower will directly benefit Guarantor, and Guarantor deems it to Guarantor's business and financial advantage and benefit to execute this Guaranty. Because of the direct benefit to Guarantor from the Loan to Borrower, which is fully supportive of and in good and valuable consideration for the execution of this Guaranty, Guarantor agrees to guarantee to Lender the obligations of Borrower as set forth herein.

**AGREEMENT**

**NOW THEREFORE**, for and in consideration of the premises hereof and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned Guarantor does hereby agree for the benefit of Lender as follows:

1. Guarantor does hereby unconditionally and absolutely guarantee to Lender the full and prompt payment of (i) the indebtedness represented by the Note, together with interest, as provided therein, and (ii) reasonable attorneys' fees and costs incurred by Lender in enforcing its rights under this Guaranty (hereinafter together referred to as the "Indebtedness").

2. This is a guaranty of payment and performance. This is not a guaranty of collection. The obligations of Guarantor under this Guaranty shall be absolute and unconditional irrespective of the validity, legality or enforceability of the Note and shall not be affected by any action taken under the Note or any other agreement between Borrower and Lender in the exercise of any right or power therein conferred; or by any failure or omission to enforce any right conferred thereby; or by any waiver of any covenant or condition therein provided; or by any acceleration of the maturity of the Note; or by the release or other disposal of any security for the Note; or by any other agreement between Borrower and Lender or any other circumstance whatsoever which may or might in any manner or to any extent vary the risks of Guarantor, or might otherwise constitute a legal or equitable discharge of Guarantor; it being the purpose and intent that this Guaranty and the obligations of Guarantor hereunder shall be absolute and unconditional under any and all circumstances and shall not be discharged except by payment as provided herein.

ACC000342  
SHADOW-8507

DB04/836607.0004/2459912.1 WP06

*Martinez* EXHIBIT *13*  
DATE *10-15-12*  
Colette E. Ross  
CR No. 50658



3. Guarantor agrees that the whole or any part of the security now or hereafter held for the Indebtedness may be exchanged, compromised or surrendered from time to time; that the time or place of payment of the Indebtedness may be changed or extended, in whole or in part, to a time certain or otherwise, and may be renewed or accelerated, in whole or in part; that Borrower may be granted indulgences generally; that any of the provisions of the Note or other documents executed by Borrower or Guarantor in favor of Lender may be modified, amended or waived; that any party liable for the payment thereof may be granted indulgences or released; and that any deposit balance for the credit of Borrower or any other party liable for the payment of the Indebtedness or liable upon any security therefor may be released, in whole or in part, at, before and/or after the stated, extended or accelerated maturity of the Indebtedness, all without notice to or further assent by Guarantor, who shall remain bound thereon, notwithstanding any such exchange, compromise, surrender, extension, renewal, acceleration, modification, indulgence or release.

4. Guarantor expressly waives: (a) notice of acceptance of this Guaranty by Lender and of all extensions of credit to Borrower by Lender; (b) presentment and demand for payment of any of the Indebtedness; (c) protest and notice of dishonor, default, non-payment, or partial payment to Guarantor or to any other party with respect to the Indebtedness or with respect to any security therefor; (d) all other notices to which Guarantor might otherwise be entitled; and (e) demand for payment under this Guaranty. No notice or demand on Guarantor in any case shall entitle Guarantor to any other or further notice or demand in any other circumstances. Guarantor further agrees that there are absolutely no conditions or limitations to this undertaking except those set forth herein.

5. Guarantor does hereby unconditionally agree to indemnify and save Lender harmless from and against any and all loss, damage, cost and expense (including reasonable attorneys' fees) arising from or in connection with the Loan or any advances made by Lender to Borrower in connection with the Loan, the Note and any other documents executed in connection with the Loan.

6. Upon any default in the payment of the Note, or upon default in any of the terms, covenants, warranties, agreements, or undertakings in any other document executed by Borrower or Guarantor in connection with the Loan, or default in any of the terms of this Guaranty, Lender may for the purposes of the guarantee and indemnity herein contained, accelerate all amounts which at that time are due and/or are to become due from Borrower in the future and may proceed against Guarantor, without taking action first against Borrower or against any other person, firm, company, partnership, or corporation, or without proceeding against or exhausting any security held from Borrower, and any liability under this Guaranty shall not be reduced or impaired by reason of Lender's failure to take any action against any collateral of Borrower, against any other guarantor, or with respect to any right or duties Lender may owe Borrower. Settlement of any claim by Lender against Borrower or any other guarantor whether or not in any judicial proceedings, and whether voluntarily or involuntarily, shall not reduce the amount due under any of the terms of this Guaranty.

7. Guarantor hereby subordinates to the Indebtedness of Borrower to Lender any indebtedness of Borrower now or hereafter owed by Borrower to Guarantor. In the event that all or any portion of any such indebtedness of Borrower to Guarantor shall be paid by Borrower to

Guarantor, then Guarantor shall collect, enforce and receive any such amount paid by Borrower to Guarantor as trustee for Lender.

8. In consideration of the benefits accruing to Guarantor from Borrower, and until the Indebtedness has been paid in full, Guarantor hereby expressly waives all rights of subrogation, contribution, indemnification or other similar legal or equitable rights which Guarantor may now or hereafter be otherwise entitled to assert against Borrower, whether arising by contract or operation of law (including, without limitation, any such right arising under the U.S. Bankruptcy Code) or otherwise with respect to or by reason of any payment made by Guarantor under this Guaranty or on account of the Loan secured by this Guaranty. Guarantor hereby agrees that this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time payment of the Indebtedness, or any part thereof, is rescinded or must otherwise be restored or returned by Lender upon the insolvency, bankruptcy or reorganization of Borrower, or otherwise, all as though such payment had not been made. To the extent Guarantor has an equity interest in Borrower, Guarantor further agrees with Borrower, for the benefit of each of Borrower's creditors, whether existing on the date hereof or hereafter arising, that any such payment by Guarantor shall constitute a contribution of capital by Guarantor to Borrower. The provisions of this paragraph shall survive the repayment of the Indebtedness and the termination of this Guaranty.

9. If at any time or times hereafter Lender employs counsel (a) to pursue collection under this Guaranty, (b) to intervene or to sue for enforcement of the terms hereof, or (c) to file a petition, complaint, answer, motion or other pleading in any suit or proceeding relating to the enforcement of Lender's rights under this Guaranty, then in any such event, all of the reasonable attorneys' fees relating thereto shall be an additional liability of Guarantor to Lender hereunder, payable on demand.

10. This Guaranty shall continue in full force and effect until the Indebtedness is fully paid and discharged.

11. Guarantor warrants and represents to Lender that this Guaranty is enforceable against Guarantor in accordance with its terms and that the execution and delivery of this Guaranty does not violate or constitute a breach of any agreement to which Guarantor is a party.

12. Guarantor represents to Lender that Guarantor has knowledge of Borrower's financial condition and affairs and represents and agrees that Guarantor will keep informed while this Guaranty is in force. Guarantor further agrees that Lender will have no obligation to investigate the financial condition or affairs of Borrower for the benefit of Guarantor nor to advise Guarantor of any fact respecting, or any change in, the financial condition or affairs of Borrower which might come to the knowledge of Lender at any time, whether or not Lender knows or believes or has reason to know or believe that any such fact or change is unknown to Guarantor or might (or does) materially increase the risk of Guarantor as guarantor or might (or would) affect the willingness of Guarantor to continue as guarantor with respect to the Indebtedness.

13. All rights, powers and remedies of Lender hereunder and under any agreement between Borrower and Lender or Guarantor and Lender, now, or at any time hereafter in force,

shall be cumulative and not alternative, and shall be in addition to all rights, powers and remedies given to Lender by law. No exercise of, delay in exercising, or omission to exercise, any rights, powers, remedies and/or discretion by Lender shall be deemed a waiver thereof, and every such right, power, remedy and discretion may be exercised repeatedly. Without limiting the generality of the foregoing, at any time that Lender is entitled to exercise its remedies hereunder, it may in its discretion elect to initiate foreclosure proceedings against Borrower or to demand performance by Borrower under the Note or Guarantor under this Guaranty.

14. This Guaranty shall be deemed to be a contract made under, and for all purposes shall be construed in accordance with, the internal laws and judicial decisions of the State of Arizona. Guarantor and Lender agree that any dispute arising out of this Guaranty shall be subject to the jurisdiction of both the state and federal courts in Arizona. For that purpose, Guarantor hereby submits to the jurisdiction of the state and federal courts of Arizona. Guarantor further agrees to accept service of process out of any of the aforesaid courts in any such dispute by registered or certified mail addressed to Guarantor. Nothing herein contained, however, shall prevent Lender from bringing any action or exercising any rights against (a) Borrower, (b) any security, (c) Guarantor personally, or (d) the assets of Guarantor, within any other state or jurisdiction.

15. It shall be a default hereunder if Borrower or Guarantor shall (a) consent to the appointment of a receiver, trustee or liquidator of all or a substantial part of Borrower's or Guarantor's assets, or (b) be adjudicated as bankrupt or insolvent, or file a voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they become due, or (c) make a general assignment for the benefit of creditors or (d) file a petition under or take advantage of any insolvency law, or (e) file an answer admitting the material allegations of a petition filed against Borrower or Guarantor in any bankruptcy, reorganization or insolvency proceeding or fail to cause the dismissal of such petition within sixty (60) days after the filing of said petition, or (f) take action for the purpose of effecting any of the foregoing, or (g) if any order, judgment or decree shall be entered upon an application of the creditor of Borrower or Guarantor by a court of competent jurisdiction approving a petition seeking appointment of a receiver or trustee of all or a substantial part of Borrower's or Guarantor's assets and such order, judgment or decree shall continue unstayed and in effect for a period of sixty (60) days.

16. This Guaranty is and shall inure to the benefit of Lender, its successors or assigns, and shall be binding upon Guarantor, and Guarantor's heirs, legal representatives, successors and assigns. Death of a Guarantor shall constitute a default hereunder; provided, however, that notwithstanding the death of a Guarantor, the obligation of this Guaranty shall continue in full force and effect with respect to estate of that Guarantor.

17. Without limiting any of the other waivers contained in this Guaranty, Guarantor specifically waives any right to have Borrower or any other guarantor joined with Guarantor in any suit brought on this Guaranty and further specifically waives any right to require Lender to sue Borrower to collect the Indebtedness as a prerequisite to Lender's taking action against Guarantor under this Guaranty.

18. The liability of Guarantor under this Guaranty shall in no manner be impaired, affected or released by the liquidation, dissolution, receivership, insolvency, bankruptcy, the

making of an assignment, compensation, composition or readjustment of Borrower or of any other Guarantor, or by any proceedings affecting the status, existence or assets of Borrower, or of any other Guarantor.

19. The terms of this Guaranty, and the liability of Guarantor hereunder, shall in no way be affected or impaired by any limitation of personal liability of Borrower under the Note or any other document executed by Borrower or Guarantor in connection with the Loan which may now or hereafter be effective.

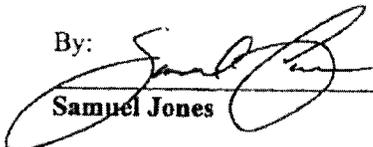
20. Where two or more persons or entities have executed this Guaranty, unless the context clearly indicates otherwise, all references herein to "Guarantor" shall mean the Guarantors hereunder of each of them. All obligations and liability of said parties shall be joint and several.

IN WITNESS WHEREOF, the undersigned have set their hand and seal this as of the day and year first above written.

**GUARANTOR:**

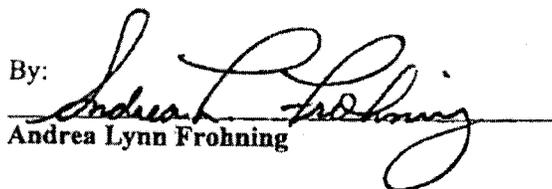
**SAMUEL JONES**

By:

  
\_\_\_\_\_  
Samuel Jones

**ANDREA LYNN FROHNING**

By:

  
\_\_\_\_\_  
Andrea Lynn Frohning

**PROMISSORY NOTE**

(Term Loan)

\$200,000.00

Phoenix, Arizona

March \_\_, 2010

FOR VALUE RECEIVED, the undersigned, SHADOW BEVERAGES AND SNACKS, LLC, an Arizona limited liability company ("Maker") promises to pay to BRENT TUNNELL ("Lender"), or order, the principal sum of Two Hundred Thousand Dollars and No Cents (\$200,000.00), together with interest on the unpaid balance from time to time outstanding at an annual rate of Twenty Five Percent (25%).

The entire unpaid principal, all unpaid accrued interest and all other amounts payable hereunder shall be paid in full on or before September 17, 2010.

Maker shall pay to holder a late charge equal to five percent (5%) of the amount of any payment due hereunder which shall not have been made to holder within five (5) days after the date that such payment becomes due.

The actual rate of interest shall be calculated on the basis of a 360-day year with interest charged on a daily basis on the principal balance outstanding and unpaid for the actual number of days the principal is outstanding from the date of disbursement until paid. All amounts payable hereunder shall be paid in lawful money of the United States.

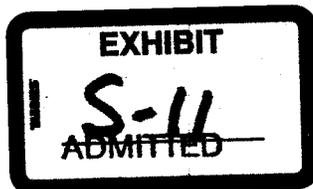
During the first two (2) months after the date of this Note first set forth above, Maker shall have no right to prepay any principal payable under this Note. During the period commencing two (2) months and one (1) day after the date of this Note and ending four (4) months after the date of this Note, Maker shall have the right at any time or from time to time to prepay all or a portion of the principal or interest, provided, however, Maker shall in such event pay a prepayment charge in an amount equal to five percent (5%) of the principal amount of the prepayment. During the period commencing four (4) months and one (1) day after the date of this Note, Maker shall have the right at any time or from time to time to prepay all or a portion of the principal or interest without a prepayment charge or premium.

At the holder's option, any payments hereunder may be applied first to accrued interest and then to principal.

All past due payments of principal or interest shall bear interest from their respective due dates until paid at a rate of interest equal to ten percent (10%) per annum in excess of the rate otherwise payable under this Note (the "Default Rate").

This Note shall become immediately due and payable at the option of the holder hereof without presentment or demand or any notice or Maker or any other person obligated hereon except as otherwise provided by the Term Loan Agreement of even date herewith between Maker and Lender (the "Loan Agreement"), upon the occurrence of any event of default in the payment of any of the principal or any interest hereon when due, upon default under the Loan Agreement, or upon default under any other agreement between Maker and Lender. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

DB04/836607.0004/2561634.1 DD01



Mar 19  
DATE 10-15-11  
Colette E. Ross  
CR No. 50658

SHADOW007294

Principal and interest shall be payable at the address of Lender, as set forth in the Loan Agreement or at such other place as the holder hereof may designate.

In the event any holder hereof utilizes the services of an attorney in attempting to collect the amounts due hereunder or to enforce the terms hereof or of any agreements related to this indebtedness, or if any holder hereof becomes party plaintiff or defendant in any legal proceeding for the recovery or protection of the indebtedness evidenced hereby, Maker, its successors and assigns, and any endorsers hereof shall repay to such holder hereof, on demand, all costs and expenses so incurred, including reasonable attorneys' fees, whether or not suit is brought, including those costs, expenses and attorneys' fees incurred after the filing by or against the Maker of any proceeding under any chapter of the Bankruptcy Code, Title 11 of the United States Code, or similar federal or state statute, and whether incurred in connection with the involvement of any holder hereof as creditor in such proceedings or otherwise.

Maker agrees that the interest rate contracted for includes the interest rate set forth herein plus any compensating balance requirement and any other charges, fees, costs and expenses incident to this transaction paid by Maker to the extent the same are deemed interest under applicable law.

Except as otherwise provided in the Term Loan Agreement, Maker and all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally waive (i) demand, presentment for payment, notice of nonpayment, demand and dishonor, protest, notice of protest and all other notice except as otherwise provided herein, (ii) filing of suit, and (iii) diligence in collecting this Note. Maker, all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally agree that it will not be necessary for any holder hereof, in order to enforce payment of this Note, to first institute suit or exhaust its remedies against any maker or others liable herefor. Maker, all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally further consent to any extension or postponement of time of payment of this Note or any other indulgence with respect hereto, including but not limited to, the release of any party primarily or secondarily liable hereon without notice thereof to any of them. further waives

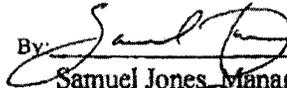
**MAKER, ALL ENDORSERS AND ALL GUARANTORS, HEREBY SEVERALLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS NOTE, IT BEING ACKNOWLEDGED BY MAKER, ALL ENDORSERS AND ALL GUARANTORS THAT EACH SUCH PARTY MAKES THIS WAIVER OF TRIAL BY JURY KNOWINGLY AND VOLUNTARILY AND ONLY AFTER CONSULTATION WITH LEGAL COUNSEL.**

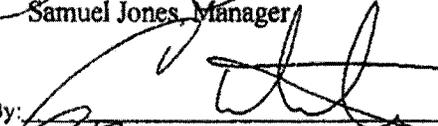
This Note shall be governed and construed in accordance with the laws of the State of Arizona.

*[Signatures appear on the following page.]*

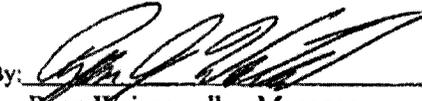
This Promissory Note was executed and delivered by the undersigned and is effective as of the date first set forth above.

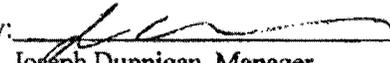
SHADOW BEVERAGES AND SNACKS, LLC, an  
Arizona limited liability company

By:   
Samuel Jones, Manager

By:   
George Martinez, Manager

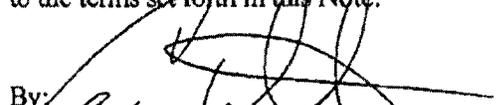
By:   
Richard Scherer, Manager

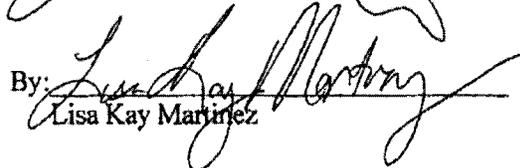
By:   
Ryan Weissmueller, Manager

By:   
Joseph Dunnigan, Manager

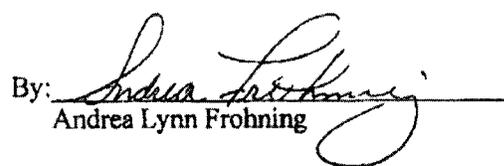
[Maker]

Each of the undersigned guarantors hereby agrees  
to the terms set forth in this Note.

By:   
George Martinez

By:   
Lisa Kay Martinez

By:   
Samuel Jones

By:   
Andrea Lynn Frohning

Shadow Beverages and Snacks LLC

AZ

Checking Accounts

Account Title: Shadow Beverages and Snacks LLC

Free Small Business Checking 1			0
Account Number	2848	Statement Dates	4/01/10 thru 5/02/10
Previous Balance	3,282.23	Days This Statement Period	32
1 Deposits/Credits	200,000.00	Average Ledger	131,221.38
3 Checks/Debits	155,792.00	Average Collected	131,221.38
Service Charge	.00		
Interest Paid	.00		
Current Balance	47,490.23		

Deposits and Additions

Date	Description		Amount
4/06	Wire Transfer Credit	BRENT AND MIKO TUNNELL REVOCAB	200,000.00

Withdrawals and Deductions

Date	Description		Amount
4/06	Wire Transfer Fee		10.00-
4/07	Transf to Checking		36,449.17-
	Confirmation number	407100279	
4/30	Transf to Checking		119,332.83-
	Confirmation number	430100210	

Daily Balance Information

Date	Balance	Date	Balance
4/01	3,282.23	4/07	166,823.06
4/06	203,272.23	4/30	47,490.23



MICHAEL K. JEANES  
Clerk of the Superior Court  
By Shannon Stulz, Deputy  
Date 09/23/2010 Time 14:16:43

Description	Amount
CASE# CV2010-027812	
CIVIL NEW COMPLAINT	301.00
TOTAL AMOUNT	301.00
Receipt# 20856052	

1 Christopher C. Simpson (#018626)  
Sharon W. Ng (#024975)  
2 **STINSON MORRISON HECKER LLP**  
1850 North Central Avenue, Suite 2100  
3 Phoenix, Arizona 85004-4584  
Tel: (602) 279-1600  
4 Fax: (602) 240-6925  
Email: csimpson@stinson.com  
5 Attorneys for Plaintiff Brent Tunnell

6 **SUPERIOR COURT OF ARIZONA**  
7 **MARICOPA COUNTY**

8 BRENT TUNNELL,  
9 Plaintiff,

No. CV2010-027812  
**COMPLAINT**

10 v.

(Breach of Contract; Fraud)

11 SHADOW BEVERAGES AND  
12 SNACKS, LLC, an Arizona limited  
liability company; SAMUEL JONES;  
13 ANDREA LYNN FROHNING;  
GEORGE MARTINEZ; and LISA KAY  
14 MARTINEZ,

15 Defendants.

16  
17 For its Complaint against Defendants, Shadow Beverages and Snacks, LLC, Samuel  
18 Jones, Andrea Lynn Frohning, George Martinez, and Lisa Kay Martinez, Plaintiff, Brent  
19 Tunnell, alleges as follows:

20 **PARTIES, JURISDICTION, AND VENUE**

21 1. Plaintiff, Brent Tunnell, resides in Maricopa County, Arizona and entered into  
22 contracts with Defendants in Maricopa County, Arizona.

23 2. Defendant, Shadow Beverages and Snacks, LLC ("Shadow Beverages"), is an  
24 Arizona limited liability company.

ACC000323  
SHADOW-8507

EXHIBIT

1 S-13  
ADMITTED



1 12. Pursuant to the Second Note, "all unpaid accrued interest and all other amounts  
2 payable . . . shall be paid in full on or before September 17, 2010."

3 13. Payment of the Second Note was personally guaranteed by Payment and  
4 Performance Guaranties (the "Second Guaranties") executed by Samuel Jones and his wife  
5 Andrea Lynn Frohning, and George Martinez and his wife Lisa Kay Martinez. A true and  
6 correct copy of each of the Guaranties is attached as Exhibit D.

7 14. On or about March 17, 2010, Plaintiff and Shadow Beverages entered into a  
8 certain Term Loan Agreement (the "Loan Agreement") executed by Managers Samuel Jones  
9 and George Martinez. A true and correct copy of the Loan Agreement is attached as Exhibit E.

10 15. The Loan Agreement required Shadow Beverages to "[p]romptly deposit the  
11 proceeds of the Loan and all payments received from its customers or resulting from the sale of  
12 its products" into a separate bank account (the "Production Account").

13 16. Upon information and belief, Shadow Beverages did not deposit payments  
14 received from its customers or resulting from the sale of its products into the Production  
15 Account.

16 **COUNT 1 - BREACH OF CONTRACT**

17 17. Plaintiff realleges and incorporates by reference the allegations set forth in the  
18 preceding paragraphs as if fully set forth herein.

19 18. The First Note matured on August 17, 2010.

20 19. Shadow Beverages failed to make any payment on the First Note toward the  
21 principal or accrued interest despite demand by Plaintiff.

22 20. Shadow Beverages breached the First Note when it failed to make payments due  
23 and owing to Plaintiff.

24 21. Shadow Beverages has failed to cure its default under the First Note.

25 22. As a direct and proximate result of Shadow Beverages' contractual breaches

1 under the First Note, Plaintiff has sustained damages in the amount of at least \$56,623.12 with  
2 interest accruing thereon at the default rate of thirty-five percent (35%) from and after August  
3 17, 2010.

4 23. The Second Note matured on September 17, 2010.

5 24. Shadow Beverages failed to make any payment on the Second Note toward the  
6 principal or accrued interest despite demand by Plaintiff.

7 25. The Second Note contains a late payment fee of five percent (5%).

8 26. Shadow Beverages breached the Second Note when it failed to make payments  
9 due and owing to Plaintiff.

10 27. Shadow Beverages has failed to cure its default under the Second Note.

11 28. As a direct and proximate result of Shadow Beverages' contractual breaches  
12 under the Second Note, Plaintiff has sustained damages in the amount of at least \$238,303.11  
13 with interest accruing thereon at the default interest rate of thirty-five percent (35%) from and  
14 after September 17, 2010.

15 29. Pursuant to the First Note, Second Note, and A.R.S. § 12-341.01, Plaintiff is  
16 entitled to an award of his reasonable attorneys' fees and costs incurred in enforcing the First  
17 Note and the Second Note.

18 **COUNT 2 – BREACH OF GUARANTY**

19 30. Plaintiff realleges and incorporates by reference the allegations set forth in the  
20 preceding paragraphs as if fully set forth herein.

21 31. Pursuant to the Guaranties, each of Samuel Jones and his wife Andrea Lynn  
22 Frohning, and George Martinez and his wife Lisa Kay Martinez have jointly and severally  
23 unconditionally and absolutely guaranteed all indebtedness of Shadow Beverages under the  
24 First Note.

25 32. Pursuant to the Second Guaranties, each of Samuel Jones and his wife Andrea  
26

1 Lynn Frohning, and George Martinez and his wife Lisa Kay Martinez have jointly and  
2 severally guaranteed an "absolute, direct, immediate, and unconditional guarantee of timely  
3 payment and performance, and not merely collectability . . . [including] . . . without limitation,  
4 all primary, secondary, direct, indirect, fixed and contingent obligations of Borrower to pay  
5 principal, interest, prepayment charges, late charges, default interest . . . which may be owing  
6 at any time in connection with the obligations of [Shadow Beverages]" under the First Note  
7 and the Second Note.

8 33. Each of Samuel Jones, Andrea Lynn Frohning, George Martinez and Lisa Kay  
9 Martinez breached their respective guaranties by failing to pay Plaintiff all amounts due and  
10 owing under the terms of the First Note and the Second Note.

11 34. As a direct and proximate result of Jones', Frohning's, and the Martinezs'  
12 breaches of their respective guaranties, Plaintiff has sustained damages in the amount of at  
13 least \$56,623.12 with interest accruing thereon at the default rate of thirty-five percent (35%)  
14 from and after August 17, 2010 under the First Note and of at least \$238,303.11 with interest  
15 accruing thereon at the default interest rate of thirty-five percent (35%) from and after  
16 September 17, 2010 under the Second Note.

17 35. Pursuant to the guaranties and/or A.R.S. § 12-341.01, Plaintiff is entitled to an  
18 award of his reasonable attorneys' fees and costs incurred in enforcing the Guaranties and the  
19 Second Guaranties.

20 **COUNT 3 – FRAUD**

21 36. Plaintiff realleges and incorporates by reference the allegations set forth in the  
22 preceding paragraphs as if fully set forth herein.

23 37. In order to obtain money and financing of credit, Shadow Beverages and the  
24 Managers made false statements, promises and representations with the intent to deceive  
25 Plaintiff that its Managers would cause Shadow Beverages to deposit sale proceeds from the  
26

1 sale of its products into a separate bank account for the benefit of Plaintiff as specifically  
2 required by the Loan Agreement and the First Note.

3 38. Shadow Beverages and its Managers made these statements in writing pursuant  
4 to the Loan Agreement and the First Note, which they knew to be materially false, representing  
5 Shadow Beverages' and the Managers' financial condition and ability to repay the First Note  
6 and the Second Note.

7 39. Shadow Beverages and the Managers made the statements on which they  
8 intended Plaintiff to rely and on which Plaintiff did rely in his decision to extend credit.

9 40. Shadow Beverages and its Managers made the written statements with the intent  
10 to deceive Plaintiff.

11 41. The acts described above were in furtherance of an actual fraud.

12 42. The foregoing promises and representations were material to Plaintiff.

13 43. Plaintiff did not have knowledge of the falsity of the foregoing statements,  
14 promises and representations by Shadow Beverages and the Managers.

15 44. Shadow Beverages' Managers were acting in a fiduciary capacity of Shadow  
16 Beverages, and their actions constitute fraud against Plaintiff.

17 45. Shadow Beverages' Managers' actions constitute a willful and malicious injury to  
18 Plaintiff.

19 46. Shadow Beverages and its principals knowingly and intentionally deceived  
20 Plaintiff.

21 47. Plaintiff had a right to rely upon the foregoing statements and representations by  
22 Shadow Beverages and its Managers and Plaintiff did so reasonably rely.

23 48. Plaintiff has been consequently and proximately injured by the foregoing  
24 representations by Shadow Beverages and the Managers through their false statements and  
25 representation that sale proceeds would be deposited into a separate bank account for the

1 benefit of Plaintiff and the written statement on which Plaintiff relied with respect to Shadow  
2 Beverages' and its Managers' financial condition and ability to repay the First Note and the  
3 Second Note.

4 49. Shadow Beverages and its Managers acted in willful, wanton, and intentional  
5 disregard of Plaintiff's rights and with an evil mind such that Plaintiff is entitled to recover and  
6 the Court should award Plaintiff punitive damages against Shadow Beverages and its Managers  
7 in an amount sufficient to punish Shadow Beverages and the Managers and to deter it and  
8 others from engaging in similar conduct in the future.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff requests judgment against Defendants as follows:

11 A. Judgment against Shadow Beverages in the amount of \$56,623.12, plus all  
12 accrued and unpaid interest thereon at the default interest rate of thirty-five percent (35%) from  
13 and after August 17, 2010 under the First Note;

14 B. Judgment against Shadow beverages in the amount of \$238,303.11, plus all  
15 accrued and unpaid interest thereon at the default interest rate of thirty-five percent (35%) from  
16 and after September 17, 2010 under the Second Note;

17 C. Judgment against Defendants Samuel Jones and Andrea Lynn Frohning in the  
18 amount of \$294,926.23, plus all accrued and unpaid interest thereon at the default interest rate  
19 of thirty-five percent (35%) from and after the maturity of each Note;

20 D. Judgment against Defendants George Martinez and Lisa Kay Martienz in the  
21 amount of \$294,926.23, plus all accrued and unpaid interest thereon at the default interest rate  
22 of thirty-five percent (35%) from and after the maturity of each Note;

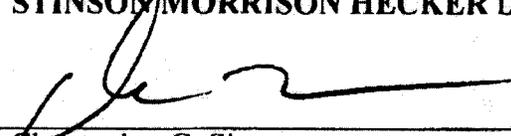
23 E. Punitive damages against Shadow Beverages and the Managers;

24 F. For Plaintiff's reasonable attorneys' fees and costs in enforcing the First Note,  
25 Second Note, the Guaranties and the Second Guaranties; and

1 G. For such other and further relief as the Court deems just and appropriate.  
2

3 RESPECTFULLY SUBMITTED this 23<sup>rd</sup> day of September, 2010.

4 **STINSON MORRISON HECKER LLP**

5  
6 By: 

7 Christopher C. Simpson  
8 Sharon W. Ng  
9 1850 North Central Avenue, Suite 2100  
10 Phoenix, Arizona 85004-4584  
11 Attorneys for Plaintiff Brentwood Tunnell

12 ORIGINAL filed this 23<sup>rd</sup> day of  
13 September, 2010:

14 Clerk of the Court  
15 Maricopa County Superior Court  
16 101/201 West Jefferson  
17 Phoenix, Arizona 85003

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25 **ACC000330**  
SHADOW-8507

TERM LOAN AGREEMENT

This Term Loan Agreement (the "Loan Agreement") is made and entered into as of March \_\_, 2010, by and between SHADOW BEVERAGES AND SNACKS, LLC, an Arizona limited liability company ("Borrower"), and BRENT TUNNELL ("Lender").

RECITALS:

Borrower produces and supplies Iron Clad Energy + Hydration and Ripe Simply Natural Vitamin Enhanced Water to numerous convenience store retail locations.

Borrower has experienced significant growth in the number of convenience store locations stocking Iron Clad Energy + Hydration and/or Ripe Simply Natural Vitamin Enhanced Water and Borrower recently entered into a contract to provide an additional 1600 retail locations with Iron Clad Energy + Hydration and/or Ripe Simply Natural Vitamin Enhanced Water.

Borrower desires to obtain a six-month loan for the purpose of funding production of Iron Clad Energy + Hydration and/or Ripe Simply Natural Vitamin Enhanced Water to supply the additional retail locations.

Lender is willing to extend such a term loan to Borrower but only upon the terms and conditions set forth herein (the "Loan").

Now, therefore, in consideration of the agreements contained herein, the parties agree as follows:

AGREEMENTS:

1. Terms of the Loan

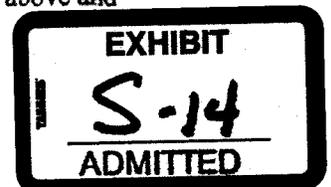
1.1 Sources and Uses. Subject to the terms and conditions of this Loan Agreement, Lender will make the Loan to Borrower in the principal amount of Two Hundred Thousand Dollars (\$200,000). The Loan shall be used by Borrower for the sole purpose of paying Borrower's suppliers for production of Iron Clad Energy + Hydration and/or Ripe Simply Natural Vitamin Enhanced Water.

1.2 Note. The obligation of the Borrower to repay Lender the unpaid principal balance of the Loan, with interest thereon as hereinafter provided, shall be evidenced by a promissory note (the "Note"). The Loan will bear interest for the period at the rate or rates set forth in the Note, and be payable in accordance with the terms of the Note. The unpaid principal balance, all accrued and unpaid interest and all other sums due and payable under the Note or other Loan Documents, if not sooner paid, shall be paid in full on the Maturity Date.

1.3 Term. The term of the Loan commences on the date first set forth above and continues until **September 17, 2010** (the "Maturity Date").

Term Loan Agreement  
DB04/836607.0004/2556690.2 DD01

Martinez EXHIBIT 15  
DATE 10-15-15  
Colette E. Ross  
CR No. 50658



SHADOW007306

1.4 Prepayments. Borrower shall have no right to make prepayments of the Loan in whole or in part except in accordance with the terms of the Note.

1.5 Loan Documents. The Loan Documents consist of this Loan Agreement, the Note, the Payment and Performance Guaranty of George Martinez and Lisa Kay Martinez, the Payment and Performance Guaranty of Samuel Jones and Andrea Lynn Frohning and all other documents and instruments given to Lender from time to time in connection with or to secure the Loan, as originally executed or as any of the same may be hereafter supplemented or amended from time to time, in writing (the "Loan Documents").

1.6 Loan Fees. In lieu of Borrower paying customary loan fees and all expenses incurred by Lender pertaining to the origination of this Loan incurred as of the date first set forth above, Borrower desires to issue and Lender is willing to accept membership interests in Borrower as further described in Section 2 below. Borrower shall remain responsible for all other amounts, fees, expenses and sums due Lender arising from the Loan, including, without limitation, administrative fees and expenses in connection with any modification of any of the terms of the Loan.

1.7 Payments.

(a) The Borrower shall make each payment hereunder and under the Note not later than 11:00 a.m. (Phoenix, Arizona time) on the day when due in U.S. dollars to the Lender at its address referred to in Section 6.2 in same day funds (or other funds acceptable to Lender); and

(b) Whenever any payment hereunder or under the Note shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest or fee, as the case may be.

2. Conditions of Lending

2.1 Conditions Precedent to Advance. The obligation of Lender to make its advance under the Loan is subject to the condition precedent that the Lender shall have received on or before the day of the advance the following, in form and substance satisfactory to the Lender:

- (a) Fully executed original Loan Agreement;
- (b) Fully executed original Note;
- (c) Current financial statements of Borrower;
- (d) Fully executed original Payment and Performance Guaranty of George Martinez and Lisa Kay Martinez;

- (e) Current financial statements of George Martinez and Lisa Kay Martinez;
- (f) Fully executed original Payment and Performance Guaranty of Samuel Jones and Andrea Lynn Frohning;
- (g) Current financial statements of Samuel Jones and Andrea Lynn Frohning;
- (h) Copies of the Employment Agreements of Samuel Jones, George Martinez and Joe Dunnigan;
- (i) The secure token from First Fidelity Bank allowing Lender online access to the Production Account, defined below;
- (j) Fully executed original First Note; and
- (k) A Certificate representing Three Percent (3%) of the issued and outstanding capital interests of Borrower registered in the name of Lender.

## 2.2 Additional Conditions Precedent to Advance.

The obligation of Lender to make its advance under the Loan shall be subject to the following further conditions precedent:

(a) No Event of Default or event which with the giving of notice or the passage of time, or both, would be an event of default shall have occurred under this Loan Agreement or the Production Line Promissory Note dated February 17, 2010 from Borrower to Lender (the "First Note");

(b) The proceeds of the advance are used for the purposes set forth in Section 1.1 of this Loan Agreement;

## 3. Representations and Warranties

3.1 Representations and Warranties. To induce Lender to establish and enter into this Loan Agreement, Borrower hereby represents and warrants to the Lender that so long as this Loan Agreement is in effect and until payment and performance in full of all obligations and liabilities of Borrower to Lender:

(a) Borrower is and will continue to be a duly organized and existing limited liability company created under the laws of the State of Arizona and qualified to do business in the State of Arizona. Borrower is and will continue to be, qualified to do business in all jurisdictions where the nature of the business transacted, or the ownership of property, makes such licensing or qualification necessary. Borrower has and will continue to have all requisite power and authority to own its assets and to carry on their businesses;

(b) Borrower is and will continue to be duly authorized to enter into and perform its obligations under this Loan Agreement, the Note, and all other statements, instruments and transactions contemplated hereby or relating hereto; and the execution, delivery and performance by Borrower of this Loan Agreement, the Note and all of the instruments and transactions contemplated hereby or relating hereto do not and will not violate any provision of law or of Borrower's articles of organization or any agreement, indenture, note or instrument which is binding upon Borrower;

(c) This Loan Agreement, the Note and all other documents referred to herein to which Borrower is a party have been validly executed and delivered by Borrower and constitute legal, valid and binding obligations of Borrower enforceable in accordance with their terms;

(d) Borrower's chief executive office and Borrower's principal place of business is located at the address set forth in the Section 6.2 of this Loan Agreement;

(e) All financial statements delivered and to be delivered by Borrower to Lender have been and will be prepared in conformity with generally accepted accounting principles and fairly present the financial condition and the results of operations of Borrower at the times and for the periods therein stated. Since the date of such financial statements, there has been no material adverse change in the financial condition, the operations or any other status of Borrower. There are no liabilities, direct or indirect, fixed or contingent, as of the date of such financial statements, not disclosed by such financial statements;

(f) Borrower has filed and will file all tax returns and reports required by law to be filed, and all taxes, fees, assessments and other governmental charges (other than those presently payable without penalty or interest or those which Borrower is contesting in good faith by appropriate proceedings being diligently conducted and of which Lender has been given written notice) upon Borrower or upon any of its properties or income which are due and payable, have been paid;

(g) Except as disclosed in writing of even date delivered to Lender, there is no suit, litigation, proceeding or investigation pending or threatened against or affecting Borrower in any court or before any regulatory commission, board or other governmental agency, or which questions the validity of this Loan Agreement, the Note or any other statements, instruments or transactions contemplated hereby or relating hereto. Borrower is not in default with respect to any order of any court or with respect to any applicable statute, order, rule or regulation of any governmental agency;

(h) No consent, approval, order, license, permit, certificate or authorization of, or registration, declaration or filing with, any regulatory commission, board or other governmental agency is necessary or required with respect to the execution, delivery or performance of this Loan Agreement, the Note, or any other statements, instruments or transactions contemplated hereby or relating hereto;

(i) All written information heretofore, herewith or hereafter furnished by

Borrower to Lender is and will be, true and correct in all material respects as of the date with respect to which such information has been or is purported to be furnished, and all projections of operating results which have been delivered to Lender have been made by Borrower in good faith;

(j) Borrower and its operations are and will continue to be in compliance with and not in violation of all applicable laws and regulations;

(k) No event of default exists or has occurred under the First Note and Borrower has complied and continues to comply with the provisions of Sections 5 and 6 therein.

(l) Borrower has good, lawful, and marketable title to all its properties and assets reflected on the financial statements referred to in Section 3.1(e), except for such assets as have been disposed of since the date of said financial statements in the ordinary course of business, and all such properties and assets are free and clear of mortgages, pledges, liens, charges and other encumbrances except as specifically set forth in such financial statements;

(m) Borrower has procured and is in possession of all licenses or permits required by federal, state or local laws for the operation of its business in each jurisdiction wherein it is now conducting business;

(n) Borrower is not in default in the payment of the principal or interest on any indebtedness for borrowed money, nor is it in default under any instrument or agreement under and subject to which any indebtedness for borrowed money has been issued, and no event has occurred under the provisions of any such instrument or agreement which, with or without the lapse of time or the giving of notice, or both, constitutes or would constitute an event of default thereunder; and

(o) The recitals set forth at the beginning of this Loan Agreement are true and accurate as of the date first set forth above and are hereby incorporated herein.

#### 4. Covenants of Borrower

4.1 Affirmative Covenants. So long as Borrower is indebted to Lender, and until payment in full of the indebtedness to Lender hereunder and under the First Note, Borrower agrees that, unless Lender shall otherwise consent in writing, Borrower will:

(a) Production Account. Promptly deposit the proceeds of the Loan and all payments received from its customers or resulting from the sale of its products, from time to time, into the separate First Fidelity Bank account: account No. \_\_\_\_\_ (the "Production Account"). Borrower shall use the funds from the Production Account only for the purpose set forth in Section 1.1 above and for no other purpose. Notwithstanding anything herein to the contrary, on any day on which the balance of the Production Account exceeds Two Hundred and Fifty Thousand Dollars (\$250,000), Borrower may deposit such additional payments received from its customers in Borrower's general account unless and until the balance of the Production Account drops below Two Hundred and Fifty Thousand Dollars (\$250,000);

(b) Insurance. Keep all of Borrower's assets of an insurable nature fully insured against loss or damage by fire, theft, collision (in the case of motor vehicles) and such other risks, casualties and contingencies of such types as are customarily insured against by persons of established reputations engaged in the same or similar business to that of Borrower or as Lender may require. Borrower will at all times maintain adequate product liability and public liability insurance against tort claims;

(c) Litigation. Promptly notify the Lender of the commencement of any litigation or governmental proceeding against the Borrower which, if adversely determined, might affect Borrower, or Borrower's business, or Borrower's ability to repay the Loan in any material respect;

(d) Taxes. Pay and discharge, or cause to be paid and discharged, all taxes, assessments and governmental charges, if any, imposed upon Borrower or upon income and profits, and upon any personal property belonging to Borrower, prior to the date on which penalties attach thereto;

(e) Corporate Existence. Maintain Borrower's corporate existence in good standing, and qualify and remain qualified to do business as a foreign corporation in each jurisdiction in which the character of the properties owned or leased by it therein or in which the transaction of business, makes such qualification necessary;

(f) Use. Use the proceeds of the Loan and any funds disbursed from the Production Account solely for the purpose set forth in Section 1.1;

(g) Indemnification. Indemnify and hold the Lender harmless against any and all claims, demands, debts and liabilities of whatsoever nature, and all costs and expenses (including reasonable attorneys' fees) relating to or in any way arising out of the Loan;

(h) Inspection. Give the Lender or any persons designated by it the right, without hindrance or delay, upon two Business Days' notice, during normal business hours, to inspect any property and to inspect, audit, check and make copies of Borrower's books, records and accounts;

(i) Keep Licenses, Permits, Etc. Keep in effect all licenses, permits and franchises required by law or contract for the operation of business, and pay all fees, and other charges imposed by law on Borrower's businesses or properties or on any agreement in connection herewith;

(j) Adverse Circumstances. Promptly provide Lender with all relevant information concerning any circumstance which could materially and adversely affect Borrower's ability to perform its obligations under this Loan Agreement or of the occurrence of any event which is an Event of Default or an event which, with the giving of notice or with the passage of time, or both, would be an Event of Default;

(k) Employment of Key Officers. Promptly notify the Lender of any change in the employment status of Samuel Jones, George Martinez or Joe Dunnigan or any change to the Employment Agreements of Samuel Jones, George Martinez or Joe Dunnigan each dated October 1, 2008; and

(l) Financial Information. Furnish to Lender (with a copy to Lender's counsel as required by Section 6.2):

(i) Within 15 days after the close of each calendar month, an income statement, statement of cash flows and balance sheet of Borrower as of the end of such month, and certified, subject to customary adjustments, by a financial officer of Borrower as being complete and correct and fairly presenting Borrower's financial condition and the results of operations in accordance with generally accepted accounting principles;

(ii) Within 15 days after the close of each calendar month, a copy of the statement for each bank account of Borrower as at the end of such month; and

(iii) Promptly, from time to time, upon request of Lender, such other information concerning Borrower's financial condition, business and affairs as shall be reasonably requested by Lender.

4.2 Negative Covenants. So long as Borrower is indebted to Lender and until payment in full of all indebtedness of Borrower to Lender, Borrower agrees that without the prior written consent of Lender it will not:

(a) Dividends and Purchase of Stock. Declare any dividends or make any payment on account of the purchase, acquisition, redemption, or other retirement of stock or membership interests of Borrower;

(b) Fixed Assets. Make any expenditures or commitments for fixed or capital assets or acquisitions;

(c) Leases. Maintain or enter into any leases or rental agreements, whether of real or personal property;

(d) Mergers and Consolidation. Enter into any merger or consolidation or acquire all or substantially all of the assets of any person, firm, joint venture or corporation;

(e) Sale, Lease, Etc. Sell, lease, assign, transfer or otherwise dispose of any assets (other than obsolete or worn-out property not used or usable in its business) whether now owned or hereafter acquired, except in the ordinary course of its business as presently conducted and for a full and adequate consideration;

(f) Loans to and Investments in Others. Make any advances, loans or

extensions of credit to any person, firm or corporation, or purchase or make any commitment to purchase any stock, bonds, notes or debentures or other securities of any person, firm or corporation, including, without limitation, officers and employees;

(g) Sale and Leaseback. Directly or indirectly enter into any arrangement whereby Borrower shall sell or transfer all or any substantial part of their fixed assets then owned and shall thereupon, or within one (1) year thereafter, rent or lease the assets so sold or transferred, unless Lender has given its prior written approval to such arrangement; or

(h) Limitation on Liens. Create or suffer to exist any mortgage, pledge, lien, charge, encumbrance or security interest upon or in any of its property or assets now owned or hereafter acquired, or enter into any arrangement for the acquisition of any property subject to conditional sales agreement or lease or other title retention agreement, excluding from the operation of this covenant (h):

(i) Mortgages, pledges, liens, charges and security interests to Lender to secure the indebtedness and other obligations of Borrower under this Loan Agreement, or otherwise; and

(ii) Existing liens and encumbrances currently reflected in the financial statements referred to in Section 3.1(e) hereof and delivered to Lender prior to the date of this Loan Agreement.

## 5. Events Of Default

5.1 Events of Default. Any one or more of the following shall constitute an Event of Default:

(a) Failure to pay all amounts due under the Loan on or before the Maturity Date;

(b) If any representation or warranty of the Borrower in connection with this Loan Agreement or any agreement related hereto or in any certificate or report furnished pursuant hereto shall be false or misleading in any material and adverse respect (and if such breach was inadvertent, such falsehood remains uncorrected for 5 days);

(c) Failure of Borrower to perform or comply with any covenant, term or agreement contained herein or in any of the other Loan Documents (and if such failure was inadvertent and nonmonetary, such failure remains uncorrected for 5 days);

(d) If Borrower shall have made a general assignment for the benefit of creditors; or not pay its debts generally as they become due; or be unable or admit in writing its inability to pay its debts; or shall file a petition for relief or have an order for relief entered in any proceeding pursuant to the Bankruptcy Code or any other law or laws for the relief of, or relating to, debtors; or if any creditor petitions under the Bankruptcy Code or any other law or laws for the relief of, or relating to, debtors for an order for relief against Borrower and such petition is not

dismissed within 60 days after service; or if a receiver or trustee or custodian has been appointed in any proceeding for any of Borrower's property or assets or if Borrower has requested the appointment of such receiver, trustee or custodian; or if Borrower is adjudged insolvent under any state insolvency law;

(e) If any indebtedness owing on any bond, debenture, note or other evidence of indebtedness for borrowed money of the Borrower becomes due and payable by acceleration prior to its express maturity by reason of any default or breach by the Borrower, or if any such indebtedness becomes due by its terms and shall not be promptly paid or extended;

(f) If for any reason any of Samuel Jones, George Martinez or Joe Dunnigan shall cease to be an employee of Borrower or there shall be any change to the employment relationship of any of Samuel Jones, George Martinez or Joe Dunnigan as reflected by their Employment Agreements each dated October 1, 2008;

(g) If any breach, default or Event of Default occurs under any of the other Loan Documents; or

(h) If the usual business of the Borrower shall be terminated or suspended whether voluntarily or involuntarily (and if involuntarily, such suspension shall continue for 5 days); or if the Borrower's corporate existence shall be dissolved, merged or terminated.

5.2 Remedies. Upon the occurrence of any Event of Default and at any time thereafter: (i) the Lender may, at its option, declare any or all of the indebtedness of the Borrower under the Loan to be immediately due and payable in full, whereupon all of the principal, interest and other indebtedness under the Loan shall forthwith become due and payable in full without presentment demand, protest or notice of any kind, all of which are hereby expressly waived; and (ii) the Lender may enforce any and all rights and remedies under the Loan and under all documents delivered in connection therewith and against any or all collateral and may pursue all rights and remedies available at law, or in equity; provided, however, that such termination and acceleration shall automatically occur if such Event of Default shall be one of the events described in Section 5.1 (d).

5.3 Attorney Fees. In all cases Lender in invoking any remedy shall be entitled to recover from Borrower its costs incurred in connection therewith, including reasonable attorneys' fees, whether or not suit is brought.

## 6. Miscellaneous

6.1 Amendments, Etc. No amendment or waiver of any provision of this Loan Agreement or the Note, nor consent to any material departure by the Borrower therefrom, shall in any event be effective unless the same shall be in writing and signed by the Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

6.2 Notices, Etc. Except as otherwise provided herein, all notices and other

communications provided for hereunder shall be in writing (including telegraphic communication) and mailed or telegraphed or delivered: (i) if to the Borrower, at its address at [REDACTED] AZ [REDACTED] with a copy to Steven T. Lawrence, Esq., Gallagher & Kennedy, PA, [REDACTED] AZ [REDACTED] and (ii) if to Lender, to Brent Tunnell, [REDACTED] AZ [REDACTED] with a copy to Christopher Simpson, Esq., Stinson Morrison Hecker, [REDACTED] AZ [REDACTED] or, as to each party, at such other address as shall be designated by such party in a written notice to the other party.

6.3 No Waiver; Remedies. No failure on the part of Lender to exercise, and no delay in exercising, any right hereunder or under the Note shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder or under the Note preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

6.4 Costs and Expenses. The Borrower agrees to pay on demand all costs and expenses, if any (including, without limitation, the reasonable fees and out-of-pocket expenses of counsel for the Lender), in connection with the enforcement of this Loan Agreement, the Note and the other documents to be delivered hereunder.

6.5 Business Day. As used herein Business Day means a day of the year on which offices of state government are not required or authorized to close in Phoenix, Arizona.

6.6 Binding Effect. This Loan Agreement shall become effective when it shall have been executed by the Borrower and the Lender and thereafter shall be binding upon and inure to the benefit of the Borrower, Lender and their respective successors and assigns, except that the Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of Lender.

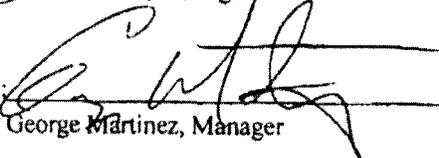
6.7 Law. This Loan Agreement shall be governed by and construed in accordance with the internal law of the State of Arizona.

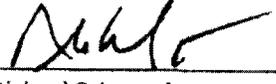
[Remainder of this page intentionally left blank.]

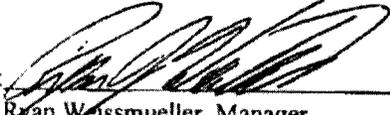
IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be duly executed by their respective signatories thereunto duly authorized, as of the date first above written.

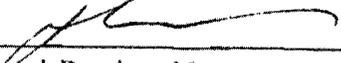
SHADOW BEVERAGES AND SNACKS, LLC, an Arizona limited liability company

By:   
Samuel Jones, Manager

By:   
George Martinez, Manager

By:   
Richard Scherer, Manager

By:   
Ryan Weissmueller, Manager

By:   
Joseph Dunnigan, Manager

[Borrower]

BRENT TUNNELL

By: \_\_\_\_\_  
Brent Tunnell

[Lender]

*Martinez* EXHIBIT *14*  
DATE *010-15-15*  
Colette E. Ross  
CR No. 50658

1 Christopher C. Simpson (#018626)  
Sharon W. Ng (#024975)  
2 **STINSON MORRISON HECKER LLP**  
1850 North Central Avenue, Suite 2100  
3 Phoenix, Arizona 85004-4584  
Tel: (602) 279-1600  
4 Fax: (602) 240-6925  
Email: csimpson@stinson.com  
5 Attorneys for Plaintiff Brent Tunnell

6 **SUPERIOR COURT OF ARIZONA**  
7 **MARICOPA COUNTY**

8 BRENT TUNNELL,

No. CV2010-027812

9 Plaintiff,

**JUDGMENT**

10 v.

(Assigned to the Honorable Robert H. Oberbillig)

11 SHADOW BEVERAGES AND  
12 SNACKS, LLC, an Arizona limited  
liability company; SAMUEL JONES;  
13 ANDREA LYNN FROHNING;  
GEORGE MARTINEZ; and LISA KAY  
14 MARTINEZ,

15 Defendants.

16  
17 The Court, having reviewed the parties' Stipulation to Entry of Judgment against  
18 Defendants Shadow Beverages and Snacks, LLC, Samuel Jones, Andrea Lynn Frohning,  
George Martinez, and Lisa Kay Martinez, hereby orders, judges and decrees as follows:  
19

20 JUDGMENT is hereby entered in favor of Plaintiff Brent Tunnell, and against  
21 Defendants, Shadow Beverages and Snacks, LLC, Samuel Jones, Andrea Lynn Frohning,  
22 George Martinez, and Lisa Kay Martinez, jointly and severally, in the amount of Three  
23 Hundred Eighty-Six Thousand Nine Hundred Forty-Two and 61/100's Dollars (\$386,942.61).  
24 Such sum shall bear interest at the rate of thirty-five percent (35%) per annum from August 1,

2011 until paid. Each party will bear its own attorney fees and costs.

DB04/809537.0002/4453163.1 WP06

ACC000320  
SHADOW-8507



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EXECUTED this \_\_\_\_ day of May, 2011.

---

The Honorable Robert H. Oberbillig

eSignature Page -- 201105171082560\_TUNNELL\_\_JUDGMENT.pdf

Granted

Signed on this day, May 17, 2011



/S/ Robert Oberbillig  
Judicial Officer of Superior Court

**ACC000322**  
SHADOW-8507

COVENANT NOT TO EXECUTE

I. INTRODUCTION

This COVENANT NOT TO EXECUTE ("Agreement") is entered this 16<sup>th</sup> day of May, 2011 by and between BRENT TUNNELL ("Tunnell"), on the one hand, and SHADOW BEVERAGES AND SNACKS, LLC ("Shadow Beverages"), SAMUEL JONES, ANDREA LYNN FROHNING, GEORGE MARTINEZ, and LISA KAY MARTINEZ on the other hand. Samuel Jones, Andrea Lynn Frohning, George Martinez, and Lisa Kay Martinez are collectively referred to herein as the "Guarantors." Shadow Beverages and the Guarantors are referred to herein as the Defendants. Tunnell and the Defendants are referred to herein as the "Parties."

II. RECITALS

A. On or about September 23, 2010, Tunnell commenced a lawsuit against Shadow Beverages and Snacks, LLC ("Shadow Beverages") and the Guarantors in the Superior Court of the State of Arizona for the County of Maricopa (the "Court"), which bears the case number CV2010-027812 in which Tunnell sought a judgment against Shadow Beverages and the Guarantors, for among other things, a sum certain, accruing interest on said sum, attorneys' fees, and costs.

B. On or about May 16<sup>th</sup> 2011, Tunnell, Shadow Beverages, and the Guarantors stipulated to judgment, in which the Court will enter judgment in favor of Tunnell in the sum certain of \$386,942.61 together with interest accruing thereon at the rate of thirty-five percent (35%) per annum from and after August 1, 2011 (the "Judgment").

C. The Parties have now reached an agreement wherein Tunnell will covenant not to execute on the Judgment against the Defendants and take other actions pursuant to the herein-described terms.

III. SETTLEMENT AND CONSIDERATION

Tunnell agrees to accept the sum of \$300,000 in settled funds as full and complete satisfaction of the Judgment and all loans made by Tunnell to Shadow Beverages and the related guaranties, provided that Tunnell receives from Defendants the following amounts by cashier's check or wire transfer on or before the following deadlines and further provided such funds are not subject to avoidance:

- 1) \$10,000 upon the execution of this Agreement; and
- 2) \$290,000 on or before August 1, 2011 (the "Final Payment").

Upon receipt of the Final Payment on or before August 1, 2011, all equity, membership interests, ownership interests or other rights of Tunnell in or to Shadow Beverages or its capital securities shall be canceled without further consideration. **It is understood and agreed that the above payment deadlines shall be strictly enforced and Defendants' failure to deliver payment on the payment deadline shall render this settlement null and void.**



#### **IV. COVENANT NOT TO EXECUTE**

Tunnell agrees and covenants that Tunnell shall not initiate any legal action against Defendants to enforce the Judgment before August 2, 2011. Tunnell further covenants and agrees that he shall not cause the judgment to be recorded in any county before August 2, 2011. Within three (3) business days of Tunnel's receipt of the Final Payment, Tunnell shall caused to be filed a formal Satisfaction of Judgment with the Court executed by Mr. Tunnell, in the form attached hereto as Exhibit A, confirming that the Judgment has been satisfied in full.

#### **V. LEGAL PROCEEDINGS**

In the event any legal proceeding is instituted in connection with any controversy arising out of this Agreement, the prevailing party shall be entitled to recover, in addition to costs, such sums as the court adjudges reasonable as attorneys' fees, including attorneys' fees on any appeal.

#### **VI. GOVERNING LAW**

The laws of the State of Arizona shall govern the interpretation and construction of this Agreement.

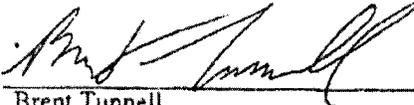
#### **VII. CONSTRUCTION**

The Parties to this Agreement and their counsel have reviewed and revised this Agreement. The Parties agree that any uncertainty or ambiguity shall not be interpreted or construed against the party most responsible for drafting or preparing the Agreement. This Agreement represents the entire agreement of the Parties hereto concerning the subject matter hereof. Except as set forth herein, no other covenants, agreements, representations or warranties of any kind whatsoever have been made to any of the Parties hereto, or have been relied on by any of the Parties hereto. All Parties represent that they have full authority to enter into this Agreement and have not transferred, assigned or encumbered any of their interests, rights or obligations in the loans at issue in the lawsuit.

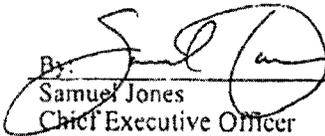
#### **VIII. COUNTERPARTS**

This Agreement may be executed in multiple counterparts, each of which shall be deemed an original Agreement, and all of which shall constitute one Agreement. Facsimile or scanned transactions of signed copies of this Agreement shall be deemed to be original signatures.

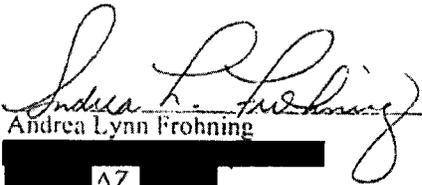
IN WITNESS WHEREOF, the Parties have signed the Agreement effective as of the date set forth above.

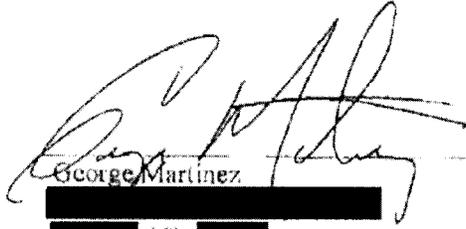
By:   
Brent Tunnell  
c/o Stinson Morrison Hecker LLP  
[Redacted]  
[Redacted] Arizona [Redacted]

SHADOW BEVERAGES AND SNACKS,  
LLC

By:   
Samuel Jones  
Chief Executive Officer  
Shadow Beverages and Snacks, LLC  
[Redacted]  
[Redacted] AZ [Redacted]

  
Samuel Jones  
[Redacted]  
[Redacted] AZ [Redacted]

  
Andrea Lynn Frohning  
[Redacted]  
[Redacted] AZ [Redacted]

  
George Martinez

[REDACTED]  
[REDACTED] AZ. [REDACTED]

  
Lisa Kay Martinez

[REDACTED]  
[REDACTED] AZ. [REDACTED]

First Fidelity Bank, N.A.  
Oklahoma City, OK 73123-0482

8/01/11

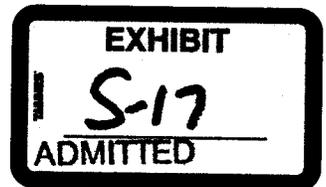
NOTICE OF WIRE TRANSFER

Funds in the amount of \$ 290,000.00 have been wired to  
Stinson Morrison Hecker, LLP  
From account [REDACTED] 6031  
Transfer fee.....\$.00

If you need additional information, please call Customer Service at  
405-416-2223 or 1-800-299-7047.

Shadow Beverages and Snacks LLC

[REDACTED]  
AZ [REDACTED]



Martinez EXHIBIT 18  
DATE 10-15-15  
Colette E. Ross  
CR No. 50658



Martinez EXHIBIT 20  
DATE 10-15-15  
Colette E. Ross  
CR No. 50658

**PROMISSORY NOTE**  
(Term Loan)

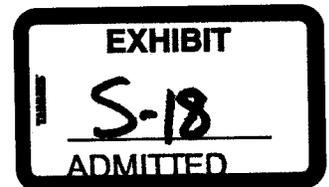
\$75,000.00

Phoenix, Arizona  
September 1, 2010

FOR VALUE RECEIVED, the undersigned, **SHADOW BEVERAGES AND SNACKS, LLC**, an Arizona limited liability company ("Maker") promises to pay to Jarus Family Trust U/A dated October 19, 2007 ("Lender"), or order, the principal sum of Seventy Five Thousand Dollars and No Cents (\$75,000.00), together with interest on the unpaid balance from time-to-time outstanding at an annual rate of Fifteen Percent (15%). In addition to the terms of this Promissory Note and Performance Guaranty document, Maker will issue to Lender within 5 days of the date this Promissory Note is funded by Lender, a membership interest in Maker, equal to a 2% interest determined on a Fully Diluted Basis. "Fully Diluted Basis" for this purpose means all of the Company's issued and outstanding economic interests (including without limitation membership interests, profits interests and any other economic interests in the ownership of the Maker), all economic interests issued or issuable under or pursuant to all convertible and derivative securities then outstanding, whether or not any of the foregoing are then vested or exercisable.

The entire unpaid principal, all unpaid accrued interest and all other amounts payable hereunder shall be paid in full on or before December 31, 2010. If the entire unpaid principal, all unpaid accrued interest and all other amounts payable hereunder shall not be paid by December 31<sup>st</sup> 2010, Maker shall be deemed to be in default hereunder, and all such unpaid amounts immediately begin to accrue interest at an annual rate of Seventeen Percent (17%). In addition, within 5 days of such default, Maker shall issue to Lender an additional membership interest in Maker, equal to a 1% interest determined on a Fully Diluted Basis. In no event shall the interest paid hereunder, together with any other consideration paid or agreed to be paid for the use, forbearance or detention of money advanced hereunder, exceed the highest lawful rate permissible under any law which a court of competent jurisdiction may deem applicable hereto. In the event that such a court determines that the Lender has charged, received or contracted to receive interest hereunder in excess of the highest lawful rate permissible, the interest payable hereunder shall automatically be reduced to the maximum rate permitted by law, and the Lender shall promptly refund to Maker any interest received by it in excess of the maximum lawful rate (with such reduction and refund being made first with respect to cash interest amounts paid or payable under this Note, and thereafter with respect to any other consideration received by the Lender). It is the intent hereof that Maker not pay or contract to pay, and that the Lender not receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may lawfully be paid by Maker under applicable law.

The actual rate of interest shall be calculated on the basis of a 360-day year with interest charged on a daily basis on the principal balance outstanding and unpaid for the actual number of days the principal is outstanding from the date of disbursement until paid. All amounts payable hereunder shall be paid in lawful money of the United States.



Maker shall have the right at any time or from time-to-time to prepay all or a portion of the principal or interest without a prepayment charge or premium.

At the holder's option, any payments hereunder may be applied first to accrued interest and then to principal.

This Note shall become immediately due and payable at the option of the holder hereof without presentment or demand or any notice or Maker or any other person obligated hereon, upon the occurrence of any event of default in the payment of any of the principal or any interest hereon when due, upon default under any other agreement between Maker and Lender, or upon the filing of a Petition of Bankruptcy by Maker, or the President or Chief Executive Officer of Maker. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. Principal and interest shall be payable at the address of Lender, as set forth under its signature below, or at such other place as the holder hereof may designate.

In the event any holder hereof utilizes the services of an attorney in attempting to collect the amounts due hereunder or to enforce the terms hereof or of any agreements related to this indebtedness, or if any holder hereof becomes party plaintiff or defendant in any legal proceeding for the recovery or protection of the indebtedness evidenced hereby, Maker, its successors and assigns, and any endorsers or guarantors hereof shall repay to such holder hereof, on demand, all costs and expenses so incurred, including reasonable attorneys' fees, whether or not suit is brought, including those costs, expenses and attorneys' fees incurred whether before or after the filing by or against the Maker, or the President or Chief Executive Officer of Maker, of any proceeding under any chapter of the Bankruptcy Code, Title 11 of the United States Code, or similar federal or state statute, and whether incurred in connection with the involvement of any holder hereof as creditor in such proceedings or otherwise.

Maker agrees that the interest rate contracted for includes the interest rate set forth herein plus any compensating balance requirement and any other charges, fees, costs and expenses incident to this transaction paid by Maker to the extent the same are deemed interest under applicable law.

Maker and all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally waive (i) demand, presentment for payment, notice of nonpayment, demand and dishonor, protest, notice of protest and all other notice except as otherwise provided herein, (ii) filing of suit, and (iii) diligence in collecting this Note. Maker, all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally agree that it will not be necessary for any holder hereof, in order to enforce payment of this Note, to first institute suit or exhaust its remedies against any maker or others liable herefor. Maker, all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally further consent to any extension or postponement of time of payment of this Note or any other indulgence with respect hereto, including but not limited to, the release of any party primarily or secondarily liable hereon without notice thereof to any of them.

**MAKER, ALL ENDORSERS AND ALL GUARANTORS, HEREBY SEVERALLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS NOTE, IT BEING ACKNOWLEDGED BY MAKER, ALL ENDORSERS AND**



ALL GUARANTORS THAT EACH SUCH PARTY MAKES THIS WAIVER OF TRIAL BY JURY KNOWINGLY AND VOLUNTARILY AND ONLY AFTER CONSULTATION WITH LEGAL COUNSEL.

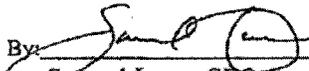
This Note shall be governed and construed in accordance with the laws of the State of Arizona.

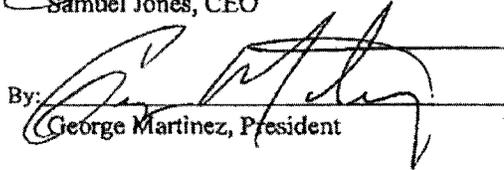
*[Signatures appear on the following page.]*



This Promissory Note was executed and delivered by the undersigned and is effective as of the date first set forth above.

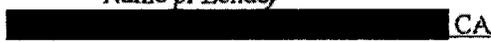
SHADOW BEVERAGES AND SNACKS, LLC, an Arizona limited liability company

By:   
Samuel Jones, CEO

By:   
George Martinez, President

Jarus Family Trust U/A dated October 19, 2007

By:  Trustee  
Name of Lender

 CA   
Address of Lender

Shadow Beverages and Snacks LLC

AZ

Checking Accounts

Account Title: Shadow Beverages and Snacks LLC

Free Small Business Checking 1			89
Account Number	6031	Statement Dates	9/01/10 thru 9/30/10
Previous Balance	115,958.57	Days This Statement Period	30
5 Deposits/Credits	150,387.75	Average Ledger	71,003.99
93 Checks/Debits	191,843.37	Average Collected	68,480.90
Service Charge	.00		
Interest Paid	.00		
Current Balance	74,502.95		

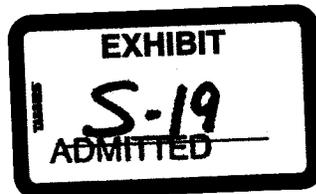
Deposits and Additions

Date	Description		Amount
9/02	Electronic Deposit		76.25
9/13	Wire Transfer Credit	JARUS SCOTT M	75,000.00
	FIRST CLEARING CORP		
	MO		
9/20	Electronic Deposit		210.00
9/22	Electronic Deposit		75,000.00
9/30	Electronic Deposit		101.50

Withdrawals and Deductions

Date	Description		Amount
9/14	Fund-Fees Perquest	CCD 7T322	72.20-
9/14	Fund-Taxes Perquest	CCD 7T322	4,677.19-
9/14	Payroll Shadow Beverages	CCD 7T322	14,902.06-
9/15	Account Analysis Charge		463.46-
9/27	Wire Transfer Debit	General Paper Products Inc	7,549.20-
	8027	5198	
	Landmark Community	MN	
9/29	Fund-Fees Perquest	CCD 7T322	74.67-
9/29	Fund-Taxes Perquest	CCD 7T322	5,153.06-
9/29	Payroll Shadow Beverages	CCD 7T322	16,176.58-

ACC009719  
SHADOW-8507



## PAYMENT AND PERFORMANCE GUARANTY

This PAYMENT AND PERFORMANCE GUARANTY ("Guaranty") is made as of September 7, 2010 by the undersigned (individually and collectively, "Guarantor") in favor of Jarus Family Trust U/A dated October 19, 2007 ("Lender").

### Factual Background

Guarantor is executing this Guaranty to induce Lender to make a loan (the "Loan") to SHADOW BEVERAGES AND SNACKS, LLC ("Borrower") in the principal amount of Seventy-Five Thousand Dollars (\$75,000). The Loan is being made under a Promissory Note (the "Note") of even date herewith, between Lender and Borrower. Unless defined herein, all capitalized terms shall have the meanings set forth in the Note.

### Guaranty

1. Guaranty of Loan. This Guaranty constitutes an absolute, direct, immediate, and unconditional guarantee of timely payment and performance, and not merely of collectability, and shall include, without limitation, all primary, secondary, direct, indirect, fixed and contingent obligations of Borrower to pay principal, interest, prepayment charges, late charges, default interest, loan fees and other fees, charges, sums, costs and expenses which may be owing at any time in connection with the obligations of Borrower under the Note, as such may be modified, amended, extended or renewed from time to time. If Borrower defaults in the payment when due of the Loan or any part of it, Guarantor shall, in lawful money of the United States, immediately pay to Lender, all sums due and owing on the Loan. Additionally, Guarantor shall be responsible for and shall fully perform all of the other obligations of Borrower under the Loan Documents promptly upon receiving written notice from Lender that Borrower has failed to perform any of such obligations in accordance with the Loan Documents. The obligations of Guarantor under this Guaranty shall be continuing and irrevocable until all of the amounts owed and all other obligations to be performed under the Loan Documents have been fully satisfied.

2. Rights of Lender. Guarantor authorizes Lender to perform any or all of the following acts at any time in its sole discretion; all without notice to Guarantor and without affecting Guarantor's obligations under this Guaranty:

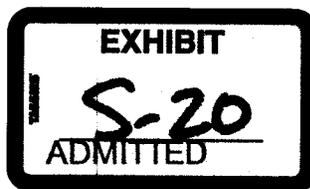
a. Lender may apply any payments or recoveries from Borrower, Guarantor or any other source, to Borrower's obligations under the Loan Documents in such manner, order and priority as Lender may elect.

b. Lender may release Borrower from its liability for the Loan or any part of it.

c. Lender may substitute, add or release any one or more guarantors or endorsers.

d. In addition to the Loan, Lender may extend other credit to Borrower, and may take and hold security for the credit so extended, all without affecting Guarantor's liability under this Guaranty.

Payment and Performance Guaranty (§.30.10)



Martinez  
EXHIBIT 21  
DATE 10-15-15  
Colette E. Ross  
CR No. 50658

SHADOW006771

3. Guaranty to be Absolute. Guarantor expressly agrees that until the Loan is paid and performed in full and each and every term, covenant and condition of this Guaranty is fully performed, Guarantor shall not be released by or because of:

a. Any act or event which might otherwise discharge, reduce, limit or modify Guarantor's obligations under this Guaranty;

b. Any waiver, extension, modification, forbearance, delay or other act or omission of Lender, or its failure to proceed promptly or otherwise as against Borrower or any Guarantor;

c. Any action, omission or circumstance which might increase the likelihood that Guarantor may be called upon to perform under this Guaranty or which might affect the rights or remedies of Guarantor as against Borrower; or

d. Any dealings occurring at any time between Borrower and Lender, whether relating to the Loan or otherwise.

Guarantor hereby expressly waives and surrenders any defense to its liability under this Guaranty based upon any of the foregoing acts, omissions, agreements, waivers or matters. It is the purpose and intent of this Guaranty that the obligations of Guarantor under this Guaranty shall be absolute and unconditional under any and all circumstances.

4. Guarantor's Warranties and Representations Regarding Waivers and Choice of Law. Guarantor hereby represents and warrants (which representation and warranty is being relied upon by Lender in making the Loan) that each of the waivers set forth in this Guaranty, including, without limitation, each of the waivers set forth in Paragraph 5 and 6, and Guarantor's agreement that this Guaranty shall be governed by Arizona law as set forth in Paragraph 22, is made with Guarantor's full knowledge of its significance and consequences of each such waiver and choice of law and has explained to Guarantor the true legal effect of such decisions, including the rights which Guarantor might have if it were not making such waivers and choice of law. Based on the foregoing, Guarantor acknowledges that, under the circumstances, such waivers and choice of law are reasonable and not contrary to public policy or law.

5. Guarantor's Waivers. Guarantor waives:

a. All statutes of limitations as a defense to any action or proceeding brought against Guarantor by Lender, to the fullest extent permitted by law;

b. Any right it may have to require Lender to proceed against Borrower, proceed against or exhaust any security held from Borrower, or pursue any other remedy in Lender's power to pursue;

c. Any defense based on any claim that Guarantor's obligations exceed or are more burdensome than those of Borrower;

d. Any defense based on: (i) any legal disability of Borrower, (ii) any release, discharge, modification, impairment or limitation of the liability of Borrower to Lender from any

cause, whether consented to by Lender or arising by operation of law or from any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships ("Insolvency Proceeding") and (iii) any rejection or disaffirmance of the Loan, or any part of it, or any security held for it, in any such Insolvency Proceeding;

e. Any defense based on any action taken or omitted by Lender in any Insolvency Proceeding involving Borrower, including any election to have Lender's claim allowed as being secured, partially secured or unsecured, any extension of credit by Lender to Borrower in any Insolvency Proceeding, and the taking and holding by Lender of any security for any such extension of credit;

f. All presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Guaranty and of the existence, creation, or incurring of new or additional indebtedness, and demands and notices of every kind;

g. Any defense based on or arising out of any defense that Borrower may have to the payment or performance of the Loan or any part of it;

h. Any benefit of the provisions of Arizona Revised Statutes Sections 12-1641 and 12-1642 et seq., and Rule 17(f) of the Arizona Rules of Civil Procedures, that set forth certain rights and obligations among guarantors, debtors and creditors, to the extent applicable;

i. Any exemption rights; and

j. Any benefit of any statutory provision limiting the right of Lender to recover a deficiency judgment, or to otherwise proceed, against any person or entity obligated for payment of the Loan, after any trustee's sale, any judicial foreclosure sale or any personal property sale of any collateral securing the Loan including, without limitation, the benefits, if any, of Arizona Revised Statutes Section 33-814. If Lender exercises any right or remedy with respect to any collateral securing the Loan, Guarantor shall remain liable to Lender for the deficiency by which the net proceeds actually received by Lender from the exercise of such right or remedy shall be less than Borrower's obligations under the Loan, except to the extent otherwise provided by law.

k. Any defense based on any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower.

6. Waivers of Subrogation and Other Rights.

a. Upon a default by Borrower, Lender in its sole discretion, without prior notice to or consent of Guarantor, may elect to: (i) foreclose either judicially or nonjudicially against any real or personal property security it may hold for the Loan, (ii) accept a transfer of any such security in lieu of foreclosure, (iii) compromise or adjust the Loan or any part of it or make any other accommodation with Borrower or Guarantor, or (iv) exercise any other remedy against Borrower or any security. No such action by Lender shall release or limit the liability of Guarantor, and Guarantor shall remain liable under this Guaranty after the action, even if the

effect of the action is to deprive Guarantor of any subrogation rights, rights of indemnity, or other rights to collect reimbursement from Borrower for any sums paid to Lender, whether contractual or arising by operation of law or otherwise. Guarantor further understands and agrees that on any foreclosure or assignment in lieu of foreclosure on any security held by Lender, such security will no longer exist and that any right that Guarantor might otherwise have (absent the waiver set forth herein) on full payment on the Borrower's obligation by Guarantor to Lender, to participate in any such security or to be subrogated by any rights to Lender with respect to any such security will be nonexistent. Guarantor expressly agrees that under no circumstances shall it be deemed to have any right, title, interest or claim in or to any real or personal property to be held by Lender or any third party after any trustee's sale, any judicial foreclosure sale, any personal property sale or transfer in lieu of foreclosure of any security for the Loan.

b. Guarantor agrees that the payment or performance of any act which tolls any statute of limitations applicable to the Loan Documents shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

c. Regardless of whether Guarantor may have made any payments to Lender, Guarantor hereby waives: (i) all rights of subrogation, all rights of indemnity, and any other rights to collect reimbursement from Borrower for any sums paid to Lender, whether contractual or arising by operation of law (including the United States Bankruptcy Code or any successor or similar statute) or otherwise, (ii) all rights to enforce any remedy that Lender may have against Borrower, and (iii) all rights to participate in any security now or later to be held by Lender for the Loan. The waivers given in this paragraph shall be effective until the Loan has been paid and performed in full.

7. Revival and Reinstatement. If Lender is required to pay, return or restore to Borrower or any other person any amounts previously paid on the Loan because of any Insolvency Proceeding of Borrower, or any other reason, the obligations of Guarantor shall be reinstated and revived and the rights of Lender shall continue with regard to such amounts, all as though they had never been paid.

8. Information Regarding Borrower. Before signing this Guaranty, Guarantor investigated the financial condition and business operations of Borrower, and such other matters as Guarantor deemed appropriate to assure itself of Borrower's ability to discharge its obligations under the Loan Documents. Guarantor assumes full responsibility for that due diligence, as well as for keeping informed of all matters which may affect Borrower's ability to pay and perform its obligations to Lender. Lender has no duty to disclose to Guarantor any information which Lender may have or receive about Borrower's financial condition or business operations, or any other circumstances bearing on Borrower's ability to perform.

9. Subordination. Any rights of Guarantor, whether now existing or later arising, to receive payment on account of any indebtedness (including interest) owed to it by Borrower, or to withdraw capital invested by it in Borrower, or to receive distributions from Borrower, shall at all times be subordinate in all respects to the lien of the Loan. Nevertheless, upon request by Lender, Guarantor shall collect, enforce and receive any indebtedness of Borrower to Guarantor. Any sums collected at Lender's request or collected in contravention of the prohibition set forth

herein shall be held by Guarantor as trustee for Lender and shall be paid over to Lender on account of Borrower's obligations under the Loan Documents; provided, however, such payments shall not impair, reduce or affect in any manner the liability of Guarantor under the other provisions of this Guaranty. Guarantor hereby agrees to indemnify Lender and to hold harmless from and against any and all loss, cost, damage or expense (including, without limitation, attorneys' fees and court costs) incurred by Lender as a result of or in connection with any allegation or finding that the delivery of this Guaranty is a "preference" under 11 U.S.C. § 547.

10. Guarantor's Representations and Warranties. Guarantor represents and warrants that:

a. All financial statements and other financial information furnished or to be furnished to Lender are or will be true and correct and do or will fairly represent the financial condition of Guarantor (including all contingent liabilities); and

b. There has been no material adverse change in Guarantor's financial condition since the dates of the statements most recently furnished to Lender.

11. Events of Default. Lender may declare Guarantor to be in default under this Guaranty upon the occurrence of any of the following events ("Events of Default"):

a. Guarantor fails to materially perform any of its obligations under this Guaranty; or

b. Guarantor attempts to revoke this Guaranty or this Guaranty becomes ineffective for any reason; or

c. Any representation or warranty made or given by Guarantor to Lender proves to be false or misleading as of the date made in any material respect; or

d. Guarantor becomes insolvent or the subject of any Insolvency Proceeding;

or

e. The death or disability of Guarantor.

12. Authorization; No Violation. Guarantor is authorized to execute, deliver and perform under this Guaranty, which is a valid and binding obligation of Guarantor. No provision or obligation of Guarantor contained in this Guaranty violates any applicable law, regulation or ordinance, or any order or ruling of any court or governmental agency. No such provision or obligation conflicts with, or constitutes a breach or default under, any agreement to which Guarantor is a party.

13. Additional and Independent Obligations. Guarantor's obligations under this Guaranty are in addition to its obligations under any other existing or future guaranties, each of which shall remain in full force and effect until it is expressly modified or released in a writing signed by Lender. Guarantor's obligations under this Guaranty are independent of those of Borrower or any other guarantor on the Loan. Lender may bring a separate action against

Guarantor without first proceeding against Borrower, any other guarantor or person or any security that Lender may hold, and without pursuing any other remedy. Lender's rights under this Guaranty shall not be exhausted by any action by Lender until the Loan has been paid and performed in full.

14. No Waiver: Consents: Cumulative Remedies. Each waiver by Lender must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from Lender's delay in exercising or failure to exercise any right or remedy against Borrower, Guarantor or any security. Consent by Lender to any act or omission by Borrower or Guarantor shall not be construed as a consent to any other or subsequent act or omission, or as a waiver of the requirement for Lender's consent to be obtained in any future or other instance. All remedies of Lender against Borrower and Guarantor are cumulative.

15. No Release. Guarantor shall be released from its obligations under this Guaranty when all of Borrower's obligations under the Loan Documents have been performed in full, and, at Borrower's request, Lender will provide to Borrower a writing signed by Lender confirming such release.

16. Heirs, Successors and Assigns: Participations. The terms of this Guaranty shall bind and benefit the heirs, personal representatives, successors and assigns of Lender and Guarantor; provided, however, that Guarantor may not assign this Guaranty, or assign or delegate any of its rights or obligations under this Guaranty, without the prior written consent of Lender in each instance. Lender in its sole discretion may sell or assign participations or other interests in the Loan and this Guaranty, in whole or in part, all without notice to or the consent of Guarantor and without affecting Guarantor's obligations under this Guaranty. Also without notice to or the consent of Guarantor, Lender may disclose any and all information in its possession concerning Guarantor, this Guaranty and any security for this Guaranty to any actual or prospective purchaser of any securities issued or to be issued by Lender, and to any actual or prospective purchaser or assignee of any participation or other interest in the Loan and this Guaranty.

17. Exchange of Information. The Guarantor agrees that the Lender may exchange financial information about the Guarantor with his attorneys, financial advisors and other professionals.

18. Notices. All notices given under this Guaranty must be in writing and shall be effectively served upon delivery, or if mailed, upon the first to occur of receipt three (3) days after deposit in certified United States mail, postage prepaid, sent to the party at the following address:

Lender: Jarus Family Trust U/A dated October 19, 2007  
c/o Scott M Jarus, Trustee

[REDACTED] CA [REDACTED]

Guarantor: The address set forth beneath the signature of Guarantor below.

Those addresses may be changed by Lender or Guarantor by written notice to the other party. Service of any notice on any one Guarantor signing this Guaranty shall be effective service on Guarantor for all purposes.

19. Rules of Construction. In this Guaranty, the word "Borrower" includes both the named Borrower and any other person who at any time assumes or otherwise becomes primarily liable for all or any part of the obligations of the named Borrower on the Loan. The word "person" includes any individual, company, limited liability company, trust or other legal entity of any kind. If this Guaranty is executed by more than one person, the word "Guarantor" includes all such persons. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." When the context and construction so require, all words used in the singular shall be deemed to have been used in the plural and vice versa. No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Guaranty. All headings appearing in this Guaranty are for convenience only and shall be disregarded in construing this Guaranty.

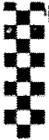
20. Governing Law. This Guaranty shall be governed by, and construed in accordance with, the laws of the State of Arizona.

21. JURY TRIAL; JURISDICTION. GUARANTOR HEREBY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS GUARANTY, IT BEING ACKNOWLEDGED BY GUARANTOR THAT GUARANTOR MAKES THIS WAIVER OF TRIAL BY JURY KNOWINGLY AND VOLUNTARILY AND ONLY AFTER CONSULTATION WITH LEGAL COUNSEL OF GUARANTOR'S CHOOSING. GUARANTOR HEREBY CONSENTS TO THE NON-EXCLUSIVE PERSONAL JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN MARICOPA, COUNTY, ARIZONA IN ANY AND ALL ACTIONS BETWEEN THE GUARANTOR AND LENDER ARISING UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN OR ANY OF THE LOAN DOCUMENTS.

22. Costs and Expenses. If any lawsuit or arbitration is commenced which arises out of, or which relates to this Guaranty, the Loan Documents or the Loan, the prevailing party shall be entitled to recover from each other party such sums as the court (but not the jury) may adjudge to be reasonable attorneys' fees in the action or proceeding, in addition to costs and expenses otherwise allowed by law. In all other situations, including any Insolvency Proceeding, Guarantor agrees to pay all of Lender's costs and expenses, including attorneys' fees which may be incurred in any effort to collect or enforce the Loan or any part of it or any term of this Guaranty. From the time(s) incurred until paid in full to Lender, all sums shall bear interest at the Default Rate, as defined in the Note.

23. Consideration. Guarantor acknowledges that it expects to benefit from Lender's extension of the Loan to Borrower because of its relationship to Borrower as a shareholder of Borrower, and that it is executing this Guaranty in consideration of that anticipated benefit.

24. Integration: Modifications. This Guaranty (a) integrates all the terms and conditions mentioned in or incidental to this Guaranty, (b) supersedes all oral negotiations and



prior writings with respect to its subject matter, and (c) is intended by Guarantor and Lender as the final expression of the agreement with respect to the terms and conditions set forth in this Guaranty and as the complete and exclusive statement of the terms agreed to by Guarantor and Lender. No representation, understanding, promise or condition shall be enforceable against any party unless it is contained in this Guaranty. This Guaranty may not be modified except in a writing signed by both Lender and Guarantor.

25. Miscellaneous. The death or legal incapacity of any Guarantor shall not terminate the obligations of such Guarantor or any other Guarantor under this Guaranty, including its obligations with regard to future advances under the Loan Documents. The liability of all persons who are in any manner obligated under this Guaranty shall be joint and several. The illegality or unenforceability of one or more provisions of this Guaranty shall not affect any other provision. Any Guarantor who is married agrees that Lender may look to all of his or her community property and separate property to satisfy his or her obligations under this Guaranty. Time is of the essence in the performance of this Guaranty by Guarantor.

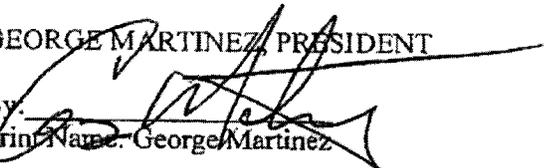
IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty the day and year first above written.

GUARANTORS:

SAM JONES, CEO

By:   
Print Name: Sam Jones

Address:   
 AZ 

GEORGE MARTINEZ, PRESIDENT  
By:   
Print Name: George Martinez

Address:   
 AZ 





*Connecticut*  
 STATE OF ARIZONA )  
*Fairfield* ) ss. *Newtown*  
 COUNTY OF MARICOPA )

*10th*

The foregoing instrument was acknowledged before me this *10th* day of September, 2010 by Sam Jones, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that he had read and executed the same.

NOTARY PUBLIC

My commission expires:

**ANN M. BENORE**  
NOTARY PUBLIC

State of Connecticut  
My Commission Expires  
June 30, 2012

*Ann M Benore*

STATE OF ARIZONA )  
 ) ss.  
 COUNTY OF MARICOPA )

The foregoing instrument was acknowledged before me this 7th day of September, 2010 by George Martinez, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged that he had read and executed the same.

*Jessica R. Fry*  
 NOTARY PUBLIC

My commission expires:

Nov 19th 2012

**JESSICA R. FRY**  
 NOTARY PUBLIC - ARIZONA  
 MARICOPA COUNTY  
 My Commission Expires  
 November 19, 2012

**J.R. FRY**  
 NOTARY PUBLIC - ARIZONA  
 MARICOPA COUNTY  
 My Commission Expires  
 November 19, 2012

SHADOW BEVERAGES AND SNACKS, LLC

Scott Jarus

Loan Repayment

8/23/2011

2701

75,000.00

PAYMENT  
RECORD

First Fidelity Checking Loan Repayment

75,000.00



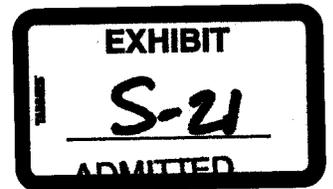
611878 (5/11)



007851



Rev 3/11



Martinez EXHIBIT 22  
DATE 10-15-15  
Colette E. Ross  
CR No. 50658

**PROMISSORY NOTE**

(Term Loan)

\$125,000.00

Phoenix, Arizona

January 3, 2011

FOR VALUE RECEIVED, the undersigned, **SHADOW BEVERAGES AND SNACKS, LLC**, an Arizona limited liability company ("Maker") promises to pay to **Ronald Barrett** ("Lender"), or order, the principal sum of One Hundred Twenty-Five Thousand Dollars and No Cents (\$125,000.00), together with interest on the unpaid balance from time to time outstanding at an annual rate of Ten Percent (10%). In addition to the terms of this Promissory Note (Maker) will grant a 2% equity interest in Shadow Beverages & Snacks, LLC upon completion of document(s) signatures and fund transfer. Promissory note will be secured by a Charles Schwab investment account # [REDACTED]0960, held by George Martinez.

The entire unpaid principal, all unpaid accrued interest and all other amounts payable hereunder shall be paid in full on or before March 1, 2011. In the event that the promissory will not be paid by the 1<sup>st</sup> of March, 2011, the investment account ([REDACTED]0960) will be dispersed and funds will be used to pay the outstanding principal and interest.

The actual rate of interest shall be calculated on the basis of a 360-day year with interest charged on a daily basis on the principal balance outstanding and unpaid for the actual number of days the principal is outstanding from the date of disbursement until paid. All amounts payable hereunder shall be paid in lawful money of the United States.

Maker shall have the right at any time or from time to time to prepay all or a portion of the principal or interest without a prepayment charge or premium.

At the holder's option, any payments hereunder may be applied first to accrued interest and then to principal.

All past due payments of principal or interest shall bear interest from their respective due dates until paid at a rate of interest equal to ten percent (10%) per annum in excess of the rate otherwise payable under this Note (the "Default Rate").

This Note shall become immediately due and payable at the option of the holder hereof without presentment or demand or any notice or Maker or any other person obligated hereon except as otherwise provided by the Term Loan Agreement of even date herewith between Maker and Lender (the "Loan Agreement"), upon the occurrence of any event of default in the payment of any of the principal or any interest hereon when due, upon default under the Loan Agreement, or upon default under any other agreement between Maker and Lender. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. Principal and interest shall be payable at the address of Lender, as set forth in the Loan Agreement or at such other place as the holder hereof may designate.

In the event any holder hereof utilizes the services of an attorney in attempting to collect the amounts due hereunder or to enforce the terms hereof or of any agreements related to this

Shadow Beverages - 1.3.11 (DRAFT)



Martinez EXHIBIT 25  
DATE 10-15-15  
Colette E. Ross  
CR No. 50658

SHADOW006374

indebtedness, or if any holder hereof becomes party plaintiff or defendant in any legal proceeding for the recovery or protection of the indebtedness evidenced hereby, Maker, its successors and assigns, and any endorsers hereof shall repay to such holder hereof, on demand, all costs and expenses so incurred, including reasonable attorneys' fees, whether or not suit is brought, including those costs, expenses and attorneys' fees incurred after the filing by or against the Maker of any proceeding under any chapter of the Bankruptcy Code, Title 11 of the United States Code, or similar federal or state statute, and whether incurred in connection with the involvement of any holder hereof as creditor in such proceedings or otherwise.

Maker agrees that the interest rate contracted for includes the interest rate set forth herein plus any compensating balance requirement and any other charges, fees, costs and expenses incident to this transaction paid by Maker to the extent the same are deemed interest under applicable law.

Except as otherwise provided in the Term Loan Agreement, Maker and all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally waive (i) demand, presentment for payment, notice of nonpayment, demand and dishonor, protest, notice of protest and all other notice except as otherwise provided herein, (ii) filing of suit, and (iii) diligence in collecting this Note. Maker, all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally agree that it will not be necessary for any holder hereof, in order to enforce payment of this Note, to first institute suit or exhaust its remedies against any maker or others liable herefor. Maker, all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally further consent to any extension or postponement of time of payment of this Note or any other indulgence with respect hereto, including but not limited to, the release of any party primarily or secondarily liable hereon without notice thereof to any of them.

**MAKER, ALL ENDORSERS AND ALL GUARANTORS, HEREBY SEVERALLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS NOTE, IT BEING ACKNOWLEDGED BY MAKER, ALL ENDORSERS AND ALL GUARANTORS THAT EACH SUCH PARTY MAKES THIS WAIVER OF TRIAL BY JURY KNOWINGLY AND VOLUNTARILY AND ONLY AFTER CONSULTATION WITH LEGAL COUNSEL.**

This Note shall be governed and construed in accordance with the laws of the State of Arizona.

*[Signatures appear on the following page.]*

This Promissory Note was executed and delivered by the undersigned and is effective as of the date first set forth above.

SHADOW BEVERAGES AND SNACKS, LLC, an  
Arizona limited liability company

By: \_\_\_\_\_  
Samuel Jones, COO

By: \_\_\_\_\_  
George Martinez, President

By: \_\_\_\_\_  
Ronald Barrett

Shadow Beverages and Snacks LLC

AZ

Checking Accounts

Account Title: Shadow Beverages and Snacks LLC

Free Small Business Checking 1		106
Account Number	6031	Statement Dates 1/01/11 thru 1/31/11
Previous Balance	5,339.79	Days This Statement Period 31
13 Deposits/Credits	287,867.12	Average Ledger 44,194.29
116 Checks/Debits	273,408.87	Average Collected 28,852.26
Service Charge	.00	
Interest Paid	.00	
Current Balance	19,798.04	

Deposits and Additions

Date	Description	Amount
1/05	Reverse Previously Paid Item	422.77
1/05	Reverse Previously Paid Item	2,568.27
1/05	Reverse Previously Paid Item	780.50
1/05	Reverse Previously Paid Item	865.80
1/05	Reverse Previously Paid Item	1,076.08
1/05	Reverse Previously Paid Item	1,273.36
1/05	Reverse Previously Paid Item	1,665.31
1/05	Reverse Previously Paid Item	1,996.57
1/05	Reverse Previously Paid Item	1,248.00
1/05	Electronic Deposit	49,500.00
1/10	Wire Transfer Credit O INC CUST [REDACTED] AZ [REDACTED] CHARLES SCHWAB AND CO., INC. (WIRE TRANSFER SERVICES) SAN FRANCISCO,CA,US SCH REF(Y 1 0001264703171)	125,000.00
1/14	Electronic Deposit	100,077.46
1/18	Electronic Deposit	1,393.00

Withdrawals and Deductions

Date	Description	Amount
1/03	INS PYMT HUMANA, INC. PPD	5,335.81-
1/05	Chargeback	12,200.00-

ACC009729  
SHADOW-8507





shadow  
beverages and snacks

**PROMISSORY NOTE**  
(Term Loan)

\$100,000.00

Phoenix, Arizona  
January 14, 2011

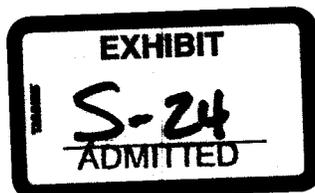
FOR VALUE RECEIVED, the undersigned, **SHADOW BEVERAGES AND SNACKS, LLC**, an Arizona limited liability company ("Maker") promises to pay to Stacey Gervasi ("Lender"), or order, the principal sum of One Hundred Thousand Dollars and No Cents (\$100,000.00), together with interest on the unpaid balance from time-to-time outstanding at an annual rate of Ten Percent (10%). In addition to the terms of this Promissory Note and Performance Guaranty document, Maker will issue to Lender within 5 days of the date this Promissory Note is funded by Lender, a membership interest in Maker, equal to a 1% interest determined on a Fully Diluted Basis. "Fully Diluted Basis" for this purpose means all of the Company's issued and outstanding economic interests (including without limitation membership interests, profits interests and any other economic interests in the ownership of the Maker), all economic interests issued or issuable under or pursuant to all convertible and derivative securities then outstanding, whether or not any of the foregoing are then vested or exercisable.

The entire unpaid principal, all unpaid accrued interest and all other amounts payable hereunder shall be paid in full on or before December 31, 2011. If the entire unpaid principal, all unpaid accrued interest and all other amounts payable hereunder shall not be paid by December 31<sup>st</sup> 2011, Maker shall be deemed to be in default hereunder, and all such unpaid amounts immediately begin to accrue interest at an annual rate of Fifteen Percent (15%). In no event shall the interest paid hereunder, together with any other consideration paid or agreed to be paid for the use, forbearance or detention of money advanced hereunder, exceed the highest lawful rate permissible under any law which a court of competent jurisdiction may deem applicable hereto. In the event that such a court determines that the Lender has charged, received or contracted to receive interest hereunder in excess of the highest lawful rate permissible, the interest payable hereunder shall automatically be reduced to the maximum rate permitted by law, and the Lender shall promptly refund to Maker any interest received by it in excess of the maximum lawful rate (with such reduction and refund being made first with respect to cash interest amounts paid or payable under this Note, and thereafter with respect to any other consideration received by the Lender). It is the intent hereof that Maker not pay or contract to pay, and that the Lender not receive or contract to receive, directly or indirectly in any manner whatsoever, interest in excess of that which may lawfully be paid by Maker under applicable law.

The actual rate of interest shall be calculated on the basis of a 360-day year with interest charged on a daily basis on the principal balance outstanding and unpaid for the actual number of days the principal is outstanding from the date of disbursement until paid. All amounts payable hereunder shall be paid in lawful money of the United States.

Maker shall have the right at any time or from time-to-time to prepay all or a portion of the principal or interest without a prepayment charge or premium.

Shadow Beverages - 7.23.10 (DRAFT)



Martinez EXHIBIT 26  
DATE 10-15-15  
Colette E. Ross  
CR No. 50658

SHADOW006340

At the holder's option, any payments hereunder may be applied first to accrued interest and then to principal.

This Note shall become immediately due and payable at the option of the holder hereof without presentment or demand or any notice or Maker or any other person obligated hereon, upon the occurrence of any event of default in the payment of any of the principal or any interest hereon when due, upon default under any other agreement between Maker and Lender, or upon the filing of a Petition of Bankruptcy by Maker, or the President or Chief Operating Officer of Maker. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. Principal and interest shall be payable at the address of Lender, as set forth under its signature below, or at such other place as the holder hereof may designate.

In the event any holder hereof utilizes the services of an attorney in attempting to collect the amounts due hereunder or to enforce the terms hereof or of any agreements related to this indebtedness, or if any holder hereof becomes party plaintiff or defendant in any legal proceeding for the recovery or protection of the indebtedness evidenced hereby, Maker, its successors and assigns, and any endorsers or guarantors hereof shall repay to such holder hereof, on demand, all costs and expenses so incurred, including reasonable attorneys' fees, whether or not suit is brought, including those costs, expenses and attorneys' fees incurred whether before or after the filing by or against the Maker, or the President or Chief Operating Officer of Maker, of any proceeding under any chapter of the Bankruptcy Code, Title 11 of the United States Code, or similar federal or state statute, and whether incurred in connection with the involvement of any holder hereof as creditor in such proceedings or otherwise.

Maker agrees that the interest rate contracted for includes the interest rate set forth herein plus any compensating balance requirement and any other charges, fees, costs and expenses incident to this transaction paid by Maker to the extent the same are deemed interest under applicable law.

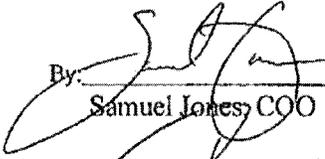
Maker and all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally waive (i) demand, presentment for payment, notice of nonpayment, demand and dishonor, protest, notice of protest and all other notice except as otherwise provided herein, (ii) filing of suit, and (iii) diligence in collecting this Note. Maker, all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally agree that it will not be necessary for any holder hereof, in order to enforce payment of this Note, to first institute suit or exhaust its remedies against any maker or others liable herefor. Maker, all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally further consent to any extension or postponement of time of payment of this Note or any other indulgence with respect hereto, including but not limited to, the release of any party primarily or secondarily liable hereon without notice thereof to any of them.

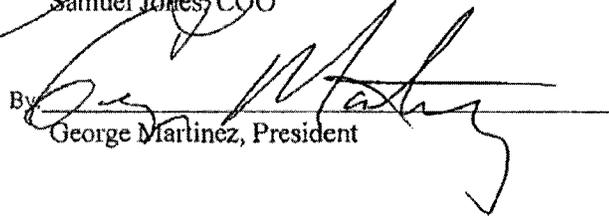
**MAKER, ALL ENDORSERS AND ALL GUARANTORS, HEREBY SEVERALLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS NOTE, IT BEING ACKNOWLEDGED BY MAKER, ALL ENDORSERS AND ALL GUARANTORS THAT EACH SUCH PARTY MAKES THIS WAIVER OF TRIAL BY JURY KNOWINGLY AND VOLUNTARILY AND ONLY AFTER CONSULTATION WITH LEGAL COUNSEL.**

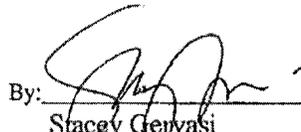
This Note shall be governed and construed in accordance with the laws of the State of Arizona.

This Promissory Note was executed and delivered by the undersigned and is effective as of the date first set forth above.

SHADOW BEVERAGES AND SNACKS, LLC, an  
Arizona limited liability company

By:   
Samuel Jones, COO

By:   
George Martinez, President

By:   
Stacey Gervasi  
 AZ   
Address of Lender

**FACTORING AGREEMENT**

DATE: October 15, 2012

SELLER: Shadow Beverages and Snacks, LLC,  
an Arizona limited liability company

ADDRESS: [REDACTED]  
Arizona

FACTOR: **FIRST COMMUNITY FINANCIAL**,  
a division of Pacific Western Bank

ADDRESS: 4000 North Central Avenue, Suite 100  
Phoenix, Arizona 85012

I. PURPOSE OF AGREEMENT.

This Agreement sets forth the terms and conditions relating to a factoring arrangement ("**Factoring Facility**") pursuant to which Factor may purchase, from time to time, on a limited recourse basis such of Seller's Accounts now existing or hereafter created and arising out of the sale of goods or the provision of services by the Company in the regular course of Seller's business as Factor, in its sole and absolute discretion, determines to be acceptable.

2. DEFINITIONS.

2.1. "**Accounts**" means whatever is encompassed by the Code's definition of that term, and additionally includes all presently existing and hereafter arising accounts, instruments, contract rights, documents, chattel paper (including security agreements and leases), and all other forms of obligations owing to Seller, all guaranties of such Accounts and other security therefor, the proceeds of such Accounts, all Inventory returned to or reclaimed by Seller, and Seller's Books relating to each of the foregoing.

2.2. "**Agreement**" shall mean this Factoring Agreement, any concurrent or subsequent rider thereto and all amendments or modifications thereof.

2.3. "**Code**" means the Uniform Commercial Code prepared under the joint sponsorship of the American Law Institute and the National Conference of Commissioners on Uniform State Laws, as amended from time to time. Any and all terms used in this Agreement shall be construed and defined in accordance with the meaning and definitions set forth herein or, to the extent not inconsistent herewith, as such terms are defined in the California Uniform Commercial Code, as amended from time to time; provided, however, with respect to any term used herein that is defined in (a) Article 9 of the Uniform Commercial Code as in force at any relevant time in the jurisdiction in which a financing statement with respect to this Agreement is filed, or (b) Article 9 as in force at any relevant time in the jurisdiction in which the terms of this Agreement are enforced, the meaning to be ascribed thereto with respect to any particular item of property shall be that under the more encompassing of the three definitions.

FACTGR, SEND REVISED DOC  
SHADOW BEVERAGES AND SNACKS, LLC

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*Martinez*  
EXHIBIT 36  
DATE 10-15-15  
Colette E. Ross  
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2.4. Collateral means whatever is encompassed by the Code's definition of Accounts, and includes all presently existing and hereafter arising accounts, instruments, contract rights, documents, chattel paper (including security agreements and leases), proceeds of inventory and all other forms of obligations owing to Borrower, all guaranties of such Accounts and other security therefor, the Proceeds of such Accounts and Borrower's Books relating to each of the foregoing.

2.5. "Customer" means Seller's customer or the account debtor.

2.6. "Customer Dispute" means any asserted claim, defense, dispute or offset by the Customer of any kind whatsoever, either arising out of an Account or against Seller, whether valid or invalid, arising either before and/or after such Account has been purchased by Factor, or if Customer refuses payment for any reason.

2.7. "Factored Accounts" mean and include all Accounts, which have been purchased by Factor.

2.8. "Factoring Limit" means \$1,000,000.00.

2.9. "Factor's Costs" means and includes: (a) filing, recording, publication and search fees incurred by Factor relating to Seller; all costs and expenses incurred by Factor in the enforcement of its rights and remedies under this Agreement, or defending this Agreement or its security interest in the Factored Accounts; (b) telephone, facsimile and delivery charges, and all the expenses of field examinations of Seller's Books; (c) all expenses for travel, lodging and food incurred by Factor's personnel in collecting the Accounts or realizing upon the Collateral; (d) all costs and expenses incurred in gaining possession of, maintaining, handling, preserving, storing, repairing, shipping, selling, preparing for sale and advertising to sell the Collateral, whether or not a sale is consummated; (e) all expenses involved in fulfilling in whole or in part any purchase order from an account debtor; (f) reasonable attorneys' fees, incurred by Factor: (i) in negotiating or documenting any extension or modification hereof; (ii) in any attempt to workout or to otherwise adjust Seller's obligations hereunder following the occurrence of an event of default; (iii) in enforcing payment hereof whether incurred before, after or irrespective of whether suit is commenced, and, in the event suit is brought to enforce payment hereof, such costs, expenses and fees and all other issues in such suit shall be determined by a court sitting without a jury; (iv) in enforcing any security interest held as collateral for Seller's obligations including any proceeding seeking relief from the automatic stay in a Bankruptcy proceeding commenced by or against Seller; and (v) in defending any litigation arising out of this Agreement; and (g) all sums advanced by Factor to reasonably protect and preserve its interest in the Factored Accounts and the Collateral, which sums so advanced shall become due and payable from Seller to Factor on written demand and shall bear interest at twenty-four percent (24%) per annum if not paid within ten (10) days after demand.

2.10. "Net Face Amount" shall mean the gross amount of an Account, less any returns, allowances or discount allowed in the ordinary course of business.

2.11. "Obligations" mean all indebtedness of Seller and each Person who hereafter becomes Seller, that is now or hereafter owing to Factor, regardless whether such indebtedness is now existing or hereafter arising, whether it is voluntary or involuntary, whether due or not, secured or unsecured, absolute or contingent, liquidated or unliquidated, and whether it is for principal, interest, fees, expenses or otherwise, and regardless whether the Person who is or hereafter becomes Seller may be liable individually or jointly with others, or whether recovery upon any such obligations may be or hereafter become barred or otherwise unenforceable. The term,

"Obligations," also includes: (a) all amounts which arise after the filing of a petition by or against Seller under Title 11 of the United States Code (the "**Bankruptcy Code**"), even if the obligations do not accrue because of the automatic stay under Bankruptcy Code § 362 or otherwise, and all amounts which would become due but for the operation of the automatic stay under § 362(a) of the Bankruptcy Code, and the operation of §§ 502(b) and 506(b) of the Bankruptcy Code; (b) indebtedness arising under modifications, renewals, replacements and extensions of the Obligations, and successive transactions which renew, continue, refinance or refund the Obligations; and (c) all covenants and duties of Seller to Factor of every kind, nature and description, (whether arising out of the Agreement or any other agreement, instrument, document, record or contract now existing or hereafter made by Seller in favor of Factor, and whether created by oral agreement or operation of law, and whether or not for the payment of money), including without limitation any debt, liability or obligation owing by Seller to others which Factor may have acquired by assignment or otherwise.

2.12. "**Seller's Books**" mean and include all of Seller's books and records including ledgers and records, computer programs, computer disks or tape files, computer printouts, and other computer prepared information.

2.13. "**State**" when referring to: (a) the location of Seller's chief executive office, will be referred to herein as the "**Chief Executive Office State**;" (b) the location of Seller's state of organization, will be referred to herein as the "**Seller State**;" and (c) the location of Collateral consisting of goods, will be referred to herein as the "**Collateral State**."

### 3. PURCHASE OF ACCOUNTS.

3.1. Seller agrees to offer certain of its Accounts for sale to Factor and Factor may purchase such of said Accounts as are credit worthy and otherwise acceptable to it, in its sole and absolute discretion. Nothing contained herein shall obligate Factor to purchase any Account from Seller, which it does not approve and accept. Factor reserves the right to reject an Account even though Factor may in the past have accepted the Accounts of that particular Customer. If Factor rejects an Account of a Customer where Factor has accepted Accounts of such Customer in the past, for so long as such Customer may owe Factor any sum, Seller does hereby agree not to sell the Customer any goods or render any services on more favorable terms than those established with respect to the Factored Accounts.

3.2. Accounts shall be offered by Seller to Factor upon such forms as may be provided by Factor, accompanied by original invoices therefor, evidence of shipping or proof of delivery or performance of services, satisfactory to Factor, and such other documents as Factor may from time to time require. Factor shall have the right to withhold the purchase price for such Accounts so accepted until Seller furnishes such documents.

3.3. As a condition precedent to purchasing Accounts hereunder, Factor must also receive an official report from the Secretary of State of each Collateral State, the Chief Executive Office State, and the Seller State (the "**SOS Reports**"), indicating that Factor's security interest in the Collateral is prior to all other security interests and other interests reflected in the report.

3.4. Factor has made no commitment to purchase any given amount of Seller's Accounts, but in no event will Factor consider the purchase of an Account if the unpaid amount thereof, together with the aggregate amount of all then unpaid Factored Accounts, exceeds the Factoring Limit.

3.5. It is further specifically understood between the parties hereto that Factor shall not in connection with the purchase of Accounts, either expressly or impliedly, be deemed to have assumed any liability or obligation which Seller may now or hereafter have to its Customers.

3.6. In consideration for establishing this Factoring Credit Facility on the terms and conditions stated herein, Seller agrees to pay to Factor upon the execution hereof an administrative set-up fee of N/A of the Factoring Limit, which shall be deemed earned and non-refundable upon payment thereof.

4. PURCHASE PRICE/DISCOUNT.

4.1. The purchase price of each Factored Account will be the Net Face Amount thereof, less a discount computed as a percentage of the Net Face Amount (the "Discount"). At the time an Account is purchased, Factor will initially pay Seller eighty-five percent (85%) of the Net Face Amount of the Account, and hold back the remaining 14.375% as a reserve (each and all, the "Reserve"). If the Account is paid within 15 days from the date of its purchase, the Discount will equal 0.625% of the Net Face Amount. If a Factored Account is not paid by the Customer or otherwise settled by Seller within said period, one or more additional discounts, computed as a percentage of the Net Face Amount, will be added to the amount of the Discount and correspondingly charged against the Reserve in accordance with the following schedule:

(a) An additional discount of percent 0.625% shall be earned, thereby reducing the Reserve to 13.75%, if the Factored Account is paid by Customer or settled by Seller more than 15 days, but on or before 30 days, after the date of its purchase by Factor; and

(b) An additional discount of 0.625% shall be earned, thereby reducing the Reserve to 13.125%, if the Factored Account is paid by Customer or settled by Seller more than 30 days, but on or before 45 days, after the date of its purchase by Factor; and

(c) If the Factored Account remains unpaid or is not repurchased by Seller within 45 days after the date of its purchase by Factor, for each 15 day period, or portion thereof, thereafter an additional discount of 0.625% shall be earned and chargeable against the Reserve.

All such additional discounts earned shall be cumulative, and may be deducted from the Reserve by Factor at such time as the Factored Account is paid, charged back, repurchased or otherwise settled by Seller. No Factored Account shall be deemed paid until final settlement of the remittance therefor has been made by the drawee bank.

4.2. Each Reserve shall be held by Factor and may be applied to any Obligations of Seller to Factor. Provided that Seller is not then in default under any term or provision of this Agreement, each Reserve shall be paid or credited by Factor to Seller at least twice each month with respect to those Factored Accounts which have been paid, less all Factor's costs, additional discount(s), the Net Face Amount of any Factored Account to be charged back or repurchased by Seller, adjustments made or allowed on any Factored Account, or sums or Obligations owing from Seller to Factor, whether arising out of this Agreement or otherwise. Payment of any Reserve is subject to the computer closing date for that period.

4.3. Notwithstanding the provisions of Section 4.1, Factor shall have the right at any time to change the percentage which is to be paid to Seller and/or increase the percentage to be withheld as

a Reserve with respect to any Account or Accounts to be purchased by Factor. By way of clarification, but not by way of limitation, examples of the circumstances under which Factor will exercise its right to change the percentage to be paid to Seller and/or increase the percentage to be withheld as a Reserve, include:

- (a) If the amount collected on a Factored Account is less than ninety-five percent (95%) of the amount billed.
- (b) If the amount of the Factored Account to be purchased would, together with the amount of all unpaid Factored Accounts, exceeded the Factoring Limit.
- (c) If the Factored Accounts turnover substantially increases within a thirty (30) day period.
- (d) The collection of the Factored Accounts during any thirty (30) day period substantially diminishes as compared with the previous period.
- (e) If Factor receives information that the creditworthiness of a Factored Account deteriorated.
- (f) If Factor receives information that an account debtor has an offset in a substantial amount.

5. RECOURSE.

5.1. Seller agrees to repurchase and Factor may charge back to Seller, the Net Face Amount of any Factored Account which:

- (a) fails to comply with any of the warranties set forth in Article 8;
- (b) involves a Customer Dispute;
- (c) remains uncollected due to Seller's interference with Factor's efforts to collect the Factored Account; or
- (d) is not paid within 90 days after the Factored Account is purchased, and in all events within 105 days from date of invoice.

5.2. The repurchase or charge back of any Factored Account shall be accomplished in any one of the following manner or combination thereof, at Factor's option:

- (a) Factor may require Seller to assign additional Accounts and deduct said sums from the purchase price thereof;
- (b) Factor may deduct said amounts from the Reserve which would otherwise be paid to Seller; or
- (c) Factor may demand payment from Seller.

All short payments, discounts and any other Obligation Seller may have to Factor may be deducted in the same manner.

6. RIGHTS IN FACTORED ACCOUNTS.

6.1. Upon approval and acceptance in writing of the assignment of an Account by a duly authorized agent of Factor, said assignment shall vest full, absolute and irrevocable title and ownership to said Factored Account in Factor, together with the proceeds thereof, and Seller's title in the goods represented thereby. As the full and sole owner of such Factored Account, Factor shall be entitled to all of the ownership, title, rights, or guarantees which Seller possessed with respect thereto and with respect to the goods represented thereby, including without limitation, the right to stoppage in transit, reclamation or replevin of the goods, the right to the goods which may be rejected, returned, or reconsigned and in and to any new Account created through the resale or exchange of such goods, the right to file materialman's liens, the right at any time to verify any information relating to any Factored Account in the name of Seller or Factor, the right to collect and receive all monies due and to become due upon said Factored Account, the right to demand, collect, receive, receipt for, sue for and compromise or settle the payment such Factored Account in its own name or in the name of Seller, without notice to or consent of Seller. Seller shall have no right or power to modify, change or alter the terms, price or other conditions of any Factored Account.

6.2. All invoices, statements and notices sent to the Customers shall bear an endorsement that the Factored Account has been sold and assigned and is to be remitted only to Factor.

6.3. All remittances, including cash, checks and other proceeds arising from the Factored Accounts shall be the sole and exclusive property of Factor. Seller shall have no power or authority to deposit or in any way deal with the proceeds of any Factored Account. If for any reason, Seller should receive any payment or other proceeds of Factored Accounts, Seller agrees to hold said proceeds in trust for Factor separate and apart from any property of Seller and endorse and transmit the same to Factor in their original form on the same day that such remittance is received, together with any voucher or memoranda. Should Seller come into possession of a check representing payment owing to both Factor and Seller, Seller shall turn over said check to Factor and Factor will, provided Seller is not indebted to Factor, refund to Seller that portion thereof belonging to Seller.

6.4. Any remittance made by a Customer, unless specifically designated as being in payment of a particular Factored Account, including remittances representing C.O.D. sales, may be applied as Factor shall see fit.

6.5. Seller does hereby irrevocably designate, make, constitute and appoint Factor, and any agent designated by Factor, as Seller's true and lawful attorney, with power to do the following in Seller's or Factor's name and at Seller's expense but without notice to Seller, and at such time or times (except as otherwise provided herein) as Factor may, in its sole election, determine;

(a) Receive, open and dispose of all mail addressed to Seller, retaining all mail pertaining to the Factored Accounts.

(b) Endorse Seller's name on any checks, notes, acceptances, money orders, drafts or other forms of payment or security that may come into Factor's possession pertaining to Factored Accounts.

(c) Exercise all of Seller's rights and remedies with respect to the collection of Factored Accounts.

(d) Sign Seller's name on any invoice, freight bill or bill of lading relating to any Account, on any draft against an account debtor, on any schedule assignment of Accounts, verification of Accounts, on any notice to account debtors, or on any other instrument, document, or record with respect to Factored Accounts.

(e) Prepare, file and sign Seller's name on any proof of claim in bankruptcy or similar document against a Customer.

(f) Prepare, file and sign Seller's name on any notice of lien, claim of mechanic's or materialman's lien or similar document or waiver or satisfaction thereof in connection with a Factored Account.

(g) Execute any other documents that may facilitate the collection, liquidation or disposition of Factored Accounts, and do all other acts and things necessary to facilitate the collection of Factored Accounts.

Factor shall not be liable to Seller for any error in judgment or mistake of fact or law; doing all things necessary and proper to carry out the purposes of this Agreement. The authority granted Factor, being coupled with an interest, shall remain in full force and effect until all Factored Accounts are paid in full and all Obligations of Seller to Factor have been fully paid and satisfied.

6.6. Seller shall notify Factor immediately in the event of a Customer Dispute and in the event that the goods represented by any Factored Account are returned to Seller for any reason, Seller shall, subject to Factor's prior approval, promptly adjust and settle the same at its expense and advise Factor of any such adjustment. Seller shall, on demand, pay over to Factor the amount of any such adjustment or repurchase said Factored Account; in the alternative, Factor may offset against any such sums as may be due to Seller in the amount of such adjustment or the full unpaid balance thereon plus any and all expenses and attorneys' fees which Factor may have incurred. Until said Factored Account is repurchased by Seller, it is understood and agreed that all returned goods shall be and remain the property of Factor. Factor shall have the privilege of disposing of any returned or rejected goods at the best price and upon the most favorable terms available under the circumstances, in the sole opinion of Factor.

## 7. BOOKS AND RECORDS.

7.1. Seller shall keep proper and accurate books, correspondence, records and papers pertaining to all Accounts and the Collateral and make proper entries in its books reflecting the sale of Factored Accounts to Factor. Factor (through any of its officers, employees or agents) shall have the right at any time during Seller's usual business hours or during the usual business hours of any third party having control over the records of Seller to inspect Seller's Books and records and the Collateral and remove all or part of Seller's Books from Seller's place of business for a limited period of time for the purpose of making copies thereof.

7.2. It is understood and agreed that Seller's principal place of business is the address set forth above and that all of Seller's Books, accounts, correspondence and other documents pertaining to the Accounts are located there and that Seller will promptly notify Factor of any change of location of its business or the place where the books and records pertaining to the Accounts are kept.

7.3. Seller shall furnish to Factor such information relating to the financial condition of Seller as Factor may request from time to time, and deliver to Factor within ninety (90) days after the close

of Seller's fiscal year a financial statement certified by an independent CPA or, at Factor's option, an authorized representative of Seller, and within twenty (20) days after receipt any other financial reports or statements prepared by or for Seller.

8. WARRANTIES.

8.1. As an inducement for Factor to enter into this Agreement and to purchase Accounts from Seller from time to time, and with full knowledge that the truth and accuracy of these warranties are being relied upon by Factor in lieu of a complete credit investigation, Seller warrants as follows, which warranties shall be deemed to be made at the time each Account is purchased by Factor:

(a) If Seller is a corporation or limited liability company, it is duly organized and is and at all times hereinafter will be in good standing under the laws of the state of its incorporation or registration and is duly qualified and in good standing in every other state in which it is required to be licensed.

(b) The Chief Executive Office State, Seller State, Collateral States and the chief place of business and the office where Seller's Books are kept are each accurately identified in Exhibit A.

(c) Seller is presently doing business only under its name as set forth in this Agreement or under the trade names set forth in Exhibit A.

(d) Seller is solvent and able to pay its debts as they mature.

(e) Seller is the true and lawful owner of the Accounts and the Collateral and has the right and power and is duly authorized to enter into this Agreement and the execution, delivery and performance thereof does not constitute a default under any indenture agreement or undertaking to which Seller is now or hereafter a party.

(f) All financial statements, applications and information delivered to Factor or financial records or Seller's Books which may be shown to Factor at any time shall be true and correct in all material respects and kept in accordance with generally accepted accounting principles.

(g) No actions or proceedings are threatened or pending against Seller, except as may be specifically disclosed in writing to Factor, and if any of the foregoing arise, Seller shall immediately notify Factor in writing with respect thereto.

(h) Seller has paid all federal, state and local taxes and assessments required of it by law (including timely payment or deposit of all F.I.C.A. payments and withholding taxes) and no tax lien has been filed against Seller.

(i) All of said Collateral is owned by Seller only and is free and clear of any and all lien, claim or security interest of any party and no financing statement covering the Collateral or the proceeds therefrom is or shall be on file at any public office, except as specifically disclosed in writing to Factor.

(j) Each Factored Account:

(1) is genuine and in all respects what it purports to be and represents a bona fide, existing, valid and legally enforceable indebtedness of the Customer named therein payable in the amount, time and manner stated in the invoice therefor and is absolutely owing to Seller and not contingent for any reason;

(2) represents a bona fide sale in the ordinary course of Seller's business of the kind, quantity and quality of the goods or services described therein, and that the goods or services described therein have been completely delivered, installed or performed, and at the time of delivery or installation have been accepted by the Customer without condition;

(3) is not with a Customer in which Seller has any legal or financial interest;

(4) is due and payable in thirty (30) days or less or on such other terms as are acceptable to Factor in its sole discretion which are expressly set forth on the face of the invoice;

(5) is not subject to any claim, credit, deduction, discount, allowance, dispute, setoff or counterclaim and the goods represented by said Account have not been sold on consignment or which any return privilege whatsoever (except defective merchandise);

9. COVENANTS OF SELLER.

9.1. Seller will not during the term of this Agreement assign or grant a security interest in any of its Accounts to any other party and will not grant a security interest in any of the Collateral to any other party, excepting purchase money security interests in equipment.

9.2. Seller will not change or modify the terms of any Factored Account, without the prior approval of Factor.

9.3. Seller will not grant a security interest in the Collateral, or permit a lien, claim or encumbrance to be imposed on any of the Collateral, or allow the Collateral to be possessed by or under the control of another person or entity.

9.4. Seller will not sell, license, lease, rent or otherwise dispose of, move, transfer or relocate outside the Collateral States, whether by sale or otherwise, any of Seller's assets, including the Collateral, but excluding Inventory which may be sold, licensed, leased, or otherwise disposed of in the ordinary course of Seller's business, provided that Factor continues to have a security interest in the proceeds thereof.

9.5. Seller will not change: (i) its Seller State; (ii) its corporate or trade name without providing Factor with 30 days' prior written notice; or (iii) any of its Collateral States without providing Factor with 30 days' prior written notice.

9.6. Seller will not relocate its place of business, its Chief Executive Office State or move Seller's Books from the locations set forth on Exhibit A.

9.7. Seller will notify Factor in writing prior to any change in Seller's place of business or if it has more than one place of business prior to any change in Seller's chief executive office or the office or offices where Seller's Books are kept and will immediately notify Factor of any proposed or actual change of Seller's name, location, identity, legal entity or structure.

9.8. Seller will maintain all Collateral in the Collateral State(s) at the address(es) identified in Exhibit A and will not, without the prior written consent of Factor, move the Collateral to any other address(es).

9.9. Seller will make timely payments or deposits of all taxes (including F.I.C.A. payments and withholding taxes) prior to delinquency and furnish to Factor on demand evidence of such payment or deposit.

9.10. Seller will not in any manner whatsoever take any action which may interfere with or hinder the collection of the Factored Accounts or interfere with any of Factor's rights under this Agreement, recognizing that any such interference may result in civil and/or criminal liability.

9.11. Seller shall, at its expense, obtain and keep in full force and effect the Collateral insured against loss or damage as is customary for businesses similar to that of Seller and name Factor as loss payee of such insurance. All proceeds received by Factor shall either be applied to any Obligations of Seller to Factor or at the discretion of Factor released to Seller.

9.12. Seller will, when requested by Factor, execute any document or instrument or do any other thing necessary to effectuate more fully the purposes and provisions of this Agreement, including without limitation, executing and filing financing statements and continuation statements in the form and substance satisfactory to Factor.

10. INDEMNITY.

10.1. Seller does hereby indemnify and agree to hold Factor harmless from any and all claims, demands, liabilities, loss, damage or expenses, including reasonable attorneys' fees which Factor may at any time sustain, suffer or incur by reason of any action which may be brought against Factor by any of Seller's Customers or any third party. This indemnity shall survive the termination of this Agreement and shall not be deemed to be released by the mutual release referred to in Section 14.9 of this Agreement.

11. SECURITY INTEREST IN COLLATERAL.

11.1. As a further inducement to Factor to enter into this Agreement and to secure the performance of all Obligations of Seller to Factor under this Agreement, Seller does hereby grant to Factor a security interest in all Collateral presently existing or hereafter arising, now owned or hereafter acquired by Seller, together with the Additional Collateral. Seller agrees to execute a financing statement and take such other action that may be required to perfect the security interest of Factor in the Collateral.

11.2. Seller will execute and deliver to Factor concurrently with Seller's execution of this Agreement, and at any time or times hereafter at the request of Factor, promissory notes, financing statements, initial financing statements, continuation statements, security agreements, mortgages, assignments, certificates of title, affidavits, reports, notices, schedules of accounts, letters of authority, and all other documents and records that Factor may request, in such form as is satisfactory to Factor,

to further evidence the Obligations and/or to perfect and maintain Factor's security interest in the Collateral and fully comply with this Agreement.

11.3. Seller authorizes Factor to file one or more financing statements and initial financing statements describing the Collateral. Seller hereby makes, constitutes and appoints Factor (and any of Factor's officers, employees or agents designated by Factor) as Seller's true and lawful attorney with power, but without notice to Seller, to sign the name of Seller or take any other action on or with respect to any Financing Statement, initial financing statement, continuation statement, security agreement, mortgage, assignment, certificate of title, affidavit, letter of authority, or notice or other similar document necessary to perfect or continue the perfection of Factor's security interest in the Collateral. Seller shall make appropriate entries in Seller's Books disclosing Factor's security interest in the Collateral. The power of attorney created in this Section is coupled with an interest, and shall be irrevocable until all Obligations are fully paid and satisfied.

11.4. Seller will have possession of the Collateral, except where expressly otherwise provided in this Agreement or where Factor chooses to perfect its security interest by possession in addition to the filing of a financing statement. Regardless who has possession, Seller shall in all events bear the risk of loss of the Collateral.

11.5. Factor will have no duty to collect any income accruing on the Collateral or to preserve any rights relating to the Collateral.

11.6. Where Collateral is in the possession of a third party, Seller will join with Factor in notifying the third party of Factor's security interest and obtaining an acknowledgment from the third party that it is holding the Collateral for the benefit of Factor.

11.7. Seller will cooperate with Factor in obtaining control with respect to Collateral consisting of: (a) deposit accounts; (b) investment property; (c) letter-of-credit rights; and (d) electronic chattel paper.

11.8. Seller will not create any chattel paper without placing a legend on the chattel paper acceptable to Factor indicating that Factor has a security interest in the chattel paper.

## 12. TERMINATION.

12.1. This Agreement shall continue in effect until April 15, 2013, and shall be automatically renewed for successive periods of six (6) months, unless terminated as follows:

- (a) Factor may terminate this Agreement upon 30 days written notice given to Seller.
- (b) Seller may terminate this Agreement only upon payment to Factor of a prepayment charge of N/A to defray Factor's costs and upon at least 30 days prior written notice. Notwithstanding the foregoing, upon the occurrence of any default, Factor may terminate this Agreement immediately without notice. Upon the effective date of termination whether such termination is pursuant to the occurrence of a default, all Obligations shall become immediately due and payable by Seller to Factor without notice or demand. No such termination of this Agreement shall affect the liabilities and obligations of Seller or the rights, powers and remedies of Factor under this Agreement, or the security interest granted to Factor hereunder until all Obligations have been fully paid and satisfied.

13. DEFAULTS/REMEDIES.

13.1. Any one or more of the following shall be a default hereunder:

- (a) Any warranty or representation made herein proves to be false in any material respect.
- (b) Seller breaches any covenants, term or provision contained in this Agreement or under any other agreement or contract between Seller and Factor.
- (c) Factor receives a SOS Report indicating that Factor's security interest in the Collateral is not prior to all other security interests or other interests reflected in the report.
- (d) A petition is filed by or against Seller under any bankruptcy or insolvency statute.
- (e) Seller becomes insolvent or a tax lien is filed against Seller or Seller shall voluntarily file for bankruptcy.
- (f) Any involuntary petition in bankruptcy shall be filed against Seller and not dismissed within 60 days.
- (g) Any levy of attachment, execution, tax lien or similar process shall be issued against Seller or the collateral and shall not be released within five days thereof.
- (h) Seller ceases normal business operations.
- (i) A material portion of the Collateral is damaged or destroyed or cannot be located within five days after Factor makes demand upon Seller to inspect the same.
- (j) The chief executive officer of Seller dies, becomes incompetent or is no longer associated with Seller.

13.2 In the event of default, Factor may, at its election, take any or all of the following actions, to be exercised concurrently or successively:

- (a) Cease purchasing Accounts from Seller or making any remittances to Seller from the Reserve until all Obligations of Seller to Factor have been fully paid and satisfied.
- (b) Require Seller to repurchase, on demand, all Factored Accounts, and pay to Factor all Obligations of Seller.
- (c) Proceed to notify and collect all Accounts which have not been factored and, in such case, exercise such rights and remedies with respect to such Accounts as are set forth in this Agreement with respect to Factored Accounts.
- (d) Notify the post office authorities to change the address for delivery of mail addressed to Seller to such address as Factor may designate.
- (e) Exercise any and all rights of a secured party under the Uniform Commercial Code and/or any other applicable law.

(f) Require Seller to assemble the Collateral, hold the same in trust for Factor's account and, at Seller's expense, deliver the same to Factor or to a third party as Factor's bailee at a place or places to be designated by Factor which is reasonably convenient to the parties, or store the same in a warehouse in Factor's name and deliver to Factor documents of title representing said Collateral.

(g) Require Seller to assemble Seller's Books and make them available to Factor at a place designated by Factor, at Seller's expense, or deliver the same to Factor at a place which is reasonably convenient to the parties.

(h) Enter, with or without process of law, and without further permission of Seller and without the necessity of posting a bond, upon any premises where the Collateral is or believed by Factor to be located, using all necessary force to accomplish the same without committing a breach of the peace (Seller hereby waiving all claims for damages or otherwise due to, arising from or connected with such entry and/or seizure), and: (i) take possession of said premises and of the Collateral located therein; (ii) place a custodian in exclusive control of said premises and of any of the Collateral located therein; (iii) remove from the premises the Collateral (and any of Seller's Books, materials and supplies) in any way relating to the Collateral or useful by Factor in enforcing its rights hereunder; (iv) remain upon said premises and use the same (together with said Seller's Books, materials and supplies) for the purpose of collecting the Collateral and/or preparing the Collateral for disposition and/or disposing of the Collateral.

(i) Sell at one or more public or private sales, lease or otherwise dispose of the Collateral (regardless whether Factor has taken possession thereof or whether the Collateral is present at any such sale or disposition) in its then condition, or after further manufacturing, processing or preparation thereof (utilizing, in connection therewith, without charge or liability to Factor therefor, any of Seller's assets), by means of one or more contracts or transactions, for cash or on terms, in such manner and at such places (including Seller's premises) as, in the opinion of Factor, is commercially reasonable.

(j) Factor will have no obligation to clean up or otherwise prepare the Collateral for sale. Factor will have no obligation to attempt to satisfy the Obligations by collecting them from any other Person liable for them, and Factor may release, modify or waive any of the Collateral provided by any other Person to secure any of the Obligations, all without affecting Factor's rights against Seller. Seller waives any right it may have to require Factor to pursue any third Person for any of the Obligations. Factor has no obligation to marshal any assets in favor of Seller, or against or in payment of the Obligations or any other obligation owed to Factor by Seller or any other person. Factor may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral and compliance will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral.

(k) Factor may dispose of the Collateral without giving any warranties as to the Collateral. Factor may specifically disclaim any warranties of title or the like. This procedure will not be considered adversely to affect the commercial reasonableness of any sale of the Collateral.

(l) If Factor sells any of the Collateral upon credit, Seller will be credited only with payments actually made by the purchaser, received by Factor and applied to the

indebtedness of the purchaser. In the event the purchaser fails to pay for the Collateral, Factor may resell the Collateral and Seller shall be credited with the proceeds of the sale.

(m) Factor shall have the right to purchase all or any portion of the Collateral at any public sale. In the event Factor purchases any of the Collateral being sold, Factor may pay for the Collateral by crediting against the purchase price some or all of the Obligations.

(n) All proceeds from said sale after payment of all costs and expenses incurred therein shall be applied to any and all Obligations of Seller to Factor returning any excess to Seller who shall remain liable to Factor for any deficiency.

No exercise by Factor of any right or remedy shall be deemed an election thereof.

14. MISCELLANEOUS.

14.1. Seller authorizes Factor, in its sole discretion, to dispose of any documents, schedules, invoices or other papers delivered to Factor at any time after six months after they are delivered to Factor, unless Seller requests, in writing, the return of the same at Seller's expense.

14.2. Factor shall not be deemed to have waived any of its rights or remedies hereunder unless such waiver is in writing and signed by Factor. Failure or delay by Factor in exercising or enforcing any right, power, privilege, lien, option or remedy hereunder shall not operate as a waiver thereof and a waiver by Factor of any default by Seller under this Agreement shall not be construed of any subsequent or other default or effect or impair any right or power resulting therefrom.

14.3. With respect to procedural matters related to the perfection and enforcement of Factor's rights against the Collateral, this Agreement shall be governed by federal law applicable to Factor and, to the extent not preempted by federal law, the laws of the state where the Collateral, or the portion of it against which enforcement is sought, is located without regard to that state's conflicts of law provisions. In all other respects, this Agreement will be governed by federal law applicable to Factor and, to the extent not preempted by federal law, the laws of the State of California without regard to its conflicts of law provisions. However, if there ever is a question about whether any provision of this Agreement is valid or enforceable, the provision that is questioned will be governed by whichever state or federal law would find the provision to be valid and enforceable. Seller does hereby agree to submit to the jurisdiction of the courts of the State of California or the State of Arizona, at Factor's election, with respect to any actions or proceedings arising out of or relating to this Agreement and does hereby agree that service of process may be made upon Seller by certified mail at the address set forth in this Agreement.

14.4. Unless otherwise provided in this Agreement, all notices, demands or other communications to either party shall be in writing and shall be mailed, telecopied or communicated by means of facsimile transmission (followed by a mailed or delivered hard copy), or delivered by hand or courier service, at their respective addresses set forth in this Agreement, or at such other addresses as shall be designated by such party in a written notice to the other party. All notices and other communications shall be deemed delivered and effective when a record has been sent by telecopy or other facsimile transmission, or upon receipt through the Internet, or upon hand delivery or upon the next business day after deposit in a United States postal box if postage is prepaid, and the notice properly addressed to the intended recipient.

14.5. This Agreement constitutes the full and complete Agreement of the parties hereto and neither party shall be bound by any provision or agreement oral or written except as set forth herein and this Agreement shall not be modified or amended in any respect except by an agreement in writing signed by both of the parties.

14.6. If any provision of this Agreement is determined to be legally invalid or unenforceable, the validity or enforceability of the remaining provisions of this Agreement shall not be affected thereby.

14.7. If at any time or times hereafter Factor employs counsel for advice or other representation: (a) with respect to any of the Collateral or this Agreement; (b) to represent Factor in any litigation, contest, dispute, suit or proceeding or to commence, defend, or intervene or to take any other action in or with respect to any litigation, contest, dispute, suit or proceeding (whether instituted by Factor, Seller or any other party) in any way relating to any of the Collateral, this Agreement or Seller's affairs; (c) to protect, collect, lease, sell, take possession of or liquidate any of the Collateral; (d) to attempt to enforce any security interest of Factor in any of the Collateral; or (e) to enforce any rights of Factor against Seller or against any other person which may be obligated to Factor by virtue of this Agreement including Seller's account debtors, then, in any of the foregoing events, all of the reasonable attorneys' fees arising from such services and all expenses, costs and charges in any way arising in connection therewith or relating thereto shall constitute a part of Factor's Costs secured by the Collateral and be payable on demand.

14.8. This Agreement has been considered, approved and made in the State of California and it and all other documents shall become effective only when accepted by Factor in the State of California.

14.9. At such time that all Obligations of Seller to Factor shall have been fully paid and satisfied and Seller executes a mutual release acknowledging that Factor is not indebted to Seller in any amount, Factor shall reassign to Seller all of its right, title and interest, without recourse, in and to any remaining unpaid Factored Accounts and release its security interest in the Collateral.

14.10. Notwithstanding the intention of the parties to the contrary as expressed in Section I of this Agreement, in the event that the transactions contemplated herein are construed to be a loan by Factor to Seller, the parties hereto agree to an effective rate of interest that is the rate resulting from all charges paid or to be paid by Seller arising out of this Agreement.

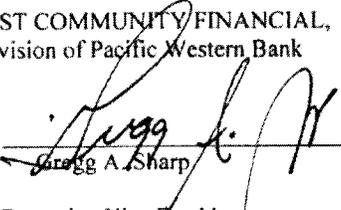
14.11. This Agreement shall inure to and be binding upon the parties hereto, their personal representatives, successors and assigns; provided, however, that Seller shall not have the right to assign this Agreement or any rights hereunder without Factor's prior written consent and any such assignment shall be void and of no effect whatsoever.

14.12. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HERETO WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTIONS HEREUNDER.

IN WITNESS WHEREOF, this Agreement has been executed on the date set forth above.

**FACTOR:**

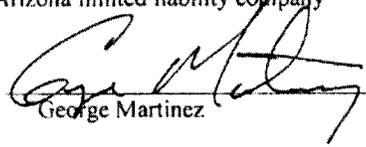
FIRST COMMUNITY FINANCIAL,  
a division of Pacific Western Bank

By:   
Gregg A. Sharp

Its: Executive Vice President

**SELLER:**

Shadow Beverages and Snacks, LLC,  
an Arizona limited liability company

By:   
George Martinez

Its: President

**EXHIBIT A**  
to  
**FACTORING AGREEMENT**

DATE: October 15, 2012  
SELLER: Shadow Beverages and Snacks, LLC,  
an Arizona limited liability company

ADDRESS: [REDACTED] Arizona [REDACTED]

FACTOR: **FIRST COMMUNITY FINANCIAL,**  
a division of Pacific Western Bank

ADDRESS: 4000 North Central Avenue, Suite 100  
Phoenix, Arizona 85012

---

CHIEF EXECUTIVE STATE: - Arizona  
SELLER STATE: - Arizona  
COLLATERAL STATE(S): - 4650 East Cotton Center Boulevard, Suite 240, Phoenix, Arizona 85040  
LOCATION OF SELLER'S BOOKS: -4650 East Cotton Center Boulevard, Suite 240, Phoenix, Arizona 85040  
SELLER'S TRADE NAMES: - None  
DESCRIPTION OF REAL PROPERTY (if any): - None

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Shadow Beverages and Snacks, LLC,  
an Arizona limited liability company

By:   
George Martinez

Its: President

FILED  
ARIZONA SECRETARY OF STATE  
10/11/2012 09:42 AM  
201217106543

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER (optional)

SHERRY RUTLEDGE

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Return acknowledgment to:

Capitol Corporate Services, Inc.  
P.O. Box 15461 Phoenix, AZ 85002  
602/255-4032

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - (use only legal name (Do not abbreviate or use trade names))

1a. ORGANIZATION'S NAME  
SHADOW BEVERAGES AND SNACKS, LLC

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2a. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
AZ 852012 USA

2b. IDENTIFICATION ADD. INFO (1a. TYPE OF ORGANIZATION OR ORGANIZATION DEBTOR) 2c. JURISDICTION OF ORGANIZATION 2d. ORGANIZATIONAL ID # (if any)

LTD. LIAB. CO. ARIZONA LI14661102

3. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - (use only legal name (Do not abbreviate or use trade names))

3a. ORGANIZATION'S NAME

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

3d. IDENTIFICATION ADD. INFO (1a. TYPE OF ORGANIZATION OR ORGANIZATION DEBTOR) 3e. JURISDICTION OF ORGANIZATION 3f. ORGANIZATIONAL ID # (if any)

4. SECURED PARTY'S NAME (or NAME of TUTAL ASSIGNEE if ASSIGNOR ONLY) - (use only legal name (Do not abbreviate or use trade names))

4a. ORGANIZATION'S NAME

OR

4b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

4c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

4000 N. CENTRAL AVENUE, SUITE 100 PHOENIX AZ 852012 USA

ALL ASSETS OF DEBTOR AS FURTHER DESCRIBED IN EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF.

5. ALTERNATIVE DESIGNATION (if applicable) 6. PERS. LESSOR 7. CONSUMER CREDIT 8. SALE OF REAL OR PERSONAL PROPERTY 9. SELLER/BUYER 10. AS LIEN 11. NON LIEN FILING

12. FILING OFFICE BY REPORT OF THE FILER (13. FILING OFFICE BY REPORT OF THE FILER) 14. SEARCH REPORT BY FILER (15. SEARCH REPORT BY FILER) 16. SEARCH REPORT BY FILER (17. SEARCH REPORT BY FILER)

18. OPTIONAL FILER REFERENCE DATA

SHADOW BEVERAGES AND SNACKS, LLC - AZ - STATE

FILING OFFICE COPY - UCC FINANCING STATEMENT (FORM UCC1) (REV. 05/2002)

Capitol Services, Inc.

Martinez EXHIBIT 35  
DATE 10-15-15  
Colette E. Ross  
CR No. 50658

CSBFG000321



ACC001079  
SHADOW-8507

**EXHIBIT A**

This **EXHIBIT A** is made a part of the financing statement to which it is annexed (the "Financing Statement") between Shadow Beverages and Snacks, LLC ("Debtor") and First Community Financial, a division of Pacific Western Bank, a California state-chartered bank ("Secured Party").

The word "Collateral" in the Financing Statement includes all assets of Debtor, including without limitation, all of the properties, assets and rights of Debtor described in the next paragraph and, including whatever is encompassed by the applicable Uniform Commercial Code's definition of the following terms, wherever located, whether now owned or hereafter acquired or arising, and all proceeds, products, replacements, substitutes, accessions, additions and improvements to any thereof.

All personal and fixture property of every kind and nature including, without limitation, all furniture, fixtures, equipment, raw materials, inventory, other goods, accounts, contract rights, rights to the payment of money, insurance refund claims and all other insurance claims and proceeds, chattel paper (including security agreements and leases), electronic chattel paper, documents, records, instruments, securities and other investment property, deposit accounts, rights to proceeds of letters of credit, letter-of-credit rights, supporting obligations of every nature, and general intangibles including, without limitation, all tax refund claims, license fees, patents, patent applications, trademarks, trademark applications, trade names, copyrights, copyright applications, rights to sue and recover for past infringement of patents, trademarks and copyrights, computer programs, computer software, engineering drawings, service marks, customer lists, goodwill, and all licenses, permits, agreements of any kind or nature pursuant to which (i) Debtor operates or has authority to operate, (ii) Debtor possesses, uses or has authority to possess or use property (whether tangible or intangible) of others, or (iii) others possess, use, or have authority to possess or use Debtor's property (whether tangible or intangible), and all recorded data of any kind or nature, regardless of the medium of recording, including, without limitation, all software, writings, plans, specifications and schematics, and all of Debtor's books and records including but not limited to, all customer lists and lists of account debtors, all ledgers; records reflecting, summarizing or evidencing Debtor's assets, accounts, business operations or financial condition, computer programs, computer discs, computer printouts, and other computer prepared information and computer equipment of any kind.

All terms used in this Exhibit shall be construed and defined (to the extent not inconsistent with the agreement in connection with which the Financing Statement is filed — "Agreement"). In accordance with the meaning and definitions set forth in the California Uniform Commercial Code, as amended from time to time; provided, however, with respect to any term used herein that is defined in (i) Article 9 of the Uniform Commercial Code prepared under the joint sponsorship of the American Law Institute and the National Conference of Commissioners on Uniform State Laws, as in force in the jurisdiction in which this financing statement was authorized by Debtor at the time that it was authorized, or (ii) Article 9 as in force at any relevant time in the jurisdiction in which the Financing Statement is filed, or (iii) Article 9 as in force at any relevant time in the jurisdiction in which the terms of the Agreement are enforced, the meaning to be ascribed thereto with respect to any particular item of property shall be that under the more encompassing of the three definitions.

DOC EXH A SHY1183DC  
SHADOW BEVERAGES AND SNACKS, LLC

CSBFG000322

ACC001080  
SHADOW-8507

**MUTUAL RELEASE**

THIS MUTUAL RELEASE is made this 29th day of October, 2014, by and between CapitalSource Business Finance Group, a dba of BFI Business Finance, as assignee of First Community Financial, a division of Pacific Western Bank ("Factor"), Shadow Beverages and Snacks, LLC ("Seller").

**RECITALS:**

A. Seller and Factor entered into that certain Factoring Agreement dated October 15, 2012 (the "Agreement"), evidencing a factoring relationship between Seller and Factor.

B. Such factoring relationship arising under the Agreement between the parties has terminated, by expiration, cancellation, or otherwise, and the parties are desirous of documenting the termination and release from further rights or obligations of the parties under the Agreement or any instruments relating thereto.

**AGREEMENTS:**

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

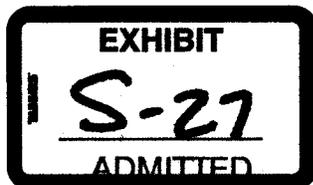
1. Seller and Factor hereby release and discharge each other and their officers, directors, servants, agents, employees, subsidiaries and affiliates from any and every claim, liability, obligation, cost, demand, accounts, contracts, damage, action and cause of action of whatever character, of any kind or nature, whether known or unknown, suspected or unsuspected, arising out of the Agreement or the factoring relationship evidenced thereby; provided, however, that the foregoing release shall not affect in any way or be operative with respect to any liability that Seller or any of its officers, directors, servants, agents, employees, subsidiaries, and affiliates, have or may have to Factor by reason of that certain Indemnity Agreement made by Seller and another party in favor of Factor, dated October 29, 2014. All accounts receivable which have heretofore been assigned to Factor pursuant to the Agreement, but the full proceeds thereof have not yet been received by Factor in collected funds, are hereby reassigned to Seller without recourse or warranty;

2. Each of the parties hereto acknowledged that all indebtedness due or to become due directly or indirectly arising out of or related to the Agreement to the other party has been paid and satisfied;

3. Seller and Factor hereby agree that if either of them shall at any time take any action to contest, set aside, limit, revoke, or in any way question this Mutual Release, or assert any right or claim inconsistent herewith, and shall not be the successful or prevailing party in such action, such person shall indemnify and hold harmless the other party named above with respect to any claim, damage, expense or cost, including reasonable attorneys' fees, that said party may incur or suffer on account thereof;

*Martinez* 74  
EXHIBIT  
DATE 10-15-15  
Colette E. Ross  
CR No. 50658

CSBFG000215



ACC000973  
SHADOW-8507

4. Simultaneously with the execution and delivery of this Mutual Release by both parties, Factor shall automatically file original UCC -3 termination statements, terminating the security interest claimed by Factor in the collateral described in the Agreement;

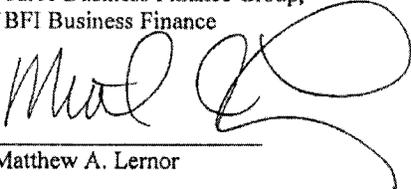
5. This Release shall be governed as to its scope, interpretation, execution and performance solely by the internal laws of the State of California, without regard to principles of conflict of laws.

6. This Release may be executed in any number of duplicate originals, and each duplicate original shall be deemed to be an original. This Release (and each duplicate original) may be executed in any number of counterparts, all of which together shall constitute one fully executed agreement, even though all signatures do not appear on the same document.

IN WITNESS WHEREOF, the parties have executed this Mutual Release in the date first hereinabove set forth.

**FACTOR:**

CapitalSource Business Finance Group,  
a dba of BFI Business Finance

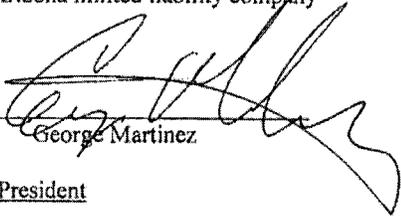
By: 

Matthew A. Lerner

Its: Executive Vice President

**SELLER:**

Shadow Beverages and Snacks, LLC,  
an Arizona limited liability company

By: 

George Martinez

Its: President

CSBFG000216

ACC000974  
SHADOW-8507

**PROMISSORY NOTE**  
(Term Loan)

\$500,000.00

Phoenix, Arizona  
March 7, 2013

FOR VALUE RECEIVED, the undersigned, **SHADOW BEVERAGES AND SNACKS, LLC**, an Arizona limited liability company ("Maker") promises to pay to Canis Major Development ("Lender"), or order, the principal sum of Five Hundred Thousand Dollars and No Cents (\$500,000.00), together with interest.

The entire unpaid principal, all unpaid accrued interest and all other amounts payable hereunder shall be paid in full on or before May 6, 2013.

The actual rate of interest shall be \$25,000 on a 30 day basis. On April 5th, 2013 a payment of \$25,000 for interest will be paid. On May 6th, 2013 the principal of \$500,000 and an additional interest payment of \$25,000 will be made. All amounts payable hereunder shall be paid in lawful money of the United States.

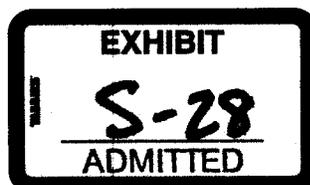
Maker shall have the right at any time or from time to time to prepay all or a portion of the principal or interest without a prepayment charge or premium.

At the holder's option, any payments hereunder may be applied first to accrued interest and then to principal.

This Note shall become immediately due and payable at the option of the holder hereof without presentment or demand or any notice or Maker or any other person obligated hereon except as otherwise provided by the Term Loan Agreement of even date herewith between Maker and Lender (the "Loan Agreement"), upon the occurrence of any event of default in the payment of any of the principal or any interest hereon when due, upon default under the Loan Agreement, or upon default under any other agreement between Maker and Lender. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. Principal and interest shall be payable at the address of Lender, as set forth in the Loan Agreement or at such other place as the holder hereof may designate.

In the event any holder hereof utilizes the services of an attorney in attempting to collect the amounts due hereunder or to enforce the terms hereof or of any agreements related to this indebtedness, or if any holder hereof becomes party plaintiff or defendant in any legal proceeding for the recovery or protection of the indebtedness evidenced hereby, Maker, its successors and assigns, and any endorsers hereof shall repay to such holder hereof, on demand, all costs and expenses so incurred, including reasonable attorneys' fees, whether or not suit is brought, including those costs, expenses and attorneys' fees incurred after the filing by or against the Maker of any proceeding under any chapter of the Bankruptcy Code, Title 11 of the United States Code, or similar federal or state statute, and whether incurred in connection with the involvement of any holder hereof as creditor in such proceedings or otherwise.

Shadow Beverages - 3.7.2103



*Martinez*  
EXHIBIT 37  
DATE 10-15-15  
Colette E. Ross  
CR No. 50658

SHADOW007360

Except as otherwise provided in the Term Loan Agreement, Maker and all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally waive (i) demand, presentment for payment, notice of nonpayment, demand and dishonor, protest, notice of protest and all other notice except as otherwise provided herein, (ii) filing of suit, and (iii) diligence in collecting this Note. Maker, all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally agree that it will not be necessary for any holder hereof, in order to enforce payment of this Note, to first institute suit or exhaust its remedies against any maker or others liable herefor. Maker, all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally further consent to any extension or postponement of time of payment of this Note or any other indulgence with respect hereto, including but not limited to, the release of any party primarily or secondarily liable hereon without notice thereof to any of them.

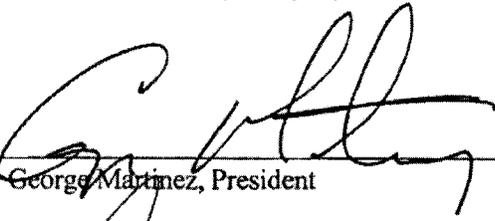
**MAKER, ALL ENDORSERS AND ALL GUARANTORS, HEREBY SEVERALLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS NOTE, IT BEING ACKNOWLEDGED BY MAKER, ALL ENDORSERS AND ALL GUARANTORS THAT EACH SUCH PARTY MAKES THIS WAIVER OF TRIAL BY JURY KNOWINGLY AND VOLUNTARILY AND ONLY AFTER CONSULTATION WITH LEGAL COUNSEL.**

This Note shall be governed and construed in accordance with the laws of the State of Arizona.

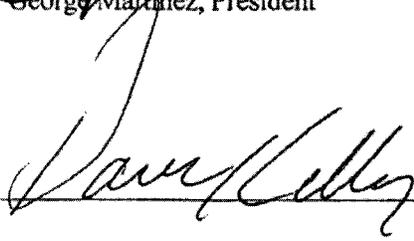
This Promissory Note was executed and delivered by the undersigned and is effective as of the date first set forth above.

SHADOW BEVERAGES AND SNACKS, LLC, an  
Arizona limited liability company

By:

  
George Martinez, President

By:



6/09/15

Wire Transfer Historical Search

11:37:27

**\*Incoming\* \*Posted\***

Acct#/Type [REDACTED] 6031 D      Wire Date: 3/07/13      Wire Seq#: 26910  
 Originator      {5000}  
 Account..... [REDACTED] 1712 D  
 Name..... DAVID P KELLY  
 Address 1..... [REDACTED]  
 Address 2..... [REDACTED] AZ [REDACTED]  
 Address 3.....

Transfer Amount.. \$100,000.00      {2000}  
 Analysis..... E      Fee/Counter... 100      Notice..... P  
 Entered By... SYSTEM      ype. S  
 Type/Subtype. 10 00      {1510}  
 Reference Number....0307      001677

Beneficiary      {4200}  
 Account..... [REDACTED] 6031      D  
 Name..... SHADOW BEVERAGES AND SNACKS LLC  
 Address 1.....

F3=Exit      F8=Maintenance      F12=Previous      **More...**



**ACC006846**  
 SHADOW-8507

6/09/15

Wire Transfer Historical Search

11:38:01

\*Incoming\* \*Posted\*

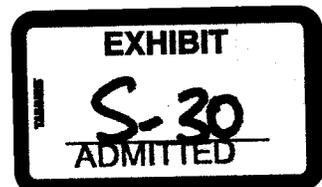
Acct#/Type [REDACTED] 6031 D      Wire Date: 3/07/13      Wire Seq#: 26913  
 Originator      {5000}  
 Account..... [REDACTED] 2238 D  
 Name..... CANIS MAJOR DEVELOPMENT LP 601 CARL  
 Address 1..... [REDACTED] MN [REDACTED]  
 Address 2..... [REDACTED]  
 Address 3.....

Transfer Amount.. \$400,000.00      {2000}  
 Analysis..... E      Fee/Counter... 100      Notice..... P  
 Entered By... SYSTEM      ype. S  
 Type/Subtype. 10 00      {1510}  
 Reference Number....0307      001728

Beneficiary      {4200}  
 Account..... [REDACTED] 6031      D  
 Name..... FBO SHADOW BEVERAGE AND SNACKS LLC  
 Address 1.....

F3=Exit      F8=Maintenance      F12=Previous      More...

ACC006849  
 SHADOW-8507



**LIMITED SECURITY AGREEMENT**

THIS LIMITED SECURITY AGREEMENT (this "Agreement"), is made and entered into on March 7, 2013 (the "Effective Date"), by and between SHADOW BEVERAGES AND SNACKS, LLC, an Arizona limited liability company ("Borrower"), and Canis Major Development, an individual ("Lender").

**RECITALS**

A. As of the Effective Date, Lender has made a loan to Borrower in the amount of Five Hundred Thousand and 00/100 dollars (\$500,000.00) (the "Loan").

B. As security for the Loan, Borrower agrees to grant Lender a security interest in the hereinafter described Collateral.

**AGREEMENT**

NOW, THEREFORE, as an inducement to Lender to make the Loan to Borrower and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender hereby agree as follows:

1. Assignment and Grant of Security Interest in Collateral.

(a) In order to secure the Secured Obligations (hereinafter defined), Borrower does hereby sell, assign, transfer, convey, mortgage, pledge and grant a continuing limited security interest in Borrower's product inventory and accounts receivable in an amount equal to the outstanding balance of the Loan (the "Collateral"). The parties acknowledge that Borrower shall be entitled to grant security interests in Borrower's product inventory and accounts receivable to third parties without the prior consent of Lender; provided, however, that Borrower shall maintain Lender's security interest in the Collateral free and clear of any security interest granted to any third party(ies) and, from time to time, Lender may request documentation from Borrower which reflects that the Collateral is sufficient to secure the then outstanding obligations under the Loan.

2. Indebtedness Secured. This Agreement secures full and prompt payment and performance of all of the obligations of Borrower under and pursuant to that Promissory Note of near or even date herewith, in the amount of Five Hundred Thousand and 00/100 Dollars (\$500,000.00) by Borrower in favor of Lender (the "Note"). The forgoing is hereinafter referred to as the "Secured Obligations."

3. Representations, Warranties, and Covenants. Borrower represents and warrants, and covenants, that:

(a) Borrower has not done anything which might prevent Lender from or limit Lender's exercise or enforcement of any of the provisions hereof;

(b) Borrower will permit and assist Lender to perfect the security interest herein granted to Lender by filing financing statements in such public offices as Lender deems appropriate to perfect the security interest herein granted to Lender;

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EXHIBIT  
DATE 8-10-15-15  
Colette E. Ross  
CR No. 50658



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(c) Borrower will maintain the Collateral free and clear from any liens, security interests or encumbrances, except for the security interest granted hereby, and will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein; and

(d) The execution, delivery and performance of this Agreement are not in contravention of law or any indenture, agreement or undertaking to which Borrower is a party or is bound.

4. Events of Default; Remedies. Borrower shall be in default of its obligations under this Agreement if any of the following are not completely cured by Borrower within fifteen (15) days after notice thereof from Lender specifying such default (provided that if such default cannot reasonably be cured within such fifteen (15) day period, no Event of Default shall be deemed to exist if Borrower shall commence to cure such default within such fifteen (15) day period and proceed with due diligence to complete such cure; but in any event, such default must be cured within ninety (90) days after Lender's notice) (each, an "Event of Default"):

(a) failure of Borrower to make any payment due under the Note within ten (10) days of when due and payable, whether as scheduled, by acceleration or otherwise;

(b) a breach by Borrower of any representation, warranty, covenant, agreement or obligation set forth in this Agreement;

(c) Borrower, pursuant to or within the meaning of Title 11, U.S. Code, or any similar federal, foreign or state law for the relief of Borrowers, (a) commences a voluntary case, (b) consents to the entry of an order for relief against it in an involuntary case, (c) consents to the appointment of a receiver, trustee, assignee, liquidator or similar official, (d) makes a general assignment for the benefit of its creditors, or (e) admits in writing that it is generally unable to pay its debts as they become due; or

(d) the dissolution or termination of Borrower.

Upon any and each and every such Event of Default and at any time thereafter, Lender may declare all Secured Obligations secured hereby immediately due and payable and may proceed to enforce payment of the same and exercise any and all rights and remedies provided by the Uniform Commercial Code as enacted in Arizona. Any notification of sale or other disposition of the Collateral required to be given by the Lender will be sufficient if given personally, or mailed by certified mail, not less than fifteen (15) days prior to the date on which such sale or other disposition will be made, to the address of the Borrower stated in Section 11.3 of the Note, and such notification shall be deemed reasonable notice. Proceeds received by Lender upon disposition of the Collateral shall be applied by Lender first towards payment of the Secured Obligations and any balance remaining after payment in full of the Secured Obligations shall be paid to whomever shall be so entitled. Borrower shall be liable for any deficiency in the event the Secured Obligations are not paid in full from said proceeds.

5. Liability. Borrower agrees that the Collateral is being assigned to the Lender solely as security for the payment and performance of the Secured Obligations, and that Lender, by its acceptance hereof, shall not be deemed to have become a member of Borrower or assumed or otherwise become liable for any of the obligations or liabilities of Borrower, whether provided for by the terms thereof, arising by operation of law, or otherwise.

6. Term of Agreement. This Agreement shall commence as of the day and year first above written and shall continue in full force and effect until all of the Secured Obligations secured hereby have been indefeasibly paid in full.

7. Successors and Assigns. The terms, covenants and conditions contained herein shall bind Borrower and its successors and assigns and shall inure to the benefit of Lender and its successors and assigns.

8. No Waiver. No failure or delay on the part of the Lender to exercise any rights hereunder shall operate as a waiver of such right, nor shall any single or partial exercise by the Lender of any right hereunder preclude any other or further exercise thereof, or the exercise of any other right. Each and every right and remedy granted to the Lender hereunder, or under any document delivered hereunder or in connection herewith, or allowed to the Lender in law or in equity, shall be deemed cumulative and may be exercised from time to time either singly or concurrently.

9. Notices. Each notice, demand, election or request provided for or permitted to be given pursuant to this Agreement shall be given in accordance with Section 11.3 of the Note.

10. Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed, interpreted and enforced in all respects in accordance with the laws of the State of Arizona.

11. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and any representation, inducement, promise or agreement between the parties with respect to the subject matter of this Agreement that is not embodied herein shall be null and void and of no further force or effect.

12. Amendment. This Agreement may not be modified, amended or otherwise altered except by written agreement executed by Borrower and Lender.

13. Counterparts; Delivery. This Agreement may be executed in counterparts, each of which shall be deemed an original, but together they shall constitute one and the same agreement. This Agreement may be executed and delivered by facsimile or PDF.

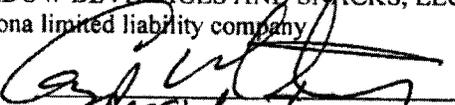
14. Severability. In the event any provision contained in this Agreement is invalid, illegal or unenforceable for any reason or to any extent, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, but instead shall be enforceable to the maximum extent permitted by law.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date.

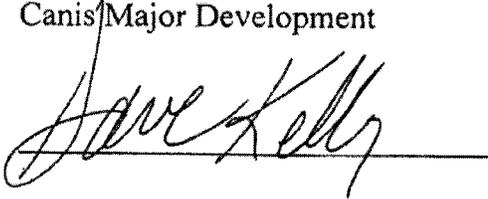
**BORROWER**

SHADOW BEVERAGES AND SNACKS, LLC, an  
Arizona limited liability company

By:   
Name: President  
Title: George Martinez

**LENDER**

Canis Major Development



## PAYMENT AND PERFORMANCE GUARANTY

This PAYMENT AND PERFORMANCE GUARANTY ("Guaranty") is made as of March 7, 2013 by the undersigned (individually and collectively, "Guarantor") in favor of *Canis Major Development* ("Lender").

### Factual Background

Guarantor is executing this Guaranty to induce Lender to make a loan (the "Loan") to SHADOW BEVERAGES AND SNACKS, LLC ("Borrower") in the principal amount of FIVE HUNDRED Thousand Dollars (\$500,000). The Loan is being made under a Promissory Note (the "Note") of even date herewith, between Lender and Borrower. Unless defined herein, all capitalized terms shall have the meanings set forth in the Note.

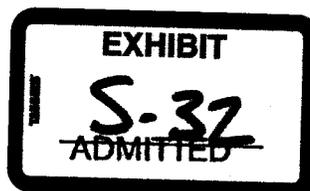
### Guaranty

1. Guaranty of Loan. This Guaranty constitutes an absolute, direct, immediate, and unconditional guarantee of timely payment and performance, and not merely of collectability, and shall include, without limitation, all primary, secondary, direct, indirect, fixed and contingent obligations of Borrower to pay principal, interest, prepayment charges, late charges, default interest, loan fees and other fees, charges, sums, costs and expenses which may be owing at any time in connection with the obligations of Borrower under the Note, as such may be modified, amended, extended or renewed from time to time. If Borrower defaults in the payment when due of the Loan or any part of it, Guarantor shall, in lawful money of the United States, immediately pay to Lender, all sums due and owing on the Loan. Additionally, Guarantor shall be responsible for and shall fully perform all of the other obligations of Borrower under the Loan Documents promptly upon receiving written notice from Lender that Borrower has failed to perform any of such obligations in accordance with the Loan Documents. The obligations of Guarantor under this Guaranty shall be continuing and irrevocable until all of the amounts owed and all other obligations to be performed under the Loan Documents have been fully satisfied.

2. Rights of Lender. Guarantor authorizes Lender to perform any or all of the following acts at any time in its sole discretion, all without notice to Guarantor and without affecting Guarantor's obligations under this Guaranty:

- a. Lender may apply any payments or recoveries from Borrower, Guarantor or any other source, to Borrower's obligations under the Loan Documents in such manner, order and priority as Lender may elect.
- b. Lender may release Borrower from its liability for the Loan or any part of it.
- c. Lender may substitute, add or release any one or more guarantors or endorsers.
- d. In addition to the Loan, Lender may extend other credit to Borrower, and may take and hold security for the credit so extended, all without affecting Guarantor's liability under this Guaranty.

Payment and Performance Guaranty



Martinez EXHIBIT 39  
DATE 010-15-15  
Colette E. Ross  
CR No. 50658

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3. Guaranty to be Absolute. Guarantor expressly agrees that until the Loan is paid and performed in full and each and every term, covenant and condition of this Guaranty is fully performed, Guarantor shall not be released by or because of:

a. Any act or event which might otherwise discharge, reduce, limit or modify Guarantor's obligations under this Guaranty;

b. Any waiver, extension, modification, forbearance, delay or other act or omission of Lender, or its failure to proceed promptly or otherwise as against Borrower or any Guarantor;

c. Any action, omission or circumstance which might increase the likelihood that Guarantor may be called upon to perform under this Guaranty or which might affect the rights or remedies of Guarantor as against Borrower; or

d. Any dealings occurring at any time between Borrower and Lender, whether relating to the Loan or otherwise.

Guarantor hereby expressly waives and surrenders any defense to its liability under this Guaranty based upon any of the foregoing acts, omissions, agreements, waivers or matters. It is the purpose and intent of this Guaranty that the obligations of Guarantor under this Guaranty shall be absolute and unconditional under any and all circumstances.

4. Guarantor's Waivers. Guarantor waives:

a. All statutes of limitations as a defense to any action or proceeding brought against Guarantor by Lender, to the fullest extent permitted by law;

b. Any right it may have to require Lender to proceed against Borrower, proceed against or exhaust any security held from Borrower, or pursue any other remedy in Lender's power to pursue;

c. Any defense based on any claim that Guarantor's obligations exceed or are more burdensome than those of Borrower;

d. Any defense based on: (i) any legal disability of Borrower, (ii) any release, discharge, modification, impairment or limitation of the liability of Borrower to Lender from any cause, whether consented to by Lender or arising by operation of law or from any bankruptcy or other voluntary or involuntary proceeding, in or out of court, for the adjustment of debtor-creditor relationships ("Insolvency Proceeding") and (iii) any rejection or disaffirmance of the Loan, or any part of it, or any security held for it, in any such Insolvency Proceeding;

e. Any defense based on any action taken or omitted by Lender in any Insolvency Proceeding involving Borrower, including any election to have Lender's claim allowed as being secured, partially secured or unsecured, any extension of credit by Lender to Borrower in any Insolvency Proceeding, and the taking and holding by Lender of any security for any such extension of credit;

f. All presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, notices of acceptance of this Guaranty and of the existence, creation, or incurring of new or additional indebtedness, and demands and notices of every kind;

g. Any defense based on or arising out of any defense that Borrower may have to the payment or performance of the Loan or any part of it;

h. Any benefit of the provisions of Arizona Revised Statutes Sections 12-1641 and 12-1642 et seq., and Rule 17(f) of the Arizona Rules of Civil Procedures, that set forth certain rights and obligations among guarantors, debtors and creditors, to the extent applicable;

i. Any exemption rights; and

j. Any benefit of any statutory provision limiting the right of Lender to recover a deficiency judgment, or to otherwise proceed, against any person or entity obligated for payment of the Loan, after any trustee's sale, any judicial foreclosure sale or any personal property sale of any collateral securing the Loan including, without limitation, the benefits, if any, of Arizona Revised Statutes Section 33-814. If Lender exercises any right or remedy with respect to any collateral securing the Loan, Guarantor shall remain liable to Lender for the deficiency by which the net proceeds actually received by Lender from the exercise of such right or remedy shall be less than Borrower's obligations under the Loan, except to the extent otherwise provided by law.

k. Any defense based on any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower.

5. Revival and Reinstatement. If Lender is required to pay, return or restore to Borrower or any other person any amounts previously paid on the Loan because of any Insolvency Proceeding of Borrower, or any other reason, the obligations of Guarantor shall be reinstated and revived and the rights of Lender shall continue with regard to such amounts, all as though they had never been paid.

6. Information Regarding Borrower. Before signing this Guaranty, Guarantor investigated the financial condition and business operations of Borrower, and such other matters as Guarantor deemed appropriate to assure itself of Borrower's ability to discharge its obligations under the Loan Documents. Guarantor assumes full responsibility for that due diligence, as well as for keeping informed of all matters which may affect Borrower's ability to pay and perform its obligations to Lender. Lender has no duty to disclose to Guarantor any information which Lender may have or receive about Borrower's financial condition or business operations, or any other circumstances bearing on Borrower's ability to perform.

7. Subordination. Any rights of Guarantor, whether now existing or later arising, to receive payment on account of any indebtedness (including interest) owed to it by Borrower, or to withdraw capital invested by it in Borrower, or to receive distributions from Borrower, shall at all times be subordinate in all respects to the lien of the Loan. Nevertheless, upon request by Lender, Guarantor shall collect, enforce and receive any indebtedness of Borrower to Guarantor.

Any sums collected at Lender's request or collected in contravention of the prohibition set forth herein shall be held by Guarantor as trustee for Lender and shall be paid over to Lender on account of Borrower's obligations under the Loan Documents; provided, however, such payments shall not impair, reduce or affect in any manner the liability of Guarantor under the other provisions of this Guaranty. Guarantor hereby agrees to indemnify Lender and to hold harmless from and against any and all loss, cost, damage or expense (including, without limitation, attorneys' fees and court costs) incurred by Lender as a result of or in connection with any allegation or finding that the delivery of this Guaranty is a "preference" under 11 U.S.C. § 547.

8. Guarantor's Representations and Warranties. Guarantor represents and warrants that:

a. All financial statements and other financial information furnished or to be furnished to Lender are or will be true and correct and do or will fairly represent the financial condition of Guarantor (including all contingent liabilities); and

b. There has been no material adverse change in Guarantor's financial condition since the dates of the statements most recently furnished to Lender.

9. Events of Default. Lender may declare Guarantor to be in default under this Guaranty upon the occurrence of any of the following events ("Events of Default"):

a. Guarantor fails to materially perform any of its obligations under this Guaranty; or

b. Guarantor attempts to revoke this Guaranty or this Guaranty becomes ineffective for any reason; or

c. Any representation or warranty made or given by Guarantor to Lender proves to be false or misleading as of the date made in any material respect; or

d. Guarantor becomes insolvent or the subject of any Insolvency Proceeding;

or

e. The death or disability of Guarantor.

10. Authorization; No Violation. Guarantor is authorized to execute, deliver and perform under this Guaranty, which is a valid and binding obligation of Guarantor. No provision or obligation of Guarantor contained in this Guaranty violates any applicable law, regulation or ordinance, or any order or ruling of any court or governmental agency. No such provision or obligation conflicts with, or constitutes a breach or default under, any agreement to which Guarantor is a party.

11. Additional and Independent Obligations. Guarantor's obligations under this Guaranty are in addition to its obligations under any other existing or future guaranties, each of which shall remain in full force and effect until it is expressly modified or released in a writing signed by Lender. Guarantor's obligations under this Guaranty are independent of those of

Borrower or any other guarantor on the Loan. Lender may bring a separate action against Guarantor without first proceeding against Borrower, any other guarantor or person or any security that Lender may hold, and without pursuing any other remedy. Lender's rights under this Guaranty shall not be exhausted by any action by Lender until the Loan has been paid and performed in full.

12. No Waiver: Consents: Cumulative Remedies. Each waiver by Lender must be in writing, and no waiver shall be construed as a continuing waiver. No waiver shall be implied from Lender's delay in exercising or failure to exercise any right or remedy against Borrower, Guarantor or any security. Consent by Lender to any act or omission by Borrower or Guarantor shall not be construed as a consent to any other or subsequent act or omission, or as a waiver of the requirement for Lender's consent to be obtained in any future or other instance. All remedies of Lender against Borrower and Guarantor are cumulative.

13. No Release. Guarantor shall be released from its obligations under this Guaranty when all of Borrower's obligations under the Loan Documents have been performed in full, and, at Borrower's request, Lender will provide to Borrower a writing signed by Lender confirming such release.

14. Heirs, Successors and Assigns: Participations. The terms of this Guaranty shall bind and benefit the heirs, personal representatives, successors and assigns of Lender and Guarantor; provided, however, that Guarantor may not assign this Guaranty, or assign or delegate any of its rights or obligations under this Guaranty, without the prior written consent of Lender in each instance. Lender in its sole discretion may sell or assign participations or other interests in the Loan and this Guaranty, in whole or in part, all without notice to or the consent of Guarantor and without affecting Guarantor's obligations under this Guaranty. Also without notice to or the consent of Guarantor, Lender may disclose any and all information in its possession concerning Guarantor, this Guaranty and any security for this Guaranty to any actual or prospective purchaser of any securities issued or to be issued by Lender, and to any actual or prospective purchaser or assignee of any participation or other interest in the Loan and this Guaranty.

15. Exchange of Information. The Guarantor agrees that the Lender may exchange financial information about the Guarantor with his attorneys, financial advisors and other professionals.

16. Notices. All notices given under this Guaranty must be in writing and shall be effectively served upon delivery, or if mailed, upon the first to occur of receipt three (3) days after deposit in certified United States mail, postage prepaid, sent to the party at the following address:

Lender: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Guarantor: The address set forth beneath the signature of Guarantor below.

Those addresses may be changed by Lender or Guarantor by written notice to the other party. Service of any notice on any one Guarantor signing this Guaranty shall be effective service on Guarantor for all purposes.

17. Rules of Construction. In this Guaranty, the word "Borrower" includes both the named Borrower and any other person who at any time assumes or otherwise becomes primarily liable for all or any part of the obligations of the named Borrower on the Loan. The word "person" includes any individual, company, limited liability company, trust or other legal entity of any kind. If this Guaranty is executed by more than one person, the word "Guarantor" includes all such persons. The word "include(s)" means "include(s), without limitation," and the word "including" means "including, but not limited to." When the context and construction so require, all words used in the singular shall be deemed to have been used in the plural and vice versa. No listing of specific instances, items or matters in any way limits the scope or generality of any language of this Guaranty. All headings appearing in this Guaranty are for convenience only and shall be disregarded in construing this Guaranty.

18. Governing Law. This Guaranty shall be governed by, and construed in accordance with, the laws of the State of Arizona.

19. JURY TRIAL; JURISDICTION. GUARANTOR HEREBY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS GUARANTY, IT BEING ACKNOWLEDGED BY GUARANTOR THAT GUARANTOR MAKES THIS WAIVER OF TRIAL BY JURY KNOWINGLY AND VOLUNTARILY AND ONLY AFTER CONSULTATION WITH LEGAL COUNSEL OF GUARANTOR'S CHOOSING. GUARANTOR HEREBY CONSENTS TO THE NON-EXCLUSIVE PERSONAL JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN MARICOPA, COUNTY, ARIZONA IN ANY AND ALL ACTIONS BETWEEN THE GUARANTOR AND LENDER ARISING UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN OR ANY OF THE LOAN DOCUMENTS.

20. Costs and Expenses. If any lawsuit or arbitration is commenced which arises out of, or which relates to this Guaranty, the Loan Documents or the Loan, the prevailing party shall be entitled to recover from each other party such sums as the court (but not the jury) may adjudge to be reasonable attorneys' fees in the action or proceeding, in addition to costs and expenses otherwise allowed by law. In all other situations, including any Insolvency Proceeding, Guarantor agrees to pay all of Lender's costs and expenses, including attorneys' fees which may be incurred in any effort to collect or enforce the Loan or any part of it or any term of this Guaranty. From the time(s) incurred until paid in full to Lender, all sums shall bear interest at the Default Rate, as defined in the Note.

21. Consideration. Guarantor acknowledges that it expects to benefit from Lender's extension of the Loan to Borrower because of its relationship to Borrower as a shareholder of Borrower, and that it is executing this Guaranty in consideration of that anticipated benefit.

22. Integration: Modifications. This Guaranty (a) integrates all the terms and conditions mentioned in or incidental to this Guaranty, (b) supersedes all oral negotiations and prior writings with respect to its subject matter, and (c) is intended by Guarantor and Lender as the final expression of the agreement with respect to the terms and conditions set forth in this Guaranty and as the complete and exclusive statement of the terms agreed to by Guarantor and Lender. No representation, understanding, promise or condition shall be enforceable against any party unless it is contained in this Guaranty. This Guaranty may not be modified except in a writing signed by both Lender and Guarantor.

23. Miscellaneous. The death or legal incapacity of any Guarantor shall not terminate the obligations of such Guarantor or any other Guarantor under this Guaranty, including its obligations with regard to future advances under the Loan Documents. The liability of all persons who are in any manner obligated under this Guaranty shall be joint and several. The illegality or unenforceability of one or more provisions of this Guaranty shall not affect any other provision. Any Guarantor who is married agrees that Lender may look to all of his or her community property and separate property to satisfy his or her obligations under this Guaranty. Time is of the essence in the performance of this Guaranty by Guarantor.

IN WITNESS WHEREOF, Guarantor has duly executed this Guaranty the day and year first above written.

GUARANTORS:

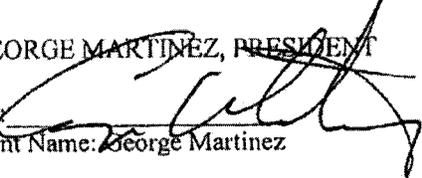
SAM JONES, CIO

By:   
Print Name: Sam Jones

Address: 

 AZ 

GEORGE MARTINEZ, PRESIDENT

By:   
Print Name: George Martinez

Address: 

 AZ 

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is entered into as of the \_\_\_ day of May, 2015 between Dave Kelly (Lender) and Shadow Beverages and Snacks, LLC ("Shadow"). Lender and Shadow are sometimes hereafter collectively referred to herein as the "Parties," and each may be referred to herein individually as a "Party."

### RECITALS

- A. On or about March 7, 2013, Shadow entered into a Promissory Note Agreement with the Lender (the "Agreement") whereby the Lender made a short-term loan to Shadow, and Shadow agreed to pay according to the terms of the Agreement.
- B. Pursuant to the Agreement, Shadow is responsible for ensuring payment to Lender for the principal amount of \$100,000 and agreed to interest.
- C. As of March 31, 2015 no payments, either for principal or interest have been made to Lender per the Promissory Note Agreement.
- D. On approximately April 1, 2015, Shadow sold off the No Fear Asset to Mix 1 life Inc. (mixx) for cash and stock.
- E. The Parties now want to settle the promissory note due to the Lender in the form of Mix 1 Life Inc. stock.
- F. All Shares of stock will be restricted to open trading for 6 months from the date of issuance.
- G. Each Party represents, warrants and acknowledges to the others that it has satisfied itself and that it fully understands the terms, conditions, and implications of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### SETTLEMENT AGREEMENT

- 1. ***Incorporation.*** The foregoing recitals are incorporated into this Agreement by reference.
- 2. ***Payment to Lender.*** On or before June 15<sup>th</sup>, 2015, Shadow shall transfer to the Lender the total amount of 16,667 shares of Mix 1 Life Inc stock.
- 3. ***Satisfaction of Promissory Note.*** Upon receipt of the stock transfer referenced in Paragraph 2, the obligation from Shadow to Lender shall be deemed paid in full.
- 4. ***Mutual Releases.*** Except for the obligations undertaken in this Agreement, the Parties each completely and forever release and discharge the other and the others' representatives, agents, Lenders, owners, employees, heirs, predecessors, successors,



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DATE 8/10-15-15  
EXHIBIT 40  
Colette E. Ross  
CR No. 50658

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affiliated entities, trustees, successors, assignees, and attorneys, past and present, and each of them, from all claims, liabilities (including attorneys' fees, costs and expenses), and damages of any kind, which either now has, or which may hereafter accrue or otherwise be acquired based on the Agreement.

5. **No Third Party Beneficiaries.** The Parties do not intend to create any rights in third persons and the Parties agree that there are no third party beneficiaries to this Settlement Agreement. No person other than a Party to this Settlement Agreement may enforce this Settlement Agreement's terms, claim the right to benefit from its provisions, or rely upon the existence of its terms or conditions for its benefit.

6. **No Oral Amendment.** The provisions of this Settlement Agreement may not be waived, altered or amended, in whole or in part, without the written consent of the Parties.

7. **No Assignment of Rights.** The Parties represent and warrant that they have not assigned, conveyed, or transferred, or attempted or purported to assign, convey, or transfer, in any manner or degree whatsoever, to any person or entity, any rights, claims or remedies against the other Party, or any rights, claims or remedies released in this Settlement Agreement.

8. **Complete Agreement.** This Settlement Agreement constitutes the full and complete understanding of the Parties regarding the Agreement and fully supersedes any prior understanding or agreements, including any previous settlement agreements, whether oral or in writing on these subjects.

9. **Successors Bound.** This Settlement Agreement shall bind and benefit the Parties' respective heirs, successors, assigns, affiliates, officers, directors, agents, servants, employees and attorneys.

10. **Severability.** In the event that any term, covenant, or provision of this Settlement Agreement shall be held by a court of competent jurisdiction to be invalid or against public policy, the remaining provisions of this Settlement Agreement shall remain in full force and effect.

11. **Review of Settlement Agreement.** The Parties hereby represent and warrant to each other that each Party has had the opportunity to review this Settlement Agreement with counsel of its own choosing, that each Party has either reviewed this Settlement Agreement with counsel or has elected to forego such review, and that no Party shall deny the validity of this Settlement Agreement on the grounds that the Party did not understand the nature and consequences of this Settlement Agreement or did not have the advice of counsel.

12. **Warranted Capacity To Execute Agreement.** The Parties represent and warrant to each other that they have the capacity to execute this Settlement Agreement.

13. **Governing Law.** This Settlement Agreement shall be construed, interpreted, and enforced in accordance with the laws of the State of Arizona.

**14. Attorneys' Fees and Costs.** In the event that any Party commences any action or proceeding against another Party or Parties to this Settlement Agreement by reason of any breach or claimed breach of any provision, covenant or representation of this Settlement Agreement, or commences any action or proceeding in any way connected with this Settlement Agreement, or seeks a judicial declaration of rights hereunder, the Party prevailing in such action or proceeding shall be entitled to recover from the other Party the prevailing Party's reasonable attorneys' fees, all costs and litigation related expenses, including expert witness fees, and any costs or expenses of collection, including reasonable attorneys' fees.

**15. Construction of Terms.** The terms of this Settlement Agreement are contractual and not mere recitals, and no representations have been made which are not contained herein. This Settlement Agreement was drafted with the input and comments of all Parties. In the event of a dispute concerning the interpretation of any provision of this Settlement Agreement or any related document, the rule of construction to the effect that certain ambiguities are to be construed against the party drafting a document will not apply. All prior representations and understandings relied upon by the Parties have been incorporated into the text of this Settlement Agreement.

**16. Captions.** The captions used in this Settlement Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms of this Settlement Agreement or its intent.

**17. Waiver of Breach.** Any waiver by any Party of any breach of any kind, whether direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Settlement Agreement.

**18. Time of the Essence.** Time is of the essence of this Settlement Agreement and every provision hereof.

**19. Counterparts.** This Settlement Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties undersigned have entered into this Settlement Agreement as of the date first above written. The signatures of the parties appear below.

Dave Kelly

\_\_\_\_\_

Shadow Beverages and Snacks, LLC

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**PROMISSORY NOTE**  
(Term Loan)

\$250,000.00

Phoenix, Arizona  
April 5, 2013

FOR VALUE RECEIVED, the undersigned, *SHADOW BEVERAGES AND SNACKS, LLC*, an Arizona limited liability company ("Maker") promises to pay to *Rick Andersen* ("Lender"), the principal sum of Two Hundred Fifty Thousand Dollars and No Cents (\$250,000.00), together with interest.

The entire unpaid principal, all unpaid accrued interest and all other amounts payable hereunder shall be paid in full on or before April 5, 2014.

The actual rate of interest shall be 12% and paid on a quarterly basis. The quarterly payment will be \$7,500. All amounts payable hereunder shall be paid in lawful money of the United States.

Maker shall have the right at any time or from time to time to prepay all or a portion of the principal or interest without a prepayment charge or premium.

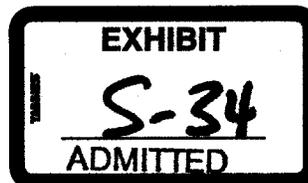
At the holder's option, any payments hereunder may be applied first to accrued interest and then to principal.

This Note shall become immediately due and payable at the option of the holder hereof without presentment or demand or any notice or Maker or any other person obligated hereon except as otherwise provided by the Term Loan Agreement of even date herewith between Maker and Lender (the "Loan Agreement"), upon the occurrence of any event of default in the payment of any of the principal or any interest hereon when due, upon default under the Loan Agreement, or upon default under any other agreement between Maker and Lender. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. Principal and interest shall be payable at the address of Lender, as set forth in the Loan Agreement or at such other place as the holder hereof may designate.

In the event any holder hereof utilizes the services of an attorney in attempting to collect the amounts due hereunder or to enforce the terms hereof or of any agreements related to this indebtedness, or if any holder hereof becomes party plaintiff or defendant in any legal proceeding for the recovery or protection of the indebtedness evidenced hereby, Maker, its successors and assigns, and any endorsers hereof shall repay to such holder hereof, on demand, all costs and expenses so incurred, including reasonable attorneys' fees, whether or not suit is brought, including those costs, expenses and attorneys' fees incurred after the filing by or against the Maker of any proceeding under any chapter of the Bankruptcy Code, Title 11 of the United States Code, or similar federal or state statute, and whether incurred in connection with the involvement of any holder hereof as creditor in such proceedings or otherwise.

Shadow Beverages - 4/1/2013

*Martina*  
EXHIBIT 41  
DATE 10-15-15  
Colette E. Ross  
CR No. 50658



SHADOW006358

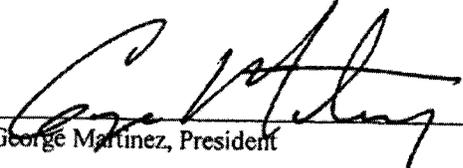
Except as otherwise provided in the Term Loan Agreement, Maker and all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally waive (i) demand, presentment for payment, notice of nonpayment, demand and dishonor, protest, notice of protest and all other notice except as otherwise provided herein, (ii) filing of suit, and (iii) diligence in collecting this Note. Maker, all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally agree that it will not be necessary for any holder hereof, in order to enforce payment of this Note, to first institute suit or exhaust its remedies against any maker or others liable herefor. Maker, all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally further consent to any extension or postponement of time of payment of this Note or any other indulgence with respect hereto, including but not limited to, the release of any party primarily or secondarily liable hereon without notice thereof to any of them.

**MAKER, ALL ENDORSERS AND ALL GUARANTORS, HEREBY SEVERALLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS NOTE, IT BEING ACKNOWLEDGED BY MAKER, ALL ENDORSERS AND ALL GUARANTORS THAT EACH SUCH PARTY MAKES THIS WAIVER OF TRIAL BY JURY KNOWINGLY AND VOLUNTARILY AND ONLY AFTER CONSULTATION WITH LEGAL COUNSEL.**

This Note shall be governed and construed in accordance with the laws of the State of Arizona.

This Promissory Note was executed and delivered by the undersigned and is effective as of the date first set forth above.

SHADOW BEVERAGES AND SNACKS, LLC, an  
Arizona limited liability company

By:   
George Martinez, President

By: \_\_\_\_\_

6/10/15

Wire Transfer Historical Search

11:14:01

**\*Incoming\* \*Posted\***

Acct#/Type [REDACTED] 6031 D      Wire Date: 4/03/13      Wire Seq#: 28400  
 Originator      {5000}  
 Account..... [REDACTED] 8920      9  
 Name..... RICK ANDERSEN  
 Address 1..... [REDACTED]  
 Address 2..... [REDACTED] NE [REDACTED]  
 Address 3.....

Transfer Amount.. \$250,000.00      {2000}  
 Analysis..... E      Fee/Counter... 100      Notice..... P  
 Entered By... SYSTEM      ype. S  
 Type/Subtype. 10 00      {1510}  
 Reference Number....0403      001829

Beneficiary      {4200}  
 Account..... [REDACTED] 6031      D  
 Name..... SHADOW BEVERAGES & SNACKS LLC  
 Address 1.....

F3=Exit      F8=Maintenance      F12=Previous      More...



ACC006936  
 SHADOW-8507

**LIMITED SECURITY AGREEMENT**

THIS LIMITED SECURITY AGREEMENT (this "**Agreement**"), is made and entered into on April 5, 2013 (the "**Effective Date**"), by and between SHADOW BEVERAGES AND SNACKS, LLC, an Arizona limited liability company ("**Borrower**"), and Rick Andersen, an individual ("**Lender**").

**RECITALS**

A. As of the Effective Date, Lender has made a term loan to Borrower in the amount of Two Hundred and Fifty Thousand and 00/100 Dollars (\$250,000.00) (the "**Loan**").

B. As security for the Loan, Borrower agrees to grant Lender a security interest in the hereinafter described Collateral.

**AGREEMENT**

NOW, THEREFORE, as an inducement to Lender to make the Loan to Borrower and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender hereby agree as follows:

1. **Assignment and Grant of Security Interest in Collateral.**

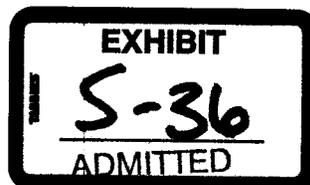
(a) In order to secure the Secured Obligations (hereinafter defined), Borrower does hereby sell, assign, transfer, convey, mortgage, pledge and grant a continuing limited security interest in Borrower's product inventory and accounts receivable in an amount equal to the outstanding balance of the Loan (the "**Collateral**"). The parties acknowledge that Borrower shall be entitled to grant security interests in Borrower's product inventory and accounts receivable to third parties without the prior consent of Lender; provided, however, that Borrower shall maintain Lender's security interest in the Collateral free and clear of any security interest granted to any third party(ies) and, from time to time, Lender may request documentation from Borrower which reflects that the Collateral is sufficient to secure the then outstanding obligations under the Loan.

2. **Indebtedness Secured.** This Agreement secures full and prompt payment and performance of all of the obligations of Borrower under and pursuant to that Promissory Note of near or even date herewith, in the amount of two hundred and fifty thousand and 00/100 Dollars (\$250,000.00) by Borrower in favor of Lender (the "**Note**"). The forgoing is hereinafter referred to as the "**Secured Obligations**."

3. **Representations, Warranties, and Covenants.** Borrower represents and warrants, and covenants, that:

(a) Borrower has not done anything which might prevent Lender from or limit Lender's exercise or enforcement of any of the provisions hereof;

(b) Borrower will permit and assist Lender to perfect the security interest herein granted to Lender by filing financing statements in such public offices as Lender deems appropriate to perfect the security interest herein granted to Lender;



*Martina* EXHIBIT 412  
DATE 10-15-13  
Colette E. Ross  
CR No. 50658

(c) Borrower will maintain the Collateral free and clear from any liens, security interests or encumbrances, except for the security interest granted hereby, and will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein; and

(d) The execution, delivery and performance of this Agreement are not in contravention of law or any indenture, agreement or undertaking to which Borrower is a party or is bound.

4. Events of Default; Remedies. Borrower shall be in default of its obligations under this Agreement if any of the following are not completely cured by Borrower within fifteen (15) days after notice thereof from Lender specifying such default (provided that if such default cannot reasonably be cured within such fifteen (15) day period, no Event of Default shall be deemed to exist if Borrower shall commence to cure such default within such fifteen (15) day period and proceed with due diligence to complete such cure; but in any event, such default must be cured within ninety (90) days after Lender's notice) (each, an "Event of Default"):

(a) Failure of Borrower to make any payment due under the Note within ten (10) days of when due and payable, whether as scheduled, by acceleration or otherwise;

(b) A breach by Borrower of any representation, warranty, covenant, agreement or obligation set forth in this Agreement;

(c) Borrower, pursuant to or within the meaning of Title 11, U.S. Code, or any similar federal, foreign or state law for the relief of Borrowers, (a) commences a voluntary case, (b) consents to the entry of an order for relief against it in an involuntary case, (c) consents to the appointment of a receiver, trustee, assignee, liquidator or similar official, (d) makes a general assignment for the benefit of its creditors, or (e) admits in writing that it is generally unable to pay its debts as they become due; or

(d) The dissolution or termination of Borrower.

Upon any and each and every such Event of Default and at any time thereafter, Lender may declare all Secured Obligations secured hereby immediately due and payable and may proceed to enforce payment of the same and exercise any and all rights and remedies provided by the Uniform Commercial Code as enacted in Arizona. Any notification of sale or other disposition of the Collateral required to be given by the Lender will be sufficient if given personally, or mailed by certified mail, not less than fifteen (15) days prior to the date on which such sale or other disposition will be made, to the address of the Borrower stated in Section 11.3 of the Note, and such notification shall be deemed reasonable notice. Proceeds received by Lender upon disposition of the Collateral shall be applied by Lender first towards payment of the Secured Obligations and any balance remaining after payment in full of the Secured Obligations shall be paid to whomever shall be so entitled. Borrower shall be liable for any deficiency in the event the Secured Obligations are not paid in full from said proceeds.

5. Liability. Borrower agrees that the Collateral is being assigned to the Lender solely as security for the payment and performance of the Secured Obligations, and that Lender, by its acceptance hereof, shall not be deemed to have become a member of Borrower or assumed or otherwise become liable for any of the obligations or liabilities of Borrower, whether provided for by the terms thereof, arising by operation of law, or otherwise.

6. Term of Agreement. This Agreement shall commence as of the day and year first above written and shall continue in full force and effect until all of the Secured Obligations secured hereby have been indefeasibly paid in full.

7. Successors and Assigns. The terms, covenants and conditions contained herein shall bind Borrower and its successors and assigns and shall inure to the benefit of Lender and its successors and assigns.

8. No Waiver. No failure or delay on the part of the Lender to exercise any rights hereunder shall operate as a waiver of such right, nor shall any single or partial exercise by the Lender of any right hereunder preclude any other or further exercise thereof, or the exercise of any other right. Each and every right and remedy granted to the Lender hereunder, or under any document delivered hereunder or in connection herewith, or allowed to the Lender in law or in equity, shall be deemed cumulative and may be exercised from time to time either singly or concurrently.

9. Notices. Each notice, demand, election or request provided for or permitted to be given pursuant to this Agreement shall be given in accordance with Section 11.3 of the Note.

10. Governing Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by, and construed, interpreted and enforced in all respects in accordance with the laws of the State of Arizona.

11. Entire Agreement. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and any representation, inducement, promise or agreement between the parties with respect to the subject matter of this Agreement that is not embodied herein shall be null and void and of no further force or effect.

12. Amendment. This Agreement may not be modified, amended or otherwise altered except by written agreement executed by Borrower and Lender.

13. Counterparts; Delivery. This Agreement may be executed in counterparts, each of which shall be deemed an original, but together they shall constitute one and the same agreement. This Agreement may be executed and delivered by facsimile or PDF.

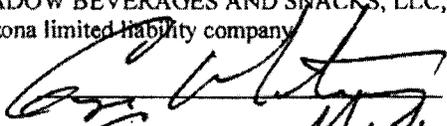
14. Severability. In the event any provision contained in this Agreement is invalid, illegal or unenforceable for any reason or to any extent, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby, but instead shall be enforceable to the maximum extent permitted by law.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the Effective Date.

**BORROWER**

SHADOW BEVERAGES AND SNACKS, LLC, an  
Arizona limited liability company

By: 

Name: George Martinez

Title: President

**LENDER**

---

**PROMISSORY NOTE**  
(Term Loan)

\$250,000.00

Phoenix, Arizona  
April 17, 2014

FOR VALUE RECEIVED, the undersigned, *SHADOW BEVERAGES AND SNACKS, LLC*, an Arizona limited liability company ("Maker") promises to pay to *Legacy Insurance Services, Inc* (██████████ *NE* ██████████) ("Lender"), the principal sum of Two Hundred Fifty Thousand Dollars and No Cents (\$250,000.00), together with interest.

The entire unpaid principal, all unpaid accrued interest and all other amounts payable hereunder shall be paid in full on or before May 19, 2014.

The actual interest shall be \$20,000 for the term of this agreement. Principal and interest will be paid on the due date of this agreement. All amounts payable hereunder shall be paid in lawful money of the United States.

Maker shall have the right at any time or from time to time to prepay all or a portion of the principal or interest without a prepayment charge or premium.

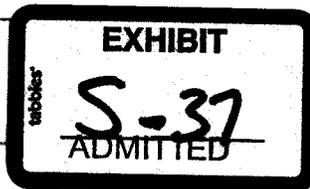
At the holder's option, any payments hereunder may be applied first to accrued interest and then to principal.

This Note shall become immediately due and payable at the option of the holder hereof without presentment or demand or any notice or Maker or any other person obligated hereon except as otherwise provided by the Term Loan Agreement of even date herewith between Maker and Lender (the "Loan Agreement"), upon the occurrence of any event of default in the payment of any of the principal or any interest hereon when due, upon default under the Loan Agreement, or upon default under any other agreement between Maker and Lender. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. Principal and interest shall be payable at the address of Lender, as set forth in the Loan Agreement or at such other place as the holder hereof may designate.

In the event any holder hereof utilizes the services of an attorney in attempting to collect the amounts due hereunder or to enforce the terms hereof or of any agreements related to this indebtedness, or if any holder hereof becomes party plaintiff or defendant in any legal proceeding for the recovery or protection of the indebtedness evidenced hereby, Maker, its successors and assigns, and any endorsers hereof shall repay to such holder hereof, on demand, all costs and expenses so incurred, including reasonable attorneys' fees, whether or not suit is brought, including those costs, expenses and attorneys' fees incurred after the filing by or against the Maker of any proceeding under any chapter of the Bankruptcy Code, Title 11 of the United States Code, or similar federal or state statute, and whether incurred in connection with the involvement of any holder hereof as creditor in such proceedings or otherwise.

Shadow Beverages -- 4/17/2014

*Marketing* EXHIBIT *63*  
DATE *2-10-15-15*  
Colette E. Ross  
CR No. 50858



SHADOW007502

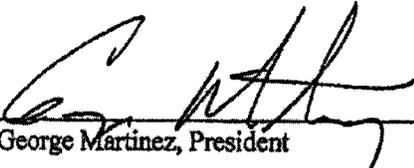
Except as otherwise provided in the Term Loan Agreement, Maker and all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally waive (i) demand, presentment for payment, notice of nonpayment, demand and dishonor, protest, notice of protest and all other notice except as otherwise provided herein, (ii) filing of suit, and (iii) diligence in collecting this Note. Maker, all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally agree that it will not be necessary for any holder hereof, in order to enforce payment of this Note, to first institute suit or exhaust its remedies against any maker or others liable herefor. Maker, all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally further consent to any extension or postponement of time of payment of this Note or any other indulgence with respect hereto, including but not limited to, the release of any party primarily or secondarily liable hereon without notice thereof to any of them.

**MAKER, ALL ENDORSERS AND ALL GUARANTORS, HEREBY SEVERALLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS NOTE, IT BEING ACKNOWLEDGED BY MAKER, ALL ENDORSERS AND ALL GUARANTORS THAT EACH SUCH PARTY MAKES THIS WAIVER OF TRIAL BY JURY KNOWINGLY AND VOLUNTARILY AND ONLY AFTER CONSULTATION WITH LEGAL COUNSEL.**

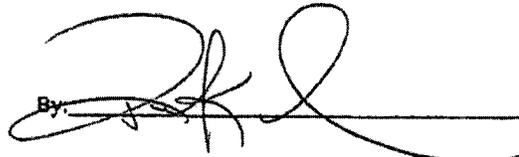
This Note shall be governed and construed in accordance with the laws of the State of Arizona.

This Promissory Note was executed and delivered by the undersigned and is effective as of the date first set forth above.

SHADOW BEVERAGES AND SNACKS, LLC, an  
Arizona limited liability company

By: 

George Martinez, President

By: 

6/15/15

Wire Transfer Historical Search

10:02:25

**\*Incoming\* \*Posted\***

Acct#/Type [REDACTED] 6031 D Wire Date: 4/17/14 Wire Seq#: 53940  
Originator {5000}

Account..... [REDACTED] 6443 D  
Name..... LEGACY INS SVCS INC OF AMERICA  
Address 1..... MIRACLE VILLAGE CTR  
Address 2..... [REDACTED]  
Address 3..... [REDACTED] NE [REDACTED]

Transfer Amount.. \$250,000.00 {2000}  
Analysis..... E Fee/Counter... 100 Notice..... P  
Entered By... SYSTEM ype. S  
Type/Subtype. 10 00 {1510}  
Reference Number....0417 001414

Beneficiary {4200}  
Account..... [REDACTED] 6031 D  
Name..... SHADOW BEVERAGES & SNACKS LLC  
Address 1.....

More...

F3=Exit

F8=Maintenance

F12=Previous



ACC007925  
SHADOW-8507

**LOAN AGREEMENT**

THIS LOAN AGREEMENT (this "Agreement") is made and entered into this 6<sup>th</sup> day of December, 2013, by and between SHADOW BEVERAGES AND SNACKS, LLC, an Arizona limited liability company ("Borrower"), with an address of [REDACTED] Arizona [REDACTED] and Catherine Leyen and Don Johnson, ("Lender"), with an address of [REDACTED] AZ [REDACTED] or [REDACTED] AZ [REDACTED]

1. The Loan and Promissory Note. Subject to the terms and conditions hereof, the Lender agrees to extend a single advance loan to the Borrower in the principal amount of TWENTY FIVE THOUSAND AND 00/100 DOLLARS (\$25,000.00) (the "Loan"). The Loan shall be used by the Borrower for the purposes as described in Section 2 of this Agreement.

2. Use of Loan Proceeds. Borrower shall use the proceeds of the Loan for the sole purpose of producing forty thousand (40,000) 12-count cases containing sixteen (16) ounce cans of No Fear energy drinks (each a "Case"). Specifically, the Loan will be used for payment to Wild Flavor House for the brand concentrate required to produce forty thousand (40,000) cases of product and for one forty thousand (40,000) case production run by PNB Production.

3. Loan Consideration. As consideration for the Loan, the Lender shall receive one dollar (\$1.00) for each Case that Borrower sells until the Loan is repaid (the "Loan Consideration") from this production run. This loan amount will produce 7,000 cases. Lender will receive \$5,000 as consideration. Borrower shall pay the applicable Loan Consideration to Lender with each Loan Payment (as defined below).

4. Security Interest. As security for the Loan, the Borrower hereby assigns and grants to the Lender a security interest in all of the Borrower's rights to the accounts receivable on the Cases until the Loan is paid in full.

5. Loan and Loan Consideration Payments. Commencing two (2) weeks after Borrower's initial receipt of proceeds from its sale of the Cases ("Sale Proceeds") Borrower shall begin repaying the Loan and paying the Loan Consideration in bi-monthly installments.

6. Notice. All notices, requests, demands, claims and other communications hereunder shall be in writing and sent by registered or certified mail, postage prepaid, addressed to the party intended to be notified, at the addresses set forth above. Either party may, at any time, or from time to time, notify the other in writing of a substitute address for that above set forth and, thereafter, notices shall be directed to the substitute address. Notice given as aforesaid shall be sufficient service thereof and shall be deemed given as of the day received, as evidenced by the return receipt of the registered or certified mail,

7. Miscellaneous. In all respects, including all matters of construction, validity and performance, this Agreement shall be governed by, and construed and enforced in accordance with the internal laws of the State of Arizona applicable to contracts made and performed in that state (without regard to the choice of law or conflicts of law provisions thereof). This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns. The Borrower shall, upon the Lender's request, execute and deliver to the Lender such other documents, certificates, instruments and other writings and take such other actions as may be necessary or desirable in order to consummate, implement or further validate the transactions contemplated by this Agreement.

SPH-2107114-1



*Martinez* EXHIBIT *S3*  
DATE *10-15-15*  
Colette E. Ross  
CR No. 50658

SHADOW006897

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be duly executed by their duly authorized officers the day and year first above written.

LENDER:

\_\_\_\_\_

By: Catherine Leyden  
Name: Catherine Leyden  
Title: Ravenstead Enterprises, LLC  
Mg. Mmbr

BORROWER:

SHADOW BEVERAGES AND SNACKS, LLC,  
an Arizona limited liability company

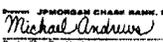
By: [Signature]  
Name: George Martinez  
Title: President / COO

<b>Remote Deposit</b>	<b>Credit</b>
Shadow Beverages & Snacks LLC Shadow Beverages & Snacks LLC ██████████	Date: 12/9/2013 Items: 1 Amount: \$25,000.00 Batch ID: 1006750673 Account ID: 35240 92784 Acct Num: ██████████ 6031

Check: 0 Amount: \$25,000.00 Date: 12/9/2013  
Run: 95, Batch: 7, Seq: 99

<b>Credit</b>
---------------

Check: 0 Amount: \$25,000.00 Date: 12/9/2013  
Run: 95, Batch: 7, Seq: 99

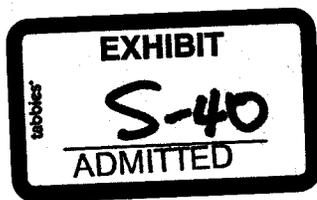
<b>CHASE</b>		<b>CASHIER'S CHECK</b>	
Remitter: DONALD J JOHNSON JR AND CATHERINE LEYEN		Date: 12/08/2013	
Pay To The Order Of: SHADOW BEVERAGES		9248606201	
Pay: TWENTY FIVE THOUSAND DOLLARS AND 00 CENTS		\$\$\$ 25,000.00 **	
 Michael Andrews Senior Vice President Chase Bank, N.A.		JPMORGAN CHASE BANK, N.A. 71026740	

Check: 9248606201 Amount: \$25,000.00 Date: 12/9/2013  
Run: 95, Batch: 7, Seq: 100

71026740 FIRST FIDELITY BANK - OK OKLAHOMA CITY, OK 6031	SHADOW BEVERAGES & SNACKS LLC 6031
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Check: 9248606201 Amount: \$25,000.00 Date: 12/9/2013  
Run: 95, Batch: 7, Seq: 100

ACC007657  
SHADOW-8507



**PROMISSORY NOTE**  
(Term Loan)

\$50,000.00

Phoenix, Arizona  
May 9, 2014

FOR VALUE RECEIVED, the undersigned, **SHADOW BEVERAGES AND SNACKS, LLC**, an Arizona limited liability company ("Maker") promises to pay to Ravenstead Enterprises, LLC ("Lender"), the principal sum of Fifty Thousand Dollars and No Cents (\$50,000.00), together with interest.

The entire unpaid principal, all unpaid accrued interest and all other amounts payable hereunder shall be paid in full on or before September 8, 2014.

An interest amount of \$10,000.00 will be paid for the short term loan on the date the loan is due to the lender. All amounts payable hereunder shall be paid in lawful money of the United States.

Maker shall have the right at any time or from time to time to prepay all or a portion of the principal or interest without a prepayment charge or premium.

At the holder's option, any payments hereunder may be applied first to accrued interest and then to principal.

In addition to the interest earned on the principal amount as stated in this agreement the lender will receive warrants for this agreement. Warrants granted to the lender will be in the amount of 24,000 shares at a price of \$4.20 per share. Warrants will have a 5 year exercise period.

This Note shall become immediately due and payable at the option of the holder hereof without presentment or demand or any notice or Maker or any other person obligated hereon except as otherwise provided by the Term Loan Agreement of even date herewith between Maker and Lender (the "Loan Agreement"), upon the occurrence of any event of default in the payment of any of the principal or any interest hereon when due, upon default under the Loan Agreement, or upon default under any other agreement between Maker and Lender. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. Principal and interest shall be payable at the address of Lender, as set forth in the Loan Agreement or at such other place as the holder hereof may designate.

In the event any holder hereof utilizes the services of an attorney in attempting to collect the amounts due hereunder or to enforce the terms hereof or of any agreements related to this indebtedness, or if any holder hereof becomes party plaintiff or defendant in any legal proceeding for the recovery or protection of the indebtedness evidenced hereby, Maker, its successors and assigns, and any endorsers hereof shall repay to such holder hereof, on demand, all costs and expenses so incurred, including reasonable attorneys' fees, whether or not suit is brought, including those costs, expenses and attorneys' fees incurred after the filing by or against the Maker of any proceeding under any chapter of the Bankruptcy Code, Title 11 of the United States Code, or similar

Shadow Beverages and Snacks



Martinez EXHIBIT 65  
DATE 10-15-15  
Colette E. Ross  
CR No. 50658

SHADOW006891

federal or state statute, and whether incurred in connection with the involvement of any holder hereof as creditor in such proceedings or otherwise.

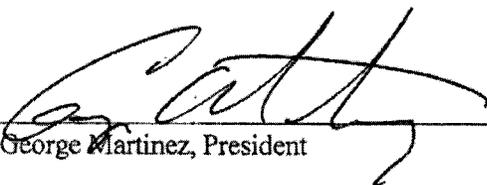
Except as otherwise provided in the Term Loan Agreement, Maker and all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally waive (i) demand, presentment for payment, notice of nonpayment, demand and dishonor, protest, notice of protest and all other notice except as otherwise provided herein, (ii) filing of suit, and (iii) diligence in collecting this Note. Maker, all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally agree that it will not be necessary for any holder hereof, in order to enforce payment of this Note, to first institute suit or exhaust its remedies against any maker or others liable herefor. Maker, all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally further consent to any extension or postponement of time of payment of this Note or any other indulgence with respect hereto, including but not limited to, the release of any party primarily or secondarily liable hereon without notice thereof to any of them.

**MAKER, ALL ENDORSERS AND ALL GUARANTORS, HEREBY SEVERALLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS NOTE, IT BEING ACKNOWLEDGED BY MAKER, ALL ENDORSERS AND ALL GUARANTORS THAT EACH SUCH PARTY MAKES THIS WAIVER OF TRIAL BY JURY KNOWINGLY AND VOLUNTARILY AND ONLY AFTER CONSULTATION WITH LEGAL COUNSEL.**

This Note shall be governed and construed in accordance with the laws of the State of Arizona.

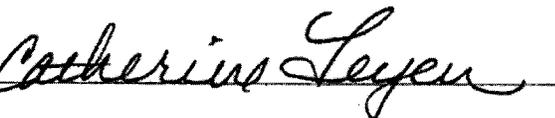
This Promissory Note was executed and delivered by the undersigned and is effective as of the date first set forth above.

SHADOW BEVERAGES AND SNACKS, LLC, an  
Arizona limited liability company

By:   
George Martinez, President

Ravensteed Enterprises, LLC

Address:   
 AZ 

By: 

<b>Remote Deposit</b>	<b>Credit</b>
<b>Shadow Beverages &amp; Snacks LLC</b> Shadow Beverages & Snacks LLC	Date: 5/12/2014
	Items: 3
	Amount: \$58,401.25
	Batch ID: 1247818249
	Account ID: [REDACTED]
	Acct Num: [REDACTED] 6031

<b>Credit</b>
---------------

Check: 0 Amount: \$58,401.25 Date: 5/12/2014  
Run: 95, Batch: 7, Seq: 205

Check: 0 Amount: \$58,401.25 Date: 5/12/2014  
Run: 95, Batch: 7, Seq: 205

<b>RAVENSTEED ENTERPRISES LLC 12-13</b>	DATE: <u>May 9, 2014</u>	99
PAY TO THE ORDER OF <u>Shadow Beverages &amp; Snacks LLC</u>	\$ <u>50,000.00</u>	
<u>Fifty thousand dollars and 00/100</u>	DOLLARS	
<b>CHASE</b> JPMorgan Chase Bank, N.A. www.chase.com	<i>Catherine Leyen</i>	

For Deposit Only Shadow Beverages & Snacks LLC First Fidelity Bank - OK 1891 5/12/2014
--

Check: 0 Amount: \$50,000.00 Date: 5/12/2014  
Run: 95, Batch: 7, Seq: 206

Check: 0 Amount: \$50,000.00 Date: 5/12/2014  
Run: 95, Batch: 7, Seq: 206

<b>ACE VENDING, INC.</b>	Webb Fargo Bank, N.A. Phoenix, AZ 85003	22945
PAY TO THE ORDER OF <u>Shadow Beverages &amp; Snacks LLC</u>	AMOUNT	
<u>Two Thousand One Hundred Sixty-One and 25/100 Dollars</u>	May 8, 2014 *****2,161.25	
<b>CHASE</b> JPMorgan Chase Bank, N.A. Phoenix, AZ 85040-4805	<i>[Signature]</i>	

For Deposit Only Shadow Beverages & Snacks LLC First Fidelity Bank - OK 1891 5/12/2014
--

Check: 22945 Amount: \$2,161.25 Date: 5/12/2014  
Run: 95, Batch: 7, Seq: 207

Check: 22945 Amount: \$2,161.25 Date: 5/12/2014  
Run: 95, Batch: 7, Seq: 207

<b>SUNSET WHOLESALE WEBB, LLC</b>	JOHNSON BANK	031398
PAY TO THE ORDER OF <u>SHADOW BEVERAGES AND SNACKS</u>	DATE: 5/12/2014	
<u>Six Thousand Two Hundred Forty and 00/100</u>	\$ <u>6,240.00</u>	
<b>CHASE</b> JPMorgan Chase Bank, N.A. Phoenix, AZ 85002-4171	<i>[Signature]</i>	

For Deposit Only Shadow Beverages & Snacks LLC First Fidelity Bank - OK 1891 5/12/2014
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Check: 31398 Amount: \$6,240.00 Date: 5/12/2014  
Run: 95, Batch: 7, Seq: 208

Check: 31398 Amount: \$6,240.00 Date: 5/12/2014  
Run: 95, Batch: 7, Seq: 208



ACC008008  
SHADOW-8507

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

GENERAL NUTRITION CORPORATION,

Plaintiff,

v.

SHADOW BEVERAGES AND SNACKS,  
LLC,

Defendant.

Civil Action No. 2:13-cv-01728-CRE

JUDGMENT

Defendant Shadow Beverages and Snacks, LLC, having failed to plead or otherwise defend in this action, and default having heretofore been entered; upon plaintiff General Nutrition Corporation's request for default judgment; it is hereby ORDERED, ADJUDGED and DECREED that Plaintiff General Nutrition Corporation recover of Defendant Shadow Beverages and Snacks, LLC, the sum of \$1,400,000, along with post-judgment interest as provided by law.

Dated: 6/13/14

*At Test. J.*

*Mutiny* EXHIBIT 55  
DATE 7-15-15  
Colette E. Ross  
CR No. 50658

ACC000464  
SHADOW-8507



**PROMISSORY NOTE**  
(Term Loan)

\$30,000.00

Phoenix, Arizona  
January 13, 2014

FOR VALUE RECEIVED, the undersigned, **SHADOW BEVERAGES AND SNACKS, LLC**, an Arizona limited liability company ("Maker") promises to pay to Jimmy Stephensen ("Lender"), the principal sum of Thirty Thousand Dollars and No Cents (\$30,000.00), together with interest.

The entire unpaid principal, all unpaid accrued interest and all other amounts payable hereunder shall be paid in full on or before April 13<sup>th</sup>, 2014. The Lender holds the rights to call the note due and payable with a 30 day written notice. Membership shares granted will be pro-rated based on the term of the agreement.

An interest amount of \$2,500 will be paid for the short term loan on the date the loan is due to the lender. All amounts payable hereunder shall be paid in lawful money of the United States.

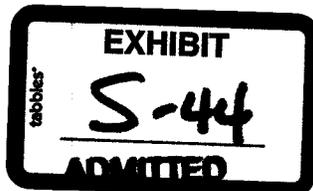
Maker shall have the right at any time or from time to time to prepay all or a portion of the principal or interest without a prepayment charge or premium.

At the holder's option, any payments hereunder may be applied first to accrued interest and then to principal.

This Note shall become immediately due and payable at the option of the holder hereof without presentment or demand or any notice or Maker or any other person obligated hereon except as otherwise provided by the Term Loan Agreement of even date herewith between Maker and Lender (the "Loan Agreement"), upon the occurrence of any event of default in the payment of any of the principal or any interest hereon when due, upon default under the Loan Agreement, or upon default under any other agreement between Maker and Lender. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. Principal and interest shall be payable at the address of Lender, as set forth in the Loan Agreement or at such other place as the holder hereof may designate.

In the event any holder hereof utilizes the services of an attorney in attempting to collect the amounts due hereunder or to enforce the terms hereof or of any agreements related to this indebtedness, or if any holder hereof becomes party plaintiff or defendant in any legal proceeding for the recovery or protection of the indebtedness evidenced hereby, Maker, its successors and assigns, and any endorsers hereof shall repay to such holder hereof, on demand, all costs and expenses so incurred, including reasonable attorneys' fees, whether or not suit is brought, including those costs, expenses and attorneys' fees incurred after the filing by or against the Maker of any proceeding under any chapter of the Bankruptcy Code, Title 11 of the United States Code, or similar federal or state statute, and whether incurred in connection with the involvement of any holder hereof as creditor in such proceedings or otherwise.

Shadow Beverages and Snacks



Marking EXHIBIT *56*  
DATE *10-15-15*  
Colette E. Ross  
CR No. 50658

SHADOW007258

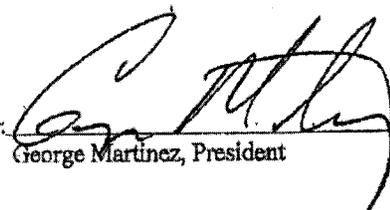
Except as otherwise provided in the Term Loan Agreement, Maker and all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally waive (i) demand, presentment for payment, notice of nonpayment, demand and dishonor, protest, notice of protest and all other notice except as otherwise provided herein, (ii) filing of suit, and (iii) diligence in collecting this Note. Maker, all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally agree that it will not be necessary for any holder hereof, in order to enforce payment of this Note, to first institute suit or exhaust its remedies against any maker or others liable herefor. Maker, all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally further consent to any extension or postponement of time of payment of this Note or any other indulgence with respect hereto, including but not limited to, the release of any party primarily or secondarily liable hereon without notice thereof to any of them.

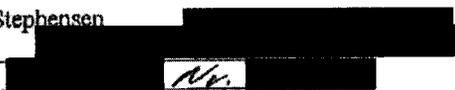
MAKER, ALL ENDORSERS AND ALL GUARANTORS, HEREBY SEVERALLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS NOTE, IT BEING ACKNOWLEDGED BY MAKER, ALL ENDORSERS AND ALL GUARANTORS THAT EACH SUCH PARTY MAKES THIS WAIVER OF TRIAL BY JURY KNOWINGLY AND VOLUNTARILY AND ONLY AFTER CONSULTATION WITH LEGAL COUNSEL.

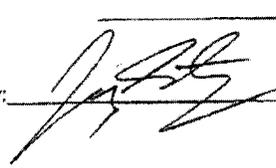
This Note shall be governed and construed in accordance with the laws of the State of Arizona.

This Promissory Note was executed and delivered by the undersigned and is effective as of the date first set forth above.

SHADOW BEVERAGES AND SNACKS, LLC, an  
Arizona limited liability company

By:   
George Martinez, President

Jimmy Stephensen  
Address 

By: 

6/12/15

Wire Transfer Historical Search

16:16:04

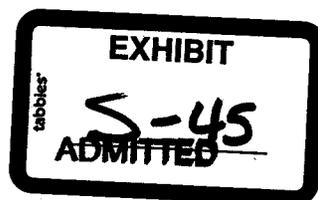
\*Incoming\* \*Posted\*

Acct#/Type [REDACTED] 6031 D Wire Date: 1/13/14 Wire Seq#: 46589  
 Originator {5000}  
 Account..... [REDACTED] 0340 D  
 Name..... N JAMES STEPHENSEN  
 Address 1..... [REDACTED]  
 Address 2..... [REDACTED] NV [REDACTED]  
 Address 3.....

Transfer Amount.. \$30,000.00 {2000}  
 Analysis..... E Fee/Counter... 100 Notice..... P  
 Entered By... SYSTEM ype. S  
 Type/Subtype. 10 00 {1510}  
 Reference Number...0113 001456

Beneficiary {4200}  
 Account..... [REDACTED] 6031 D  
 Name..... SHADOW BEVERAGES AND SNACKS LLC  
 Address 1.....

F3=Exit F8=Maintenance F12=Previous More...



PROMISSORY NOTE  
(Term Loan)

\$50,000.00

Phoenix, Arizona  
January 15, 2014

FOR VALUE RECEIVED, the undersigned, *SHADOW BEVERAGES AND SNACKS, LLC*, an Arizona limited liability company ("Maker") promises to pay to Jason and Robbyn Salganick ("Lender"), the principal sum of Fifty Thousand Dollars and No Cents (\$50,000.00), together with interest.

The entire unpaid principal, all unpaid accrued interest and all other amounts payable hereunder shall be paid in full on or before July 15, 2014. The Lender holds the rights to call the note due and payable with a 30 day written notice.

An interest amount of \$7,500 will be paid for the short term loan on the date the loan is due to the lender. All amounts payable hereunder shall be paid in lawful money of the United States.

Residual payment of \$ .50 per case for all cases Pepsi will purchase during the term of this agreement (Capped at \$12,500).

Maker shall have the right at any time or from time to time to prepay all or a portion of the principal or interest without a prepayment charge or premium.

At the holder's option, any payments hereunder may be applied first to accrued interest and then to principal.

This Note shall become immediately due and payable at the option of the holder hereof without presentment or demand or any notice or Maker or any other person obligated hereon except as otherwise provided by the Term Loan Agreement of even date herewith between Maker and Lender (the "Loan Agreement"), upon the occurrence of any event of default in the payment of any of the principal or any interest hereon when due, upon default under the Loan Agreement, or upon default under any other agreement between Maker and Lender. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. Principal and interest shall be payable at the address of Lender, as set forth in the Loan Agreement or at such other place as the holder hereof may designate.

In the event any holder hereof utilizes the services of an attorney in attempting to collect the amounts due hereunder or to enforce the terms hereof or of any agreements related to this indebtedness, or if any holder hereof becomes party plaintiff or defendant in any legal proceeding for the recovery or protection of the indebtedness evidenced hereby, Maker, its successors and assigns, and any endorsers hereof shall repay to such holder hereof, on demand, all costs and expenses so incurred, including reasonable attorneys' fees, whether or not suit is brought, including those costs, expenses and attorneys' fees incurred after the filing by or against the Maker of any proceeding under any chapter of the Bankruptcy Code, Title 11 of the United States Code, or similar federal or state statute, and whether incurred in connection with the involvement of any holder hereof as creditor in such proceedings or otherwise.

Shadow Beverages and Snacks



*Martinez* EXHIBIT *57*  
DATE *10-15-15*  
Colette E. Ross  
CR No. 50658

SHADOW007179

Except as otherwise provided in the Term Loan Agreement, Maker and all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally waive (i) demand, presentment for payment, notice of nonpayment, demand and dishonor, protest, notice of protest and all other notice except as otherwise provided herein, (ii) filing of suit, and (iii) diligence in collecting this Note. Maker, all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally agree that it will not be necessary for any holder hereof, in order to enforce payment of this Note, to first institute suit or exhaust its remedies against any maker or others liable herefor. Maker, all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally further consent to any extension or postponement of time of payment of this Note or any other indulgence with respect hereto, including but not limited to, the release of any party primarily or secondarily liable hereon without notice thereof to any of them.

MAKER, ALL ENDORSERS AND ALL GUARANTORS, HEREBY SEVERALLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS NOTE, IT BEING ACKNOWLEDGED BY MAKER, ALL ENDORSERS AND ALL GUARANTORS THAT EACH SUCH PARTY MAKES THIS WAIVER OF TRIAL BY JURY KNOWINGLY AND VOLUNTARILY AND ONLY AFTER CONSULTATION WITH LEGAL COUNSEL.

This Note shall be governed and construed in accordance with the laws of the State of Arizona.

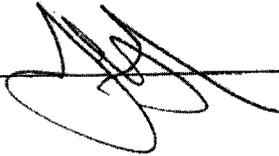
This Promissory Note was executed and delivered by the undersigned and is effective as of the date first set forth above.

SHADOW BEVERAGES AND SNACKS, LLC, an  
Arizona limited liability company

By:   
George Martinez, President 1.16.14

Address: 

ACCEPTED

By: 

- 2 -

Shadow Beverages and Snacks

SHADOW007180

<b>Remote Deposit</b>	<b>Credit</b>
<b>Shadow Beverages &amp; Snacks LLC</b> Shadow Beverages & Snacks LLC	Date: 1/16/2014
██████████	Items: 1
██████████	Amount: \$50,000.00
██████████	Batch ID: 1062460362
██████████	Account ID: ██████████
██████████	Acct Num: ██████████6031

Check: 0 Amount: \$50,000.00 Date: 1/16/2014  
Run: 95, Batch: 6, Seq: 37

<b>Credit</b>
---------------

Check: 0 Amount: \$50,000.00 Date: 1/16/2014  
Run: 95, Batch: 6, Seq: 37

<b>THE RJS TRUST</b> JASON A. SALGANICK TRUSTEE ROBBYN A. SALGANICK TRUSTEE	1108 91-401/1121 91
██████████	Date: 1-15-13
Pay to the Order of <u>Shadow Beverages + Snacks</u>	\$ 50,000.00
<u>Fifty thousand dollars and 00/100</u>	Dollars @
<b>Arizona</b> Bank & Trust Member FDIC	
For <u>444 cases investment</u>	

Check: 0 Amount: \$50,000.00 Date: 1/16/2014  
Run: 95, Batch: 6, Seq: 38

For Deposit Only Shadow Beverages & Snacks LLC First Fidelity Bank - OK ██████████6031 ██████████2691 1/16/2014
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Check: 0 Amount: \$50,000.00 Date: 1/16/2014  
Run: 95, Batch: 6, Seq: 38



**ACC007729**  
SHADOW-8507

## Unconditional Personal Guaranty

### Arizona Limited Liability Company

Whereas, Shadow Beverages and Snacks LLC, a                      (hereinafter called the "Borrower"), desires to transact business with and obtain credit or a continuation of credit from Jason A. Seiganick (hereinafter called "Creditor");

Whereas, Creditor is unwilling to extend or continue credit to the Borrower unless it receives an unconditional, absolute and irrevocable guaranty of the undersigned covering the Indebtedness to Creditor, as hereinafter defined.

Now, therefore, in consideration of the premises and of other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to induce Creditor from time to time, in its discretion, to extend or continue credit to the Borrower, the undersigned, George Martinez (hereinafter "Guarantor"), agrees, with or without notice or demand, to reimburse Creditor, to the extent that such reimbursement is not made by the Borrower, for all expenses (including counsel fees) incurred by Creditor in connection with any of the Indebtedness, as defined below, as and when due.

The word "Indebtedness" means all of Borrower's payment obligations pursuant to any agreement or contract entered into with Creditor, including all principal, interest, late charges, and collection costs and expenses relating to the Indebtedness.

In the event that any proceeding under bankruptcy, or any other laws now or hereafter in effect for relief of debtors, is filed by or against Borrower, or for the appointment of a receiver for Borrower, or any of its property, or if Borrower shall make an assignment for the benefit of creditors or shall discontinue business or become insolvent, all Indebtedness shall, for the purpose of this Guaranty, at Creditor's election, become immediately due and payable. Guarantor consents and agrees that the bankruptcy of Borrower shall not relieve him of the obligations assumed hereunder.

All monies available to Creditor for application in payment or reduction of the Liabilities of the Borrower may be applied by Creditor in such manner and in such amounts and at such time or times as it may see fit to the payment or reduction of such of the Indebtedness as Creditor may elect, and the obligations pursuant to this Guaranty shall not be affected by any surrender or release by the Borrower of any other security held by it for any claim hereby guaranteed.

Guarantor hereby waives (a) notice of acceptance of this Guaranty and of extensions of credit by Creditor to the Borrower (b) presentment and demand for payment of any of the Indebtedness (c) protest and notice of dishonor or default to the undersigned or to any other party with respect to any of the Indebtedness; (d) all other notices to which the undersigned might otherwise be entitled; and (e) any demand for payment under this Guaranty.

Guarantor hereby expressly and irrevocably releases and waives any and all claims arising from this Guaranty, which Guarantor may have against Borrower, including but not limited to, future contingent claims based on subrogation, indemnity, reimbursement, contribution or contract. Guarantor also waives any and all rights or defenses arising by reason of any "one-action" or "anti-deficiency" law or any other law which may prevent Creditor from bringing any action herein, any defense asserted by Borrower on the underlying debt or any rights to claim discharge of the Indebtedness, including but not limited to, failure of consideration, estoppel, statute of frauds, accord and satisfaction and usury. Guarantor warrants and agrees that each of these waivers is made with Guarantor's full knowledge of its significance and consequences.

Guarantor represents and warrants to Creditor that Guarantor has not, and will not, sell, lease, assign, encumber, transfer or otherwise dispose of all, or substantially all, of Guarantor's assets, or any interest therein, to the extent that such action might in any way affect this Guaranty.

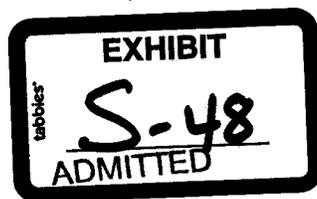
This is a guaranty of payment and not of collection and Guarantor further waives any right to require that any action be brought against the Borrower or any other person or to require that resort be had to any security or to any balance of any deposit account or credit on the books of Creditor in favor of the Borrower or any other person.

No delay on the part of Creditor in exercising any rights hereunder or failure to exercise the same shall operate as a waiver of such rights; no notice to or demand on the undersigned shall be deemed to be a waiver of the obligations of the undersigned or of the right of Creditor to take further action without notice or demand as provided herein; not in any event shall any modifications or waiver of the provisions of this Guaranty be effective unless in writing nor shall any such waiver be applicable except in the specific instance for which given.

This Guaranty shall be jointly and severally binding on Guarantor and his heirs, personal representatives and assigns.

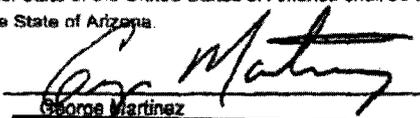
This writing is intended by the parties to be a final expression of the guaranty relationship between Guarantor and Creditor. There are no promises, terms, conditions or obligations other than those contained in this agreement. No course of dealing, course of performance or trade usage, and no parole evidence shall be used to supplement or modify any terms contained herein.

Martinez  
EXHIBIT 58  
DATE 10-15-15  
Colette E. Ross  
CR No. 50658



This Guaranty is, and shall be deemed to be, a contract entered into under and pursuant to the laws of the state of Arizona and shall be in all respects governed, construed, applied and enforced in accordance with the laws of said State, and no defense given or allowed by the laws of any other state of the United States of America shall be interposed in any action hereon unless defense is also given or allowed by the laws of the State of Arizona.

By:

  
George Martinez

Address:

 AZ

January 16, 2014

SHADOW007183

PROMISSORY NOTE

Effective Date: March 21, 2014

FOR VALUE RECEIVED, Shadow Beverages and Snacks, LLC, an Arizona limited liability company (the "Company"), and Lucio George Martinez ("Martinez"; and jointly and severally with the Company, the "Borrowers") hereby unconditionally promise to pay to the order of Reed Hatkoff ("Lender"), at [redacted], AZ [redacted] or at such other place as Lender may from time to time designate in writing, the principal sum of One Hundred & Fifteen Thousand Dollars (\$115,000.00) (the "Principal Amount"), plus any Default Interest (defined below) accrued thereon, if applicable, and all other amounts due or becoming due hereunder (the "Loan") in lawful money of the United States of America, to be paid as follows:

ARTICLE 1
TERMS

(a) Maturity Date. Unless sooner paid, the Principal Amount and any unpaid accrued interest shall be due and payable on the date that is six (6) months after the Effective Date of this Note (the "Maturity Date").

(b) Payment. This Note may be paid in full to Lender at any time prior to the Maturity Date; however, irrespective of the date upon which this Note is repaid in full, Lender shall be entitled to not less than the Principal Amount. All such payments shall be in lawful money of the United States and shall be made to Lender at the address given in above.

(c) Application of Payments. All Payments made on this Loan shall be applied first to the payment of any amounts other than the Principal Amount due and owing under this Note or under any Security Instrument (defined below), and any remainder of each payment shall be applied to the reduction of the unpaid Principal Amount.

(d) Security Instruments. Lender and Borrowers acknowledge and agree that this Note is secured by a Security Agreement and Collateral Assignment of Interest of even date herewith (the "Security Agreement"), and may be secured by one or more other instruments (collectively, the "Security Instruments"), all of which shall constitute binding terms, conditions and covenants that form the agreement between Lender and Borrower regarding the Loan.

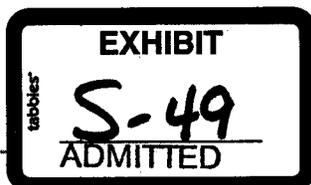
(e) Debt Defined. For purposes of this Note and all other instruments related hereto, the term "Debt" shall include all of the following: (i) the Principal Amount; (ii) Default Interest (defined below), late charges, prepayment charges and other sums, as provided in this Note or in any Security Instrument; (iii) the Royalty Payment (defined below); (iv) all other monies agreed or provided to be paid by Borrowers in this Note or in any Security Instrument; (v) all sums advanced pursuant to any Security Instrument to protect and preserve the Collateral (as defined in the Security Agreement,) and the lien and the security interest created thereby; and (vi) all sums advanced and costs and expenses incurred by Lender in connection with the Loan, including the acquisition or perfection of any security therefor.

ARTICLE 2
ROYALTY PAYMENTS

As further inducement to Lender to make this Loan, Borrowers covenant and agree to pay to Lender a royalty amount (the "Royalty Payment"), calculated as follows: Ten cents (\$0.10) per case, to be paid to Lender on any and all cases of any drink in the "No Fear" product Line sold by the Company to PepsiCo or its affiliates between the Effective Date of this Note and the six-month anniversary of the Effective Date of this Note (the "Royalty Period"), up to a total Royalty Payment of Ten Thousand Dollars (\$10,000.00). The Royalty Payment shall be paid within ten (10) days following the end of each quarter, with respect to any portion of the Royalty Payment earned during such quarter. For purposes of calculating the amount of product sold to PepsiCo or its affiliates during the Royalty Period, any order placed by PepsiCo prior to the end of the Royalty Period even if not yet fulfilled by the Company shall be deemed to have been sold to PepsiCo during the Royalty Period. Borrowers covenant and agree that the

5386893v1

Martinez EXHIBIT 61
DATE 3-10-15-15
Colette E. Ross
CR No. 50658



Company shall not seek to circumvent Lender's right to the Royalty Payment by delaying orders or sales or taking other actions with the intent of reducing the amount of the Royalty Payment due to Lender hereunder.

### ARTICLE 3 DEFAULT AND ACCELERATION

(a) Events of Default. An "Event of Default" under this Note and under the Security Instruments shall be deemed to have occurred in the event (i) Borrowers fail to pay to Lender the entire Principal Amount on or before the Maturity Date; (ii) Borrowers fail to pay to Lender any Royalty Payment or other amount due and owing pursuant to this Note or any Security Instrument not later than five (5) days after the date such payment is due to Lender; or (iii) Borrowers shall breach any other representation, warranty or covenant contained in this Note or in any Security Instrument. Upon the occurrence of any Event of Default, Lender may exercise any remedy available to it under this Note, the Security Instruments or at law.

(b) Default Payments. Unless payments are made in the amount and as required hereunder, remittances in payment of all or any part of the Debt shall not, regardless of any receipt or credit issued therefore, constitute payment until the required amount is actually received by Lender in funds immediately available as specified herein and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Lender of a payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount prior to the first (1<sup>st</sup>) day after the date when due shall be and continue to be an Event of Default.

(c) Default Interest Rate. Upon the occurrence of the first (1<sup>st</sup>) Event of Default, the Principal Amount and all other outstanding Debt shall immediately begin to accrue interest ("Default Interest") at the rate of thirty percent (30%) per annum, compounded monthly (the "Initial Default Interest Rate"). In the event such Event of Default has not been cured within thirty (30) days from the date such first Event of Default occurred, the Initial Default Interest Rate shall automatically increase by five percent (5.00%) per annum, compounded monthly, and shall thereafter continue to increase by another five percent (5.00%) per annum, compounded monthly, each month until the Event of Default is cured. The Initial Default Interest Rate above, plus any increases thereto pursuant to the preceding sentence, shall hereinafter be referred to as the "Default Interest Rate".

(d) Default Interest Calculation. Default Interest shall be calculated on the basis of a three hundred sixty-five (365) day year calculated by multiplying the actual number of days elapsed in the period for which such interest is payable by a daily rate based on said three hundred sixty-five (365) day year, compounded monthly. The Default Interest Rate shall be computed from the occurrence of the first Event of Default and such additional amounts shall be added to the Debt owed to the Lender. Default Interest calculated at the Default Interest Rate shall be added to the Debt and shall be deemed secured by the Security Instruments. This clause, however, shall not be construed as an agreement or privilege to extend the date of the payment of the Debt nor shall any further notice between or by any party hereto be required to effectuate the application of the Default Interest Rate. The provisions of this Article shall supersede any inconsistent provisions of this Note or any of the Security Instruments.

(e) Acceleration upon Default. Upon the occurrence of any Event of Default hereunder, Lender may, in its sole and absolute discretion, elect to declare this Note and all sums due to Lender hereunder immediately due and payable, whereupon the Borrower shall immediately pay to Lender all unpaid principal, accrued interest and all other charges accrued thereon in connection with the Debt, the Loan and the Security Instruments.

### ARTICLE 4 LATE CHARGE

If any sum payable under this Note is not paid prior to the fifth (5th) day after the date on which it is due, Borrower shall pay to Lender upon demand an amount equal to the lesser of five percent (5%) of the unpaid sum or the maximum amount permitted by applicable law to defray the expenses incurred by Lender in handling and processing the delinquent payment and to compensate Lender for the loss of the use of the delinquent payment and such sum shall be in addition to the amount then due ("Late Charge"). In the event the Late Charge is not paid as required herein, then such sum shall thereafter accrue interest at the Default Interest Rate under Article 2 hereof. The amount thereof shall be secured by the Security Instruments.

**ARTICLE 5  
WAIVERS**

(a) Generally. Borrowers and all others who may become liable for the payment of all or any part of the Debt do hereby severally waive presentment and demand for payment, notice of dishonor, protest and notice of protest and non-payment and all other notices of any kind. No release of any security for the Debt or extension of time for payment of this Note or any installment hereof, and no alteration, amendment or waiver of a provision of this Note or the Security Instruments made by agreement between Lender or any other person or party shall release, modify, amend, waive, extend, change, discharge, terminate or affect liability of any Borrower or any other person or entity who may become liable for the payment of all or any part of the Debt under this Note or the Security Instruments.

(b) Waiver of Notice. Borrowers shall not be entitled to any notices of any nature whatsoever from Lender except with respect to matters for which this Note specifically and expressly provides for the giving of notice by Lender to Borrowers and except with respect to matters for which Borrowers are not, pursuant to applicable legal requirements, permitted to waive the giving of notice. Each Borrower hereby expressly waives the right to receive any notice from Lender with respect to any matter for which this Note does not specifically and expressly provide for the giving of notice by Lender to Borrowers. No notice to or demand on Borrowers shall be deemed to be a waiver of any obligation of Borrowers or of Lender's right to take further action without further notice or demand.

(c) No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Note or any Security Instrument unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Note shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Note. No prior waiver by Lender, nor any course of dealing between Lender and Borrowers, shall constitute a waiver of any of Lenders rights or of any of Borrowers' obligations as to any future occurrence. Whenever the consent of Lender is required under this Note, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender. Acceptance by Lender of any payment after the occurrence of an Event of Default shall not be deemed to waive or cure such Event of Default; and every power and remedy given by this Note to Lender may be exercised from time to time as often as may be deemed expedient by Lender. Borrower hereby waives any right to require Lender at any time to pursue any remedy in Lender's power whatsoever.

**ARTICLE 6  
MISCELLANEOUS PROVISIONS**

(a) Severability. Whenever possible, each provision of this Note shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision hereof shall be prohibited by or invalid or unenforceable under the applicable law of any jurisdiction with respect to any person or circumstance, such provision shall be ineffective to the extent of such prohibition, invalidity or unenforceability, without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction or with respect to other persons or circumstances. To the extent permitted by applicable law, the parties hereto waive any provision of law that renders any provision hereof prohibited, invalid or unenforceable in any respect.

(b) Remedies Not Exclusive. No remedy herein conferred upon or reserved to Lender is intended to be exclusive of any other remedy or remedies available to Lender under this Note, at law, in equity or by statute, and each and every such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law, in equity or by statute.

(c) Liability. The obligations and liabilities of each such Borrower hereunder shall be joint and several.

(d) No Oral Modifications. This Note, and any of provisions hereof, cannot be altered, modified, amended, waived, extended, changed, discharged or terminated orally or by any act on the part of Borrowers or

Lender, but only by an agreement in writing signed by the party against whom enforcement of any alteration, modification, amendment, waiver, extension, change, discharge or termination is sought.

(e) Waiver of Counterclaim and Jury Trial. BORROWERS HEREBY KNOWINGLY WAIVE THE RIGHT TO ASSERT ANY COUNTERCLAIM, OTHER THAN A COMPULSORY COUNTERCLAIM, IN ANY ACTION OR PROCEEDING BROUGHT AGAINST BORROWERS BY LENDER OR ITS AGENTS. BORROWERS AND LENDER, TO THE FULL EXTENT PERMITTED BY LAW, EACH HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, WITH AND UPON THE ADVICE OF COMPETENT COUNSEL, WAIVE, RELINQUISH AND FOREVER FORGO HEREBY THE RIGHT TO A TRIAL BY A JURY IN ANY ACTION OR PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY TORT ACTION, BROUGHT BY EITHER OF THEM AGAINST THE OTHER BASED UPON, ARISING OUT OF OR IN ANY WAY RELATING TO OR IN CONNECTION WITH THIS NOTE, THE LOAN OR ANY COURSE OF CONDUCT, ACT, OMISSION, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, SUCH PERSON'S DIRECTORS, OFFICERS, PARTNERS, MEMBERS, EMPLOYEES, AGENTS OR ATTORNEYS, OR ANY OTHER PERSONS AFFILIATED WITH SUCH PERSON), IN CONNECTION WITH THE LOAN OR THIS NOTE, INCLUDING, WITHOUT LIMITATION, IN ANY COUNTERCLAIM WHICH ANY BORROWER MAY BE PERMITTED TO ASSERT HEREUNDER OR WHICH MAY BE ASSERTED BY LENDER OR ITS AGENTS AGAINST BORROWERS, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THIS WAIVER BY EACH BORROWER OF ITS RIGHT TO A JURY TRIAL IS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN.

(f) Time of the Essence. Time shall be of the essence in the performance of all obligations of Borrower hereunder.

(g) Governing Law. This Note shall be governed by, and construed in accordance with, the laws of the State of Arizona, except to the extent that the applicability of any of such laws may now or hereafter be preempted by Federal law, in which case such Federal law shall so govern and be controlling.

(h) Attorneys' Fees/Expenses. Borrowers agree to pay upon demand all of Lenders costs and expenses, including attorneys' fees, and Lender's legal expenses, incurred in connection with the collection or enforcement of this Note or any Security Instrument. Lender may pay someone else to help enforce this Note, and Borrowers shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's attorneys' fees and legal expenses whether or not there is a lawsuit, including attorneys' fees and legal expenses for bankruptcy proceedings (and including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Borrowers also shall pay all court costs and such additional fees as may be directed by the Court.

(i) Notices. All notices required under this Note shall be deemed to be properly served if reduced to writing and sent by (i) certified or registered mail; (ii) Federal Express or similar overnight courier; (iii) facsimile transmission; or (iv) personal delivery; and the date of such notice will be deemed to have been the date on which such notice is delivered or attempted to be delivered as shown by the certified mail return receipt or a commercial delivery service record, or in the case of facsimile on the date of receipt of the transmission as shown on a successful transmission confirmation receipt (provided that such notice is also sent via one of the other methods specified above). All notices shall be given to the party at the addresses shown herein, unless subsequently changed by the party. Borrowers agree to keep Lender informed at all times of each Borrower's current address.

(j) Interpretation. As used herein, the singular shall be deemed to include the plural and vice versa where the context and construction so require. The words "Borrowers" and "Lender" include the heirs, successors, assigns, and transferees of each of them. Caption headings in this Note are for convenience purposes only and are not to be used to interpret or define the provisions of this Note. If a court of competent jurisdiction finds any provision of this Note to be invalid or unenforceable as to any person or circumstance, such finding shall not render that provision invalid or unenforceable as to any other persons or circumstances, and all provisions of this Note in all other respects shall remain valid and enforceable. With respect to any Borrower who is a limited liability company, it is not necessary for Lender to inquire into the powers of such Borrower or of the managers, members or agents acting or purporting to act on its behalf, and any indebtedness made or created in reliance upon the professed

exercise of such powers shall be guaranteed by the person professing the exercise of such powers under this Note. If Holders collects monies which are deemed to constitute interest which would cause the effective interest rate on this Note to exceed the maximum rate permitted to be charged by the laws of the State of Arizona, all such sums deemed to constitute interest in excess of such maximum rate shall, at the option of Holders, be credited to the payment of other amounts payable under this Note or returned to Maker.

(k) Excess Interest. If Lender collects any monies which are deemed to constitute interest which would cause the effective interest rate on this Note to exceed the maximum rate permitted to be charged by the laws of the State of Arizona, all such sums which would be deemed to constitute interest in excess of such maximum rate shall, at the option of Lender, be credited to the payment of other amounts payable under this Note or the Security Instruments or returned to Borrowers, and shall not be deemed to be excess interest hereunder.

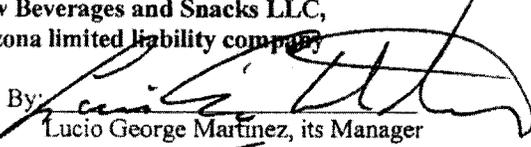
#### ARTICLE 7 AUTHORITY

Borrowers each represent and warrant that they have full power and authority to execute and deliver this Note, and the execution and delivery of this Note has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting any Borrower or the Collateral.

IN WITNESS WHEREOF, Borrowers have duly executed this Note as of the day and year first above written.

#### BORROWERS:

Shadow Beverages and Snacks LLC,  
an Arizona limited liability company

By:   
Lucio George Martinez, its Manager

By:   
Sam Jones, its (former) Manager

  
Lucio George Martinez

[notary blocks on next page]

STATE OF ARIZONA        )  
                                  ) ss.  
County of Maricopa        )

On this, the 20<sup>th</sup> day of March, 2014, before me, the undersigned Notary Public, personally appeared Lucio George Martinez, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same individually and on behalf of Shadow Beverages and Snacks, LLC, for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Deborah C Axelson  
Notary Public

NOTARY SEAL:

STATE OF ARIZONA        )  
                                  ) ss.  
County of Maricopa        )

On this, the \_\_\_ day of March, 2014, before me, the undersigned Notary Public, personally appeared Sam Jones, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same on behalf of Shadow Beverages and Snacks, LLC, for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

NOTARY SEAL:

*Title or Type of Document:* Promissory Note  
*Document Date:* March 21, 2014  
*Number of Pages:* 6

WELLS FARGO BANK N.A.  
 FULL TRANSACTION REPORT

FOR 21-MAR-2014 Page 63550

<<< TRN: 140321-091763 >>>  
 \*\*\*\*\* MESSAGE ENVELOPE \*\*\*\*\*  
 ( Bank : 121 )

SRC-FED CALLER: EXT: SND DATE: 14/03/21

RPT# AMT:100,000.00 CUR:USD RATE: 1 TRDR#  
 TEST VAL: TYP:FTR/ FMS:S CHG:DB:W CD:A COM:N CBL:N

DBT 17993 CDT D/ 4679/ ADV:LTR  
 CREDIT VAL: 14/03/21

DEBIT VAL: 14/03/21  
 AMT:100,000.00 CUR:USD  
 GL RECON: 114114  
 DEPT:0002729  
 UBS AG  
 677 WASHINGTON BLVD  
 STAMFORD CT

BNF:7 4679 CHG: BK?N  
 SHADR BEVERAGES AND SNACKS LL  
 ORDERING:BNK:SWEBRUS33FF C

ORIG:/USD8552  
 REED HATKOFF

AZ  
 REF NUM:00610220140321PW

\*\*\*\*\* MESSAGE TEXT \*\*\*\*\*

<110> Message Disposition: 30 (New expanded format)  
 Format Version: P (Production)  
 Test Production Code: N (Original incoming msg)  
 Msg Duplication Code: N (Incoming msg)  
 Msg Status Indicator: FT03

<1110> Acceptance Timestamp: 03/21  
 Receipt Time: 14:05  
 Receipt Application Id: FT03

<1120> OMAD:  
 Output cycle date: 2014/03/21  
 Output Destination Id: 1187031R  
 Output sequence number: 036430  
 Output date: 03/21  
 Output time: 14:05  
 Output application Id: FT03

<1510> Type/Subtype Code: 10 (Transfer of funds)  
 Type Code: 00 (Regular transfer)

<1520> IMAD:  
 Input Cycle date: 2014/03/21  
 Input Source Id: 86871K1C  
 Input Sequence number: 002463



ACC008762  
 SHADOW-8507

SECURITY AGREEMENT & COLLATERAL ASSIGNMENT OF INTEREST

This Security Agreement and Collateral Assignment of Interest ("Agreement") is entered into on this 21st day of March, 2014 (the "Effective Date"), by and among Shadow Beverages and Snacks LLC, an Arizona limited liability company (the "Company"), Lucio George Martinez ("Martinez"; and jointly and severally with the Company, the "Borrowers"), and Reed Hatkoff ("Secured Party"). The Borrowers and the Secured Party may be collectively referred to herein as the Parties or singularly as a Party.

RECITALS

- A. Secured Party has loaned to Borrowers, a sum of One Hundred Thousand Dollars (\$100,000.00) (the "Loan"), pursuant to the terms and conditions of a Promissory Note of even date herewith made by Borrowers (the "Note"; and together with this Agreement, the "Loan Documents").
B. Martinez owns approximately 19% of the membership interests in the Company and will materially benefit from the Loan.
C. Secured Party has requested, as a condition to making the Loan, that the Company and Martinez grant a security interest in all of the Collateral (defined below) as security for the Loan pursuant to the terms of this Agreement.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual agreements hereinafter set forth, the Parties hereto agree as follows:

ARTICLE I
Definitions

Section 1.1 Definitions. All terms defined under this Article shall have the meanings provided, unless otherwise provided for in this Agreement:

"Collateral" means all of the following:

- (i) All right, title and interest of Martinez in any cash and/or securities now or hereafter held by Ameritrade, including without limitation all cash and securities in Ameritrade Account No. 916964860 (the "Pledged Account");
(ii) All right, title and interest of Martinez in and to the Company, including without limitation 1,100,000 shares in the Company and any and all other membership rights or interests in the Company, and all rights to profits, losses, distributions, voting rights, and other rights associated with any such rights or interests (collectively, the "Martinez Company Interest");
(iii) All purchase orders of the Company from PepsiCo and/or any affiliate thereof (the "Pepsi PO's"), and all receivables of the Company from PepsiCo and/or any affiliate thereof (the "Pepsi AR's");
(iv) All of the Company's inventory of products in the "No Fear" product line (the "Inventory"); and

Martinez EXHIBIT 62
DATE 10-15-15
Colette E. Ross
CR No. 50658

5386339v1



ACC008984
SHADOW-8507

(v) Any and all proceeds of any of the foregoing.

"Event of Default" means the occurrence of any breach or default by any Borrower under any of the Loan Documents, and, if a notice and cure period is explicitly provided in the applicable Loan Document with respect to such breach or default, the failure to timely cure same prior to expiration of such stated notice and cure period.

"Obligations" means all obligations of the Borrowers under the Loan Documents, including without limitation the Principal Amount and the Royalty Payment (as defined in the Note).

"Security Interest" has the meaning specified in Section 2.1 hereof.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of Arizona or in any other state whose laws are held to govern this Agreement or any portion hereof.

**ARTICLE 2**  
**Security Interest**

Section 2.1 Grant of Security Interest. The Borrowers, jointly and severally, hereby grant, assign, convey and pledge to the Secured Party a security interest (collectively referred to as the "Security Interest") in all of the Collateral, as security for the payment and performance of all of the Obligations.

Section 2.2 Performance by the Secured Party. If Borrowers fails to timely perform or observe the Obligations and if such failure continues for any provided for cure period, then the Secured Party may, but need not, perform or observe such covenant on behalf and in the name, place and stead of the Company (or, at Secured Party's option, in Secured Party's name) and may, but need not, take any and all other actions which Secured Party may reasonably deem necessary to cure or correct such failure and thereafter the Borrowers shall pay to the Secured Party the amount of all monies expended and all actual, reasonable costs and expenses (including reasonable attorneys' fees and legal expenses) incurred by the Secured Party in connection with or as a result of the performance or observance of such agreements or the taking of such action by the Secured Party, together with interest thereon at the Default Interest Rate, as defined in the Note, from the date expended or incurred. To facilitate such performance or observance by Secured Party, each Borrower hereby irrevocably appoints Secured Party, or the delegate of Secured Party, acting alone, as the attorney in fact for such Borrower (which appointment is coupled with an interest) with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file in the name and on behalf of such Borrower any and all instruments, documents, assignments, security agreements, financing statements, applications for insurance and other agreements and writings reasonably necessary to be obtained, executed, delivered or endorsed by such Borrower to carry out the purpose and intent of this Agreement.

Section 2.3 Indemnification of Secured Party. To the fullest extent possible, the Borrowers, jointly and severally, shall indemnify, defend and hold the Secured Party harmless from and against any and all claims, damages, liability, risk, losses, and causes of action, of any kind and nature, including all attorney's fees and court costs, arising by, from or through the Loan Documents, any Borrower, any assets of any Borrower, any of the Collateral, or the Borrower's ownership interest therein, unless and to the extent any such claim or cause of action is determined by a court of competent jurisdiction to be a direct result of the Secured Party's gross negligence or willful misconduct.

**ARTICLE 3**  
**Affirmative Covenants**

Section 3.1 Pledged Account. Martinez covenants and agrees that he shall use his best efforts to cause Ameritrade to recognize the security interest in the Pledged Account granted by Martinez hereunder to the Secured Party. Whether or not Ameritrade recognizes such security interest, Martinez covenants and agrees that he shall not transfer or withdraw any amounts from the Pledged Account, or grant any other lien, pledge or security interest in the Pledged Account, until the Obligations have been satisfied in full.

Section 3.2 Martinez Interest. Martinez covenants and agrees that he shall not transfer or grant any other lien, pledge or security interest in the Martinez Interest, until the Obligations have been satisfied in full.

Section 3.3 PO's, AR's and Inventory. The Company covenants and agrees that it shall not transfer or grant any other lien, pledge or security interest in the Pepsi PO's, the Pepsi AR's or the Inventory, other than sales of Inventory in the ordinary course of business, until the Obligations have been satisfied in full.

Section 3.4 Conduct of Business. The Company shall take all actions to cause the Company:

- (a) to operate its business in the ordinary course;
- (b) to comply with all laws, statutes and regulations pertaining to its use and ownership of its properties and its conduct of its business;
- (c) to maintain all of its properties in good condition;
- (d) to observe and perform all contracts or agreements to which it is a party or by which any of its properties are bound;
- (e) to file all necessary tax returns and to timely pay all taxes which are due; and
- (f) to keep all of its properties and business insured against such losses and in such amounts as are customary in the case of persons of established reputations engaged in the same business as the Company.

Section 3.5 Actions Concerning the Company. Without the written consent of the Secured Party, which consent may be withheld in the sole and absolute discretion of the Secured Party, the Company shall not;

- (a) permit any governing documents of the Company to be amended or modified, or issue any new equity interests in the Company;
- (b) liquidated, dissolve or sell any of the assets of the Company (except for inventory in the ordinary course of business);
- (c) permit the Company to merge with any other person or business entity;

- (d) make any distributions from the Company to its members (except to the extent necessary to cover taxes owing by its members on account of Company profits allocated to such members);
- (e) take any other action which would impair the value of the interests or rights of the Company in the Collateral; or
- (f) take any actions which would in any manner impair the interests or rights of Secured Party.

Section 3.6 Representations and Warranties to Secured Party. The Borrowers, jointly and severally, hereby represent and warrant to the Secured Party, with full knowledge that the Secured Party is entering into this Agreement in material reliance thereon, as follows:

- (a) the Company has not committed nor does there exist any default of any obligation of the Company under any operating agreement or similar document of the Company;
- (b) the Company is in good and lawful standing in the State of Arizona;
- (c) nothing in any documents governing the operation or management of the Company obviates any Obligation of the Company hereunder;
- (d) nothing in any documents governing the operation or management of the Company prevents the Company from entering into this Agreement and/or granting the Security Interest in the Collateral to the Secured Party;
- (e) the Borrowers are not required by law or any agreement governing any aspect of the Company to obtain the approval or consent of any other party to enter into this Agreement;
- (f) the Pledged Account is held solely by Martinez, and no other person or entity has any right, title or interest in or to such account, and such account, on the date of this Agreement, has an account balance of no less than \$150,000.00;
- (g) the Martinez Company Interest represents approximately 19% of the total outstanding equity interests in the Company and no other person or entity has any right, title or interest in or to the Martinez Company Interest;
- (h) no person or entity other than the Company has any right, title or interest in or to the Pepsi PO's, the Pepsi AR's or the Inventory; and
- (i) the Company anticipates sales to PepsiCo of its "No Fear" product line during the Royalty Period (as defined in the Note) to be approximately 100,000 cases.

Section 3.7 Rights of Martinez Pertaining to Collateral. So long as the Borrowers are not in default under any Loan Document, then Martinez shall be entitled to exercise any and all securities trading, voting and other consensual rights pertaining to the Pledged Account and the Martinez Company Interest so long as such exercise does not cause a default under any of the Loan Documents.

**ARTICLE 4**  
**Rights and Remedies of Secured Party**

Section 4.1 Rights and Remedies. Upon or at any time following the occurrence of any Event of Default, the Secured Party may exercise any or all of the following rights and remedies:

- (a) Secured Party may exercise and enforce any and all rights and remedies available upon default to a secured party under the UCC or any other applicable laws as the same may from time to time be in effect. In conjunction with, addition to, or in substitution for those rights, Secured Party may in its sole discretion:
- (i) Foreclose the entire Collateral to the extent permitted by the UCC; provided, however, that Secured Party shall sell only so much of the Collateral as is necessary to satisfy any indebtedness or obligations secured by this Agreement then due Secured Party, including any interest due thereon;
  - (ii) Waive any default or remedy any default in any reasonable manner without waiving the default remedied and without waiving the same default after notice to the Company demanding strict performance thereof, and without waiving any other prior or subsequent default;
  - (iii) Force, demand and/or cause any Borrower to exercise all of its voting rights related to the Collateral as the Secured Party may direct, whether or not foreclosure or sales proceedings have commenced; and
  - (iv) Receive all distributions, profits and value interest arising from or through the Collateral to which any Borrower would otherwise be entitled, all of which shall be applied to payment of the Obligations;
- (b) Secured Party may exercise and enforce its rights and remedies under any of the Loan Documents; and
- (c) Secured Party may exercise any other rights and remedies available to it by law.

Section 4.2 Sale Proceeds. The proceeds of any sale or disposition of the Collateral, after deducting there from all expenses of Secured Party in taking possession of and selling the Collateral, shall be applied to the payment of any part or all of the Obligations and any amounts secured hereby, and any surplus thereafter remaining shall be paid to the Borrowers, or any other person that may be legally entitled thereto.

**ARTICLE 5**  
**Miscellaneous**

Section 5.1 No Waiver; Cumulative Remedies. No failure or delay on the part of Secured Party in exercising any right, power or remedy under this Agreement or any of the Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any

other right, power or remedy under the Loan Documents or this Agreement. The remedies provided in this Agreement and the Loan Documents are cumulative and not exclusive of any remedies provided by law.

Section 5.2 Amendments. No amendment, modification, termination or waiver of any provision of this Agreement or any release of a Security Interest shall be effective unless the same shall be in writing and signed by Secured Party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

Section 5.3 Addresses for Notices. Except as otherwise expressly provided herein, all notices, requests, demands and other communications provided for hereunder shall be given and delivered in the manner set forth in the Note.

Section 5.4 Further Documents. The Borrowers will from time to time execute and deliver or endorse any and all instruments, documents, conveyances, assignments, security agreements, financing statements and other agreements and writings that the Secured Party may reasonably request in order to secure, protect, perfect or enforce the Security Interest under this Agreement.

Section 5.5 Release of Security Agreement and Financing Statements. This Security Agreement and any Financing Statements therefore shall remain in full force and effect until the Obligations shall be paid in full. This Security Agreement, any Financing Statements and the lien and security interest granted and evidenced thereby shall terminate and become null and void, and shall have no further force and effect, upon full and final payment of the Obligations to the Secured Party. Upon full and final satisfaction of all Obligations, the Secured Party shall thereupon promptly and immediately deliver to the Borrowers, or to such person or persons as the Borrowers shall designate, the Collateral (if any) in possession of the Secured Party to the extent same has not been purchased, sold or otherwise applied, transferred or disposed of by Secured Party pursuant to enforcement of the terms of this Agreement, and shall execute and deliver, and cause to be recorded and filed an instrument or instruments of release to release any security interest or other interest or claim of Secured Party to such Collateral.

Section 5.6 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same instrument.

Section 5.7 Binding Effect; Assignment; Complete Agreement. The Agreement shall be binding upon the Borrowers and inure to the benefit of the Secured Party and their respective successors and assigns, except that the Borrowers shall not have the right to assign their Obligations under this Agreement or in the Collateral or any interest therein without the express written consent of the Secured party, which consent may be withheld in the sole and absolute discretion of the Secured Party.

Section 5.8 Governing Law, Jurisdiction and Venue; Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the substantive laws (other than conflict laws) of the State of Arizona. Each Party consents to the personal jurisdiction of the state and federal courts located in the State of Arizona in connection with any controversy related to this Agreement, waives any argument that venue in any such forum is not convenient and agrees that any litigation initiated by any of them in connection with this Agreement shall be filed in either the Superior Court of Maricopa County, Arizona, or the United States District Court.

Section 5.9 Attorneys' Fees and Costs. In the event of litigation regarding this Agreement, the prevailing party in such litigation or alternative dispute resolution shall be entitled to reasonable attorneys' fees as well as costs of suit or of the proceedings.

Section 5.10 Severability of Provisions. Any provision of this Agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

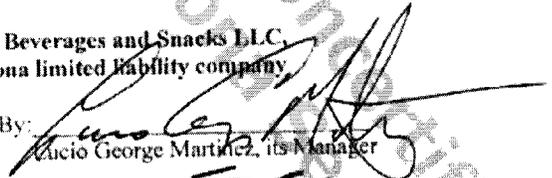
Section 5.11 Headings. Article and Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 5.12 Authority to Act. The Company hereby represents and warrants that it has obtained any and all consents necessary and appropriate for the granting of the Security Interest in the Collateral to Secured Party under any operating agreement of the Company.

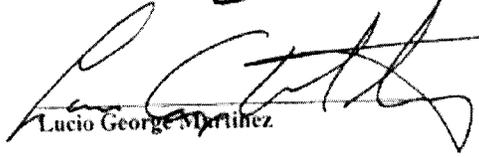
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the Effective Date.

**BORROWERS:**

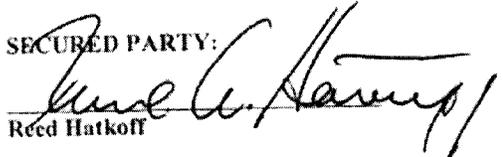
Shadow Beverages and Snacks LLC,  
an Arizona limited liability company

By:   
Lucio George Martinez, its Manager

By:   
Sam Jones, its (former) Manager

  
Lucio George Martinez

**SECURED PARTY:**

  
Reed Hatkoff

SPOUSAL CONSENT: The undersigned, being the spouse of Lucio George Martinez, hereby consents to the foregoing Security Agreement and Collateral Assignment of Interest, and agrees that any community property of other interest of the undersigned in or to any of the Collateral is bound by such Agreement,

  
Signature of Spouse

Lisa Martinez  
Print Name of Spouse

RETURN TO: [REDACTED]

Today's Date is -December 2013

**Personal Financial Statement of Lucio George Martinez**  
Name of Applicant

**PERSONAL INFORMATION**

SECTION 1- INDIVIDUAL INFORMATION			SECTION 2-SECOND PARTY INFORMATION		
APPLICANT'S NAME: Lucio George Martinez			CO-APPLICANT'S:		
Employer: Shadow Beverages and Snacks			Employer:		
Address of Employer: [REDACTED] AZ [REDACTED]			Address of Employer:		
Business Phone: [REDACTED]	Years Employed: 6	Title/Position:	Business Phone: ( )	Years Employed:	Title/Position:
Home Address: [REDACTED]		State: Arizona Zip: [REDACTED]	Home Address: [REDACTED]		State: Zip:
Home Phone: [REDACTED]	Social Security No: [REDACTED]	Date of Birth: [REDACTED]	Home Phone ( )	Social Security No.	Date of Birth:

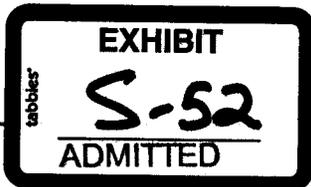
**SECTION 3- STATEMENT OF FINANCIAL CONDITION AS OF December 2013**

ASSETS (Do not include Assets of Doubtful Value)	In Dollars (Omit Cents)	LIABILITIES	In Dollars (Omit Cents)
Cash on Hand in Banks	\$30,000	Notes payable to Banks -secured Schedule D	\$32,000
Marketable Securities-Gov't Bonds-See Schedule A	\$195,000	Notes payable to Banks -unsecured Sched. D	00
Non-Marketable Securities-See Schedule A	\$3,000,000	Due to Brokers	00
Securities held by Broker in margin accounts		Amounts payable-secured	00
Investment Real Estate - See Schedule B	\$500,000	Leases and/or rents	00
Residential Real Estate - See Schedule B	\$575,000	Amounts Payable including Credit cards	\$58,000
Retirement Plans	00	Property Taxes due and/or unpaid	00
Notes Receivable	\$125,000	Unpaid Taxes Federal & State	00
Cash Held in other Institutions	00	Unpaid Interest & Principal	00
Personal Property	\$100,000	Delinquent accounts	00
Cash value of Life Insurance- See Schedule C	\$600,000	Judgements	00
OTHER ASSETS (list them)		Real Estate Mortgages Payable-See Shed. B	\$797,000
Acura MDX	\$45,000	OTHER LIABILITIES (list them)	
		TOTAL LIABILITIES	\$884,000
		NET WORTH	\$4,246,000
TOTAL ASSETS	\$5,130,000	LIABILITIES & NET WORTH	\$5,130,000

CONTINGENT LIABILITIES	YES	NO	AMOUNT
Are you a Guarantor, Co-Maker, or Endorser for any person or company?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	\$ _____
Do you have any outstanding letters of credit or Surety bonds?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	\$ _____
Is there any suit or legal actions pending against you?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	\$ _____
Are you liable or have a contingent liability on any lease or contract?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	\$ _____
Do you have any tax liability, State or Federal?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	\$ _____
Do you have or ever had any Tax Liens from any governing body?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	\$ _____
Are you obligated to pay child support, alimony or separate maintenance?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	\$ _____
Have any judgements ever been entered against you?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	\$ _____

IF YES TO ANY OF THE ABOVE, GIVE DETAILS:

PLEASE INITIAL EACH PAGE HERE  page 1



Martinez EXHIBIT 81  
DATE 10-15-13  
Colette E. Ross  
CR No. S0658

ACC000403  
SHADOW-8507

**Cash Income & Expenditures for the Year of 2012**

(omit cents)

ANNUAL INCOME	AMOUNTS	ANNUAL EXPENDITURES	AMOUNTS
Annual Salary	\$210,00	Rental Payments	00
Salary Co-Applicant	00	Lease Payments	00
Bonuses and/or Commissions	\$20,000	Mortgage Payments Residential	\$26,400
		Mortgage Payments Investment Property	\$21,600
Rental Income	\$43,200	Property Taxes all Properties	include above
Interest Income	\$25,000	Federal and State Income taxes	\$48,000
Dividend Income	00	Insurance (life, medical, property etc.)	\$11,000
Capital Gains Taken	00	Investments	00
Partnership Income	\$10,000	Alimony/Child Support	00
Other Investment Income	00	Tuition	00
Other Income Sources (list)	00	Medical Expenses	\$5,000
		Credit Card payments	\$20,000
		Other Expenses (list separately)	00
<b>TOTAL INCOME</b>	<b>\$308,000</b>	<b>TOTAL EXPENSES</b>	<b>\$132,000</b>

**Schedule A - All Securities (Including non-money market mutual funds) presently held.**

No. of Shares Stock or Face value of bonds	DESCRIPTION (Stocks or Bonds)	OWNER(s)	WHERE HELD	COST	CURRENT MARKET VALUE	Pledged	Pledged
						YES	NO
<b>Readily Marketable Securities</b>							
	Stocks	George Martinez	Ameri-Trade		\$125,000	<input type="checkbox"/>	<input checked="" type="checkbox"/>
						<input type="checkbox"/>	<input type="checkbox"/>
						<input type="checkbox"/>	<input type="checkbox"/>
						<input type="checkbox"/>	<input type="checkbox"/>
<b>Non Marketable Securities</b>							
1,100,000	Shares	George Martinez	Shadow Beverage		\$6,251,500	<input type="checkbox"/>	<input checked="" type="checkbox"/>
400,000	Shares	GSRC	Greentech		\$2,000,000	<input type="checkbox"/>	<input checked="" type="checkbox"/>
						<input type="checkbox"/>	<input type="checkbox"/>
						<input type="checkbox"/>	<input type="checkbox"/>

**Schedule B- All Real Estate Owned**

Address & Type Of Property	Title in the name of	Date Acquired	Cost	Market Value	Mortgage Maturity	Mortgage Amount Due
1772 S Comanche - Res.	G/L Martinez	2001	\$485,000	\$575,000	2044	\$385,000
2746 East Redwood Ln	G/L Martinez	2006	\$224,000	\$225,000	2026	\$182,000
3623 W Union Ave	G/L Martinez	2007	\$220,000	\$225,000	2037	\$178,000
428 East 23 <sup>rd</sup>	G/L Martinez	1999	\$85,000	\$145,000	2029	\$52,000

PLEASE INITIAL EACH PAGE HERE

page 2

ACC000404  
SHADOW-8507

Schedule C - Life Insurance Carried, Including N.S.L.I. and Group Insurance

Name of Insurance Company	Policy Owner	Beneficiary	Face Amount	Policy Loans	Cash Surrender Value
New York Life	George Martinez	Lisa Martinez	\$1,000,000	None	\$500,000

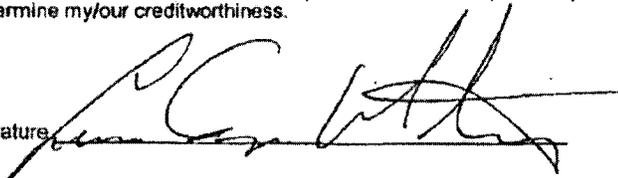
Schedule D- Notes Payable

Due To:	Type of Facility	Secured?		Amount of Line	Interest Rate	Maturity	Unpaid Balance
		Yes	no				
Platte Valley Bank	Revolving credit	<input type="checkbox"/>	<input checked="" type="checkbox"/>	\$50,000	6%	revolving	\$00
		<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>				
		<input type="checkbox"/>	<input type="checkbox"/>				

Schedule E - BANKS OR FINANCE COMPANIES WHERE CREDIT HAS BEEN OBTAINED

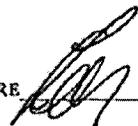
Name of The Lender	Credit in the name of	Secured or Un-secured	Original date	High Credit	Current Balance
Chase	G/L Martinez	Secured	2006	\$190,000	\$162,000
HSBC	G/L Martinez	Secured	1999	\$72,000	\$62,000
Ocwen	G/L Martinez	Secured	2012	\$382,000	\$376,000
Platte Valley Bank	G/L Martinez	Secured	1999	\$135,000	\$52,000

The information contained herein is provided to qualify for the financing that has been requested and for maintaining credit in this connection. Each of the undersigned understands that the lender(s) are relying on this information along with other information in order to qualify for the financing for the entity for which the financing been applied for. The undersigned represents and warrants that the information provided is the truth and is complete and that you may consider this statement as continuing to be true and correct until written notice of a change is given to you by the understand in connection with the financing requested. You are authorized to make all and any inquiries you deem necessary to verify the accuracy of the statements made hereon; and to determine my/our creditworthiness.

Signature 

Signature (second party) \_\_\_\_\_

Date Signed 1-27-2014 

PLEASE INITIAL EACH PAGE HERE  page 3

ACC000405  
SHADOW-8507

PROMISSORY NOTE  
(Term Loan)

\$50,000.00

Phoenix, Arizona  
July 18, 2014

FOR VALUE RECEIVED, the undersigned, **SHADOW BEVERAGES AND SNACKS, LLC**, an Arizona limited liability company ("Maker") promises to pay to Michael Crane ("Lender"), the principal sum of Fifty Thousand Dollars and No Cents (\$50,000.00), together with interest.

The entire unpaid principal, all unpaid accrued interest and all other amounts payable hereunder shall be paid in full on or before October 18, 2014.

An interest amount of \$7500.00 will be paid for the short term loan on the date the loan is due to the lender. All amounts payable hereunder shall be paid in lawful money of the United States.

Maker shall have the right at any time or from time to time to prepay all or a portion of the principal or interest without a prepayment charge or premium.

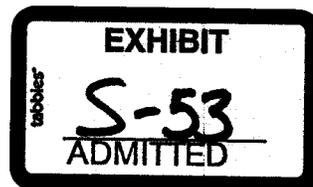
At the holder's option, any payments hereunder may be applied first to accrued interest and then to principal.

In addition to the interest earned on the principal amount as stated in this agreement, the lender will receive warrants for this agreement. Warrants granted to the lender will be in the amount of 12,000 shares at a strike price of \$4.20 per share. Warrants will have a 5 year exercise period.

This Note shall become immediately due and payable at the option of the holder hereof without presentment or demand or any notice or Maker or any other person obligated hereon except as otherwise provided by the Term Loan Agreement of even date herewith between Maker and Lender (the "Loan Agreement"), upon the occurrence of any event of default in the payment of any of the principal or any interest hereon when due, upon default under the Loan Agreement, or upon default under any other agreement between Maker and Lender. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. Principal and interest shall be payable at the address of Lender, as set forth in the Loan Agreement or at such other place as the holder hereof may designate.

In the event any holder hereof utilizes the services of an attorney in attempting to collect the amounts due hereunder or to enforce the terms hereof or of any agreements related to this indebtedness, or if any holder hereof becomes party plaintiff or defendant in any legal proceeding for the recovery or protection of the indebtedness evidenced hereby, Maker, its successors and assigns, and any endorsers hereof shall repay to such holder hereof, on demand, all costs and expenses so incurred, including reasonable attorneys' fees, whether or not suit is brought, including those costs, expenses and attorneys' fees incurred after the filing by or against the Maker of any proceeding under any chapter of the Bankruptcy Code, Title 11 of the United States Code, or similar federal or state statute, and whether incurred in connection with the involvement of any holder hereof as creditor in such proceedings or otherwise.

Shadow Beverages and Snacks



Martinez EXHIBIT 68  
DATE 10-15-15  
Colette E. Ross  
CR No. 5065B

SHADOW006427

Except as otherwise provided in the Term Loan Agreement, Maker and all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally waive (i) demand, presentment for payment, notice of nonpayment, demand and dishonor, protest, notice of protest and all other notice except as otherwise provided herein, (ii) filing of suit, and (iii) diligence in collecting this Note. Maker, all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally agree that it will not be necessary for any holder hereof, in order to enforce payment of this Note, to first institute suit or exhaust its remedies against any maker or others liable herefor. Maker, all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally further consent to any extension or postponement of time of payment of this Note or any other indulgence with respect hereto, including but not limited to, the release of any party primarily or secondarily liable hereon without notice thereof to any of them.

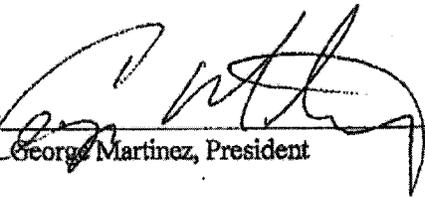
**MAKER, ALL ENDORSERS AND ALL GUARANTORS, HEREBY SEVERALLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS NOTE, IT BEING ACKNOWLEDGED BY MAKER, ALL ENDORSERS AND ALL GUARANTORS THAT EACH SUCH PARTY MAKES THIS WAIVER OF TRIAL BY JURY KNOWINGLY AND VOLUNTARILY AND ONLY AFTER CONSULTATION WITH LEGAL COUNSEL.**

This Note shall be governed and construed in accordance with the laws of the State of Arizona.

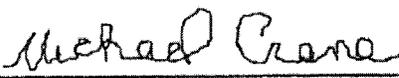
This Promissory Note was executed and delivered by the undersigned and is effective as of the date first set forth above.

SHADOW BEVERAGES AND SNACKS, LLC, an  
Arizona limited liability company

By:

  
George Martinez, President

By:

  
Michael Crane

<<< TRN: 140721-055545 >>>  
 \*\*\*\*\* MESSAGE ENVELOPE \*\*\*\*\*  
 ( Bank : 121 )

SND DATE: 14/07/21  
 EXT:

SRV:FED CALLER:  
 TRF# AMT: 13,000.00 CUR:USD RATE: 1. TROR#  
 TEST: VAL: TYP:FTR/ ENDS:S CHG:DB:W CD:A COM:N CBL:N  
 CDT D / 4679/ ADV:LTR  
 CREDIT VAL: 14/07/21  
 AMT: 13,000.00 CUR:USD  
 GL RECON: 038038  
 DEPT: 0003692  
 SHADOW BEVERAGES AND SNACKS, LLC  
 BANK OF AMERICA, NEW YORK, NY  
 100, 33RD STREET WEST  
 NEW YORK NEW YORK 10001  
 COUNTRY OF RESIDENCY: US  
 SEND: / 3516  
 MFB: AND: WIRE ACCOUNT  
 C/O MERRILL LYNCH PIERCE FENNER AND  
 SMITH INC, 4, WORLD FINANCIAL CENTER  
 NORTH TOWER 1516, NEW YORK NY 10080  
 SNDR REF NUM: 4535  
 ORDERING BNKS/MLC0US33  
 MERRILL LYNCH AND CO., INC.

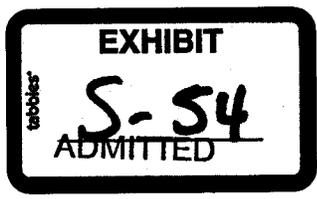
NY  
 COUNTRY OF RESIDENCY: US  
 ORIG: / 14  
 MICHAEL CRANE AND DEBRA J. MART IN J  
 TWROS: TX  
 REF NUM: P44202016770

\*\*\*\*\* MESSAGE TEXT \*\*\*\*\*

(1100) Message Disposition:  
 Format Version: 30 (New expanded format)  
 Test Production Code: P (Production)  
 Msg Duplication Code: (Original incoming msg)  
 Msg Status Indicator: N (Incoming msg)

(1110) Acceptance Timestamp:  
 Receipt Date: 07/21  
 Receipt Time: 11:14  
 Receipt Application Id: FT03

(1120) OMAD:  
 Output cycle date: 2014/07/21  
 Output destination Id: 1187031R  
 Output sequence number: 021721  
 Output date: 07/21  
 Output time: 11:14  
 Output application Id: FT03



ACC008747  
 SHADOW-8507

<<< TRN: 140718-109519 >>>  
 \*\*\*\*\* MESSAGE ENVELOPE \*\*\*\*\*  
 ( Bank : 121 )

SRC: FED CALLER: EXT: SNR DATE: 14/07/18

RPT# AMT: 37,000.00 CUR: USD RATE: 1. TRDR#  
 TEST: VAL: TYP: FTR/ FND: S: CHG: DB: V: CD: A: COM: N: CBL: N

DBT A: 9593 CDT D: 679/ ADV: LTR  
 DEBIT VAL: 14/07/18 CREDIT VAL: 14/07/18  
 AMT: 37,000.00 CUR: USD AMT: 37,000.00 CUR: USD  
 GL RECON: 114114 GL RECON: 038038

DEPT: 0002729 DEPT: 0003692  
 BANK OF AMERICA, NEW YORK, NY  
 100, 33RD STREET WEST  
 NEW YORK, NY 10001

COUNTRY OF RESIDENCY: US CHG: BK?N  
 ORDERING: BKS: 780FAUSJN BNF: 679  
 SDR REF NUM: 1137 SHADOW BEVERAGES AND SNACKS, LLC  
 BANK OF AMERICA, N.A. SHADOW BEVERAGES AND SNACKS, LLC

222 BROADWAY AZ, AZ  
 NEW YORK, NY, US 10038 ORIG TO BNF INFO:  
 COUNTRY OF RESIDENCY: US INVESTMENT  
 ORIG: 4120

CLARITY COACHING & CONSULTING, LLC  
 IX  
 REF NUM: 125907476

\*\*\*\*\* MESSAGE TEXT \*\*\*\*\*  
 (1100) Message Disposition:  
 Format Version: 30 (New expanded format)  
 Test: Production: P (Production)  
 Msg Duplication Code: (Original incoming msg)  
 Msg Status Indicator: N (Incoming msg)

(1110) Acceptance Timestamp: 07/18  
 Receipt Date: 07/18  
 Receipt Time: 14:23  
 Receipt Application Id: FT03

(1120) OMAD:  
 Output cycle date: 2014/07/18  
 Output Destination Id: I1B7031R  
 Output sequence number: 044825  
 Output date: 07/18  
 Output time: 14:23  
 Output application Id: FT03

(1510) Type/Subtype Code:  
 Type Code: 10 (Transfer of funds)  
 Subtype Code: 00 (Regular transfer)

## Unconditional Personal Guaranty

Whereas, Shadow Beverages and Snacks LLC, an Arizona Limited Liability Company, (hereinafter called the "Borrower"), desires to transact business with and obtain credit or a continuation of credit from Michael Crane (hereinafter called the "Creditor");

Whereas, Creditor is unwilling to extend or continue credit to the Borrower unless it receives an unconditional, absolute and irrevocable guarantee of the undersigned covering the Indebtedness to Creditor, as hereinafter defined.

Now, therefore, in consideration of the premises and of other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to induce Creditor from time to time, in its discretion, to extend or continue credit to the Borrower, the undersigned, George Martinez (hereinafter called "Guarantor"), agrees, with or without notice or demand, to reimburse Creditor, to the extent that such reimbursement is not made by the Borrower, for all expenses (including counsel fees) incurred by Creditor in connection with any of the Indebtedness, as defined below, as and when due.

The word "Indebtedness" means all of Borrower's payment obligations pursuant to any agreement or contract entered into with Creditor, including all principal, interest, late charges, and collection costs and expenses relating to the Indebtedness.

In the event that any proceeding under bankruptcy, or any other laws now or hereafter in effect for relief of debtors, is filed by or against Borrower, or for the appointment of a receiver for Borrower, or any of its property, or if Borrower shall make an assignment for the benefit of creditors or shall discontinue business or become insolvent, all Indebtedness shall, for the purpose of this Guaranty, at Creditor's election, become immediately due and payable. Guarantor consents and agrees that the bankruptcy of Borrower shall not relieve him of the obligations assumed hereunder.

All monies available to Creditor for application in payment or reduction of the Liabilities of the Borrower may be applied by Creditor in such manner and in such amounts and at such time or times as it may see fit to the payment or reduction of such of the Indebtedness as Creditor may elect, and the obligations pursuant to this Guaranty shall not be affected by any surrender or release by the Borrower of any other security held by it for any claim hereby guaranteed.

Guarantor hereby waives (a) notice of acceptance of this Guaranty and of extensions of credit by Creditor to the Borrower (b) presentment and demand for payment of any of the Indebtedness (c) protest and notice of dishonor or default to the undersigned or to any other party with respect to any of the Indebtedness; (d) all other notices to which the undersigned might otherwise be entitled; and (e) any demand for payment under this Guaranty.

Guarantor hereby expressly and irrevocably releases and waives any and all claims arising from this Guaranty, which Guarantor may have against Borrower, including but not limited to, future contingent claims based on subrogation, indemnity, reimbursement, contribution or contract. Guarantor also waives any and all rights or defenses arising by reason of any "one-action" or "anti-deficiency" law or any other law which may prevent Creditor from bringing any action herein, and defense asserted by Borrower on the underlying debt or any rights to claim discharge of the Indebtedness, including but not limited to, failure of consideration, estoppel, statute of



*Martinez* EXHIBIT *69*  
DATE *010-15-15*  
Colette E. Ross  
CR No. 50658

ACC000085  
SHADOW-8507

frauds, accord and satisfaction and usury. Guarantor warrants and agrees that each of the waivers is made with Guarantor's full knowledge of its significance and consequences.

Guarantor represents and warrants to Creditor that Guarantor has not, and will not, sell, lease, assign, encumber, transfer or otherwise dispose of all, or substantially all, of Guarantor's assets, or any interest therein, to the extent that such action might in any way affect this Guaranty.

This is a guaranty of payment and not of collection and Guarantor further waives any right to require that any action be brought against the Borrower or any other person or to require that resort be had to any security or to any balance of any deposit account or credit on the books of Creditor in favor of the Borrower or any other person.

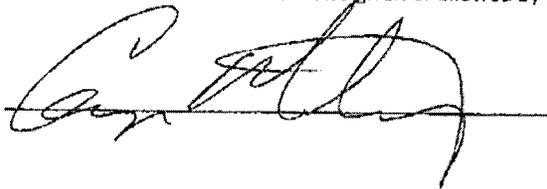
No delay on the part of Creditor in exercising any rights hereunder or failure to exercise the same shall operate as a waiver of such rights; no notice to or demand on the undersigned shall be deemed to be a waiver of the obligations of the undersigned or of the right of Creditor to take further action without notice or demand as provided herein; not in any event shall any modification or waiver of the provision for this Guaranty be effective unless in writing nor shall any such waiver be applicable except in the specific instance for which given.

This Guaranty shall be jointly and severally binding on Guarantor and his heirs, personal representatives and assigns.

This writing is intended by the parties to be a final expression of the guarantee relationship between Guarantor and Creditor. There are no promises, terms, conditions, or obligations other than those contained in this agreement. No course of dealing, course of performance, or trade usage, and no parole evidence shall be used to supplement or modify any terms contained herein.

This Guaranty is, and shall be deemed to be, a contract entered into under and pursuant to the laws of the state of Arizona and shall be in all respects governed, construed, applied and enforced in accordance with the laws of said State, and no defense given or allowed by the laws of any other state of the United States of America shall be interposed in any action hereon unless defense is also given or allowed by the laws of the State of Arizona.

By:



Address:

[REDACTED]

[REDACTED] AZ [REDACTED]

Date:

July 18, 2014

ACC000086  
SHADOW-8507

**PROMISSORY NOTE**

(Term Loan)

\$100,000.00

Phoenix, Arizona  
July 18, 2014

FOR VALUE RECEIVED, the undersigned, *SHADOW BEVERAGES AND SNACKS, LLC*, an Arizona limited liability company ("Maker") promises to pay to Kurt Moore ("Lender"), the principal sum of One Hundred Thousand Dollars and No Cents (\$100,000.00), together with interest.

The entire unpaid principal, all unpaid accrued interest and all other amounts payable hereunder shall be paid in full on or before October 17, 2014.

An interest amount of \$15,000.00 will be paid for the short term loan on the date the loan is due to the lender. All amounts payable hereunder shall be paid in lawful money of the United States.

Maker shall have the right at any time or from time to time to prepay all or a portion of the principal or interest without a prepayment charge or premium.

At the holder's option, any payments hereunder may be applied first to accrued interest and then to principal.

In addition to the interest earned on the principal amount as stated in this agreement, the lender will receive warrants for this agreement. Warrants granted to the lender will be in the amount of 24,000 shares at a strike price of \$4.20 per share. Warrants will have a 5 year exercise period.

This Note shall become immediately due and payable at the option of the holder hereof without presentment or demand or any notice or Maker or any other person obligated hereon except as otherwise provided by the Term Loan Agreement of even date herewith between Maker and Lender (the "Loan Agreement"), upon the occurrence of any event of default in the payment of any of the principal or any interest hereon when due, upon default under the Loan Agreement, or upon default under any other agreement between Maker and Lender. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. Principal and interest shall be payable at the address of Lender, as set forth in the Loan Agreement or at such other place as the holder hereof may designate.

In the event any holder hereof utilizes the services of an attorney in attempting to collect the amounts due hereunder or to enforce the terms hereof or of any agreements related to this indebtedness, or if any holder hereof becomes party plaintiff or defendant in any legal proceeding for the recovery or protection of the indebtedness evidenced hereby, Maker, its successors and assigns, and any endorsers hereof shall repay to such holder hereof, on demand, all costs and expenses so incurred, including reasonable attorneys' fees, whether or not suit is brought, including those costs, expenses and attorneys' fees incurred after the filing by or against the Maker of any proceeding under any chapter of the Bankruptcy Code, Title 11 of the United States Code, or similar federal or state statute, and whether incurred in connection with the involvement of any holder hereof as creditor in such proceedings or otherwise.

Shadow Beverages and Snacks



Marking EXHIBIT 70  
DATE 8-10-15-15  
Colette E. Ross  
CR No. 50658

SHADOW006942

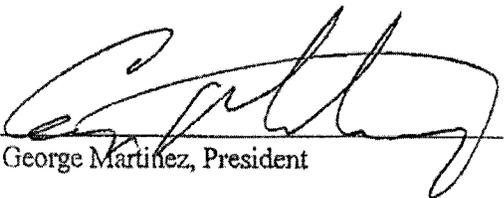
Except as otherwise provided in the Term Loan Agreement, Maker and all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally waive (i) demand, presentment for payment, notice of nonpayment, demand and dishonor, protest, notice of protest and all other notice except as otherwise provided herein, (ii) filing of suit, and (iii) diligence in collecting this Note. Maker, all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally agree that it will not be necessary for any holder hereof, in order to enforce payment of this Note, to first institute suit or exhaust its remedies against any maker or others liable herefor. Maker, all endorsers, all guarantors, and all others who may become liable for all or any part of these obligations hereby severally further consent to any extension or postponement of time of payment of this Note or any other indulgence with respect hereto, including but not limited to, the release of any party primarily or secondarily liable hereon without notice thereof to any of them.

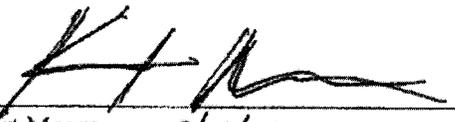
**MAKER, ALL ENDORSERS AND ALL GUARANTORS, HEREBY SEVERALLY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF, RELATING TO, OR CONNECTED WITH THIS NOTE, IT BEING ACKNOWLEDGED BY MAKER, ALL ENDORSERS AND ALL GUARANTORS THAT EACH SUCH PARTY MAKES THIS WAIVER OF TRIAL BY JURY KNOWINGLY AND VOLUNTARILY AND ONLY AFTER CONSULTATION WITH LEGAL COUNSEL.**

This Note shall be governed and construed in accordance with the laws of the State of Arizona.

This Promissory Note was executed and delivered by the undersigned and is effective as of the date first set forth above.

SHADOW BEVERAGES AND SNACKS, LLC, an  
Arizona limited liability company

By:   
George Martinez, President

By:   
Kurt Moore 7/18/14

<<< TRN: 140718-141736 >>>  
 \*\*\*\* MESSAGE ENVELOPE \*\*\*\*  
 ( Bank : 121 )

SRC:FED CALLER: SND DATE: 14/07/18  
 EXT:  
 RPT# AMT:100,000.00 CUR:USD RATE: 1. TRDR#  
 TEST: VAL: TYP:FTR/ FMS:S CHG:DB-W CD:A COM:N CBL:N

DBT A/ 0021 CDT D/ 4679/ ADV:LTR  
 DEBIT VAL: 14/07/18 CREDIT VAL: 14/07/18  
 AMT:100,000.00 CUR:USD AMT:100,000.00 CUR:USD  
 GL RECON: 114114 GL RECON: 038038  
 DEPT:0002729 DEPT:0003692  
 JPMORGAN CHASE BANK, N.A. SHADOW BEVERAGES AND SNACKS, LLC  
 4 NEW YORK PLAZA  
 FLOOR 15  
 NEW YORK, NY, US BNF: / 4679 CHG: BK?N  
 COUNTRY OF RESIDENCY: US SHADOW BEVERAGES AND SNACKS, LLC  
 SPECIAL INSTRUCTIONS:

IF INVALID SWIFT IN ORDER BNK FIELD  
 \*REMOVE S. EXAMPLES SBARNHR,  
 \*FIDLINESEC. PRUSECLUR FCNBDLS2003  
 SDR REF NUM: 472600199ES  
 ORIG: / 2835  
 THE KURT AND LAHEY MOORE FAMILY  
 REVOCABLE TRUST UTA DTD JAN 12 2004

TX  
 REF NUM: DCD OF 14/07/18

\*\*\*\* MESSAGE TEXT \*\*\*\*  
 (1100) Message Disposition: 30 (New expanded format)  
 Format Version: P (Production)  
 Test Production Code: (Original Incoming msg)  
 Msg Duplication Code: N (Incoming msg)  
 Msg Status Indicator:

(1110) Acceptance Timestamp: 07/18  
 Receipt Date: 16:42  
 Receipt Time: FT03  
 Receipt Application Id:

(1120) OMAD:  
 Output cycle date: 2014/07/18  
 Output Destination Id: 1187031R  
 Output sequence number: 057529  
 Output date: 07/18  
 Output time: 16:42  
 Output application Id: FT03

(1510) Type/Subtype Code: 10 (Transfer of funds)  
 Type Code: 00 (Regular transfer)  
 Subtype Code:



## Unconditional Personal Guaranty

Whereas, Shadow Beverages and Snacks LLC, an Arizona Limited Liability Company, (hereinafter called the "Borrower"), desires to transact business with and obtain credit or a continuation of credit from Kurt Moore (hereinafter called the "Creditor");

Whereas, Creditor is unwilling to extend or continue credit to the Borrower unless it receives an unconditional, absolute and irrevocable guarantee of the undersigned covering the indebtedness to Creditor, as hereinafter defined.

Now, therefore, in consideration of the premises and of other good and valuable consideration, the receipt of which is hereby acknowledged, and in order to induce Creditor from time to time, in its discretion, to extend or continue credit to the Borrower, the undersigned, George Martinez (hereinafter called "Guarantor"), agrees, with or without notice or demand, to reimburse Creditor, to the extent that such reimbursement is not made by the Borrower, for all expenses (including counsel fees) incurred by Creditor in connection with any of the indebtedness, as defined below, as and when due.

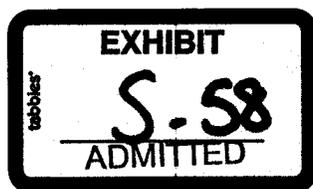
The word "indebtedness" means all of Borrower's payment obligations pursuant to any agreement or contract entered into with Creditor, including all principal, interest, late charges, and collection costs and expenses relating to the indebtedness.

In the event that any proceeding under bankruptcy, or any other laws now or hereafter in effect for relief of debtors, is filed by or against Borrower, or for the appointment of a receiver for Borrower, or any of its property, or if Borrower shall make an assignment for the benefit of creditors or shall discontinue business or become insolvent, all indebtedness shall, for the purpose of this Guaranty, at Creditor's election, become immediately due and payable. Guarantor consents and agrees that the bankruptcy of Borrower shall not relieve him of the obligations assumed hereunder.

All monies available to Creditor for application in payment or reduction of the liabilities of the Borrower may be applied by Creditor in such manner and in such amounts and at such time or times as it may see fit to the payment or reduction of such of the indebtedness as Creditor may elect, and the obligations pursuant to this Guaranty shall not be affected by any surrender or release by the Borrower of any other security held by it for any claim hereby guaranteed.

Guarantor hereby waives (a) notice of acceptance of this Guaranty and of extensions of credit by Creditor to the Borrower (b) presentment and demand for payment of any of the indebtedness (c) protest and notice of dishonor or default to the undersigned or to any other party with respect to any of the indebtedness; (d) all other notices to which the undersigned might otherwise be entitled; and (e) any demand for payment under this Guaranty.

Guarantor hereby expressly and irrevocably releases and waives any and all claims arising from this Guaranty, which Guarantor may have against Borrower, including but not limited to, future contingent claims based on subrogation, indemnity, reimbursement, contribution or contract. Guarantor also waives any and all rights or defenses arising by reason of any "one-action" or "anti-deficiency" law or any other law which may prevent Creditor from bringing any action herein, and defense asserted by Borrower on the underlying debt or any rights to claim discharge of the indebtedness, including but not limited to, failure of consideration, estoppel, statute of



Martinez EXHIBIT 71  
DATE 10-15-15  
Colette E. Ross  
CR No. 50658

SHADOW006944

frauds, accord and satisfaction and usury. Guarantor warrants and agrees that each of the waivers is made with Guarantor's full knowledge of its significance and consequences.

Guarantor represents and warrants to Creditor that Guarantor has not, and will not, sell, lease, assign, encumber, transfer or otherwise dispose of all, or substantially all, of Guarantor's assets, or any interest therein, to the extent that such action might in any way affect this Guaranty.

This is a guaranty of payment and not of collection and Guarantor further waives any right to require that any action be brought against the Borrower or any other person or to require that; resort be had to any security or to any balance of any deposit account or credit on the books of Creditor in favor of the Borrower or any other person.

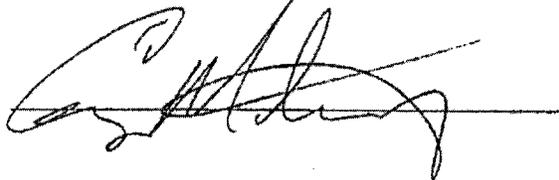
No delay on the part of Creditor in exercising any rights hereunder or failure to exercise the same shall operate as a waiver of such rights; no notice to or demand on the undersigned shall be deemed to be a waiver of the obligations of the undersigned or of the right of Creditor to take further action without notice or demand as provided herein; not in any event shall any modification or waiver of the provision for this Guaranty be effective unless in writing nor shall any such waiver be applicable except in the specific instance for which given.

This Guaranty shall be jointly and severally binding on Guarantor and his heirs, personal representatives and assigns.

This writing is intended by the parties to be a final expression of the guarantee relationship between Guarantor and Creditor. There are no promises, terms, conditions, or obligations other than those contained in this agreement. No course of dealing, course of performance, or trade usage, and no parole evidence shall be used to supplement or modify any terms contained herein.

This Guaranty is, and shall be deemed to be, a contract entered into under and pursuant to the laws of the state of Arizona and shall be in all respects governed, construed, applied and enforced in accordance with the laws of said State, and no defense given or allowed by the laws of any other state of the United States of America shall be interposed in any action hereon unless defense is also given or allowed by the laws of the State of Arizona.

By:



Address:

[REDACTED]

[REDACTED], AZ [REDACTED]

Date:

July 18, 2014

Matney  
 EXHIBIT 76  
 DATE 10-15-15

Committee E. Ross  
 CR No. 50658



Investor Name	Address	City	State	Zip	E-MAIL	TAX ID	Investment Date	Investment Amount	Interest	Maturity Date	Promissory Note	Limited Security Agreement	Certificate #	Certificate Shares	Warrants	Warrant Price
Joe Damigan			AZ		joed@		9/22/2008	\$ 5,882.35								
Steve H. Kremen			AZ		skremen@		10/1/2008	\$ 25,600.00	12%	1/1/2011						
Paul Derbin			AZ		derbin@		10/6/2008	\$ 25,000.00	12%	1/1/2011						
William Coon Bloodstock c/o Ernest Mancini			PA		EHmanancin@		10/10/2008	\$ 50,000.00	12%	1/1/2011						
Sam Jones			CT		sjones@		1/17/2008	\$ 17,647.96	12%							
Ryan Westmiller			AZ		rwes@		12/1/2008	\$ 5,882.35	12%							
Chenopier I. Oshrians			AZ		cohen@		12/1/2008	\$ 12,500.00								
Year Source Pacific Fund I, LLP c/o Ron Ditzing			AZ		rditzing@		12/1/2008	\$ 50,000.00	12%	1/1/2011						
Professional Performance Services LLC c/o Michael Roizer			AZ		mroizer77@		12/1/2008	\$ 25,000.00								
George Kears			CO				6/1/2009	\$ 50,000.00	\$ 5,483.33	6/1/2010						
Scottie White			NC		scottie.white@		6/16/2009	\$ 50,000.00								
Alan Neil			AZ		anil@		7/6/2009	\$ 500,000.00	\$ 1,500,000.00							
William Robinson			CA		wrobinson2@		11/19/2009	\$ 150,000.00	8%							
Matt J. Murphy							1/29/2010	\$ 50,000.00	\$ 2,500.00	3/27/2010						
Scott Tarsell							3/16/2010	\$ 200,000.00	2.5%	9/1/2010						
Robert W. Brouse, Trust deed 1078/2010, Robert W. Brouse, TRS			IL		rob.brouse@		4/30/2010	\$ 50,000.00								
Richard Amorevico			NV		richard@		6/13/2010	\$ 50,000.00								
Joe Joyce			FL		joey@		8/26/2010	\$ 150,000.00	10%	10/1/2010						
James Family Trust			CA		jeff@		9/1/2010	\$ 75,000.00	15%	12/01/2016						
Frank Family Trust			CA		frank@		9/9/2010	\$ 71,000.00	15%	12/31/2016						
Ron Blarett			AZ		ron@		1/9/2011	\$ 125,000.00	10%	3/1/2011						
Steve Finkels			TX		steve@		3/7/2011	\$ 75,000.00								
William M. Frosman			CA		wfrosman@		3/8/2011	\$ 50,000.00								
Lance Federley			CA		lance@		3/8/2011	\$ 100,000.00								
Doug Kahly			IL		doug@		3/14/2011	\$ 100,000.00								
Thomas Griffin			CA		tom@		3/14/2011	\$ 100,000.00								
Eric Romard			CA		eric@		3/16/2011	\$ 50,000.00								
The Alan A. Plesner Trust			CA		al@		4/18/2011	\$ 200,000.00								
Willis G & Jean A. Martin Family LLC			WA		willis@		5/25/2011	\$ 150,000.00								
Kevin Sani   Wiring LLC					ksani@		7/8/2011	\$ 200,000.00	15%	8/22/2011						
Soylham Capital Partners							7/28/2011	\$ 1,000,000.00	9%	7/28/2013						
Soylham Capital Partners							1/8/2011	\$ 1,000,000.00		7/28/2013						
RJ Sciffoni Inc Defined Benefit Pension Plan			CA		rsciffoni@		12/01/2011	\$ 50,000.00								
John F. Deane			CA		john@		1/19/2012	\$ 51,672.31								
Soylham Capital Partners			CO		eric@		4/17/2012	\$ 300,000.00	0.50%	1/15/2013						
Isaac Janot			TX				8/10/2012	\$ 500,000.00	12%	2/9/2014						
Bob Schaler							8/15/2012									
Carne Major Development Dave Kell	CO		MN		dkell@		3/7/2013	\$ 500,000.00	\$22,000.00 in 30day	5/6/2013	X	X	112000	2,300		
Rob L. Anderson Trust			NB		rob@		4/9/2013	\$ 250,000.00	12% Only	4/5/2014	X	X	112001	6,900		
Legacy Insurance Services Inc Rob Anderson	CO		NB		rob@		4/17/2014	\$ 350,000.00	\$78,000	5/19/2014	X		112015	6,900		
Richard Communications Inc. Richard Williams   Brown Building Group	CA		CA		rich@		9/21/2013	\$ 100,000.00	5%	10/1/2013						
James Stephenson			MS				12/6/2013	\$ 40,000.00	\$ 8,000.00							
			NV				1/15/2014	\$ 30,000.00	\$ 2,500.00	4/1/2014						

Entity Name	State	Entity Type	Effective Date	Amount	Rate	Term	Amendment	Balance	Interest
Jason Seligman			1/15/2014	\$ 50,000.00		6/15/2014			
Rod Haskoff			3/20/2014	\$ 115,000.00	10%	9/20/2014			
Trp Bohlic			4/17/2014						
Mari J Murphy	AZ		5/28/2014	\$ 60,000.00		6/27/2014			
Declaration of Trust of Richard W. Davis dated Nov. 7, 1994	IL		6/20/2014	\$ 50,000.00					
Meadel Crane			7/18/2014	\$ 50,000.00		10/18/2014			
Kurt Moore			7/18/2014	\$ 100,000.00		10/17/2014			
Viele Property Investments	CA		8/7/2014	\$ 300,000.00		10/7/2014			
Pullman Communications Inc. o/a Richard Schroyer L&L Partnership	CA		8/29/2014	\$ 250,000.00	5%	9/17/2013			
Joe George Martinez	AZ								
B Pava LLC	AZ								
Winnig, LLC	CA								
Andreas P Reinhardt	CA								
Robert Kertz	AZ								
Jeff Scheidt	CO								
Brian Charnick	WA								
Louis Mann	NY								
Lori Nam	NY								
Bruce Fagan	AZ		10/25/2013	\$ 250,000.00	9% Qtrly	10/31/2013	X		11,000
Bruce Fagan			11/21/2013	\$ 200,000.00		1/15/2014	X		19,000
Bruce Fagan			1/15/2014			3/15/2014	Amendment		
Bruce Fagan			3/15/2014			5/3/2014	Amendment		
Bruce Fagan			1/7/2014	\$ 100,000.00		3/7/2014	X		5,000
Bruce Fagan			3/7/2014			5/3/2014	Amendment		
David Novak   Brown Ventures LLC				\$ 150,000.00					
Bob Kato			5/19/2013	\$ 50,000.00					
Miguel Freije			12/2/2013	\$ 50,000.00			X		
William Berzovage	WA		12/2/2013	\$ 25,000.00		2/19/2014	X		
Renowned Enterprises LLC	AZ		2/19/2014	\$ 50,000.00		5/17/2014	Amendment		
CO Christian Lopez			5/17/2014	\$ 50,000.00		8/17/2014	Amendment		
Brown Bottling			5/20/2014	\$ 50,000.00		9/8/2014	X		24,000 \$ 4,20

# SHADOW BEVERAGES AND SNACKS

Business Model and Opportunity Assessment

March 2014

*Martinez* EXHIBIT *83*  
DATE *8-10-15-15*  
Colette E. Ross  
CR No. 50658



ACC000047  
SHADOW-8507



Shadow was founded in 2008 by George Martinez and Sam Jones, Beverage Executives with broad experience from the Pepsi System. The vision since inception has been to be an accelerator of beverage and snack products in the “Better for You” and nutritional categories.

Shadow, headquartered in Phoenix, AZ, has built a base infrastructure to support brand incubation and growth through its network of distributors across the country. While having a firm belief that the optimal go-to-market method is direct store delivery (DSD), they have incorporated a direct to retailer (DTR) alternative to establish a hybrid distribution model. The direct delivery method is driven by national retailers and allows for national distribution quickly by utilizing retailer’s warehouse delivery systems.

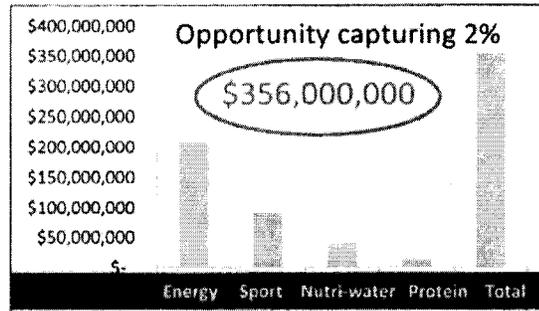
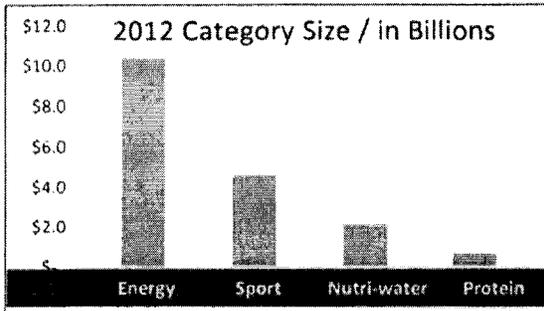
As the initial portfolio of brands was being developed, Shadow began the process of identifying and attracting experienced beverage experts from across all functional disciplines. Today the organization has 30 employees and a leadership team with a combined 300 years of beverage experience.

The Shadow brand portfolio competes effectively in four categories with a combined industry scale of approximately \$17 billion in sales. The categories are large, growing and filled with continuous innovation that will enable a pipeline of growth for years to come. The categories include Sports Nutrition, Enhanced Water, Protein Nutrition and Energy.

### **THE MARKETPLACE**

The U.S. Liquid Refreshment Beverage (LRB) industry is the largest and one of the most vibrant consumer products goods industries with annual volume of 10 billion cases and retail revenue of \$75 billion. The industry is comprised of Carbonated Soft Drinks (CSD) which represents 35% of industry revenue and Non-Carbonated Beverages (NCB) which total 65% of the industry. Over recent years, the NCB business has seen consistent 4-6% growth while CSD’s have been down (3%-5%). Total industry revenues have been growing in the 3-4% range.

The NCB business is made up of several categories including Energy, Sports, Enhanced Water, Protein and Tea beverages. Aside from the Sports category, these categories have developed and have rapidly grown over the past 10 years. The emergence of these categories has been fueled by consumers transitioning out of CSD’s and into these more functional beverage categories that provide a greater variety of beverage benefits. These key categories provide the opportunity for new and emerging brands. Shadow has built a portfolio of brands that target the opportunity of two percent in each of these growing categories.



The Energy category is growing rapidly, 19% YTD 2012, and is the second largest LRB category at \$10 billion. Key competitors in the category include Monster Beverages, Rockstar, PepsiCo and Red Bull. Growth will be fueled by consumers who continue to transition out of CSD's as they seek alternative beverages driven by category innovation.

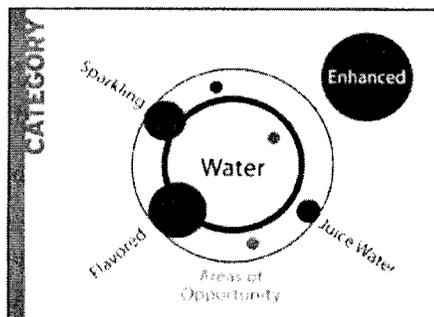
The Sports category has been the leading functional beverage category in the industry with total revenue of \$4.6 billion and growing 7% in 2012. Key competitors include category leader Gatorade (PEP) and PowerAde (KO). Continued consumer health and wellness trends will deliver category expansion in the mid-single digits.

The Enhanced Water category has rapidly developed over the past 10 years growing to \$2.1 billion in revenue with 2012 YTD growth of 3%. Key competitors include Vitamin Water (KO) and Sobe Life Water (PEP). Category growth will be robust behind functional innovation, flavor expansion and reduced calorie offerings.

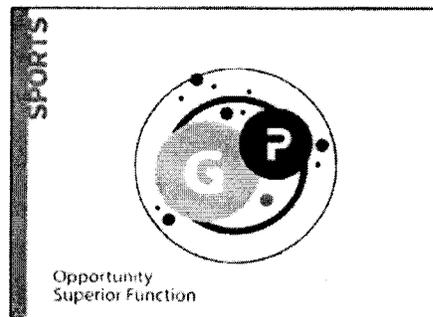
The Protein category is experiencing rapid growth driven by health and wellness trends and the consumer adoption of the Protein category. Over the past five years, the category has grown to \$0.7 billion in revenue and 2012 growth rates are exceeding 25%. The major competitor in the category is Muscle Milk (CytoSport). Category growth will continue in the 20% range driven by multiple new entries and continued household penetration.

### OUR BRAND STRATEGY

Products exist to expand choice, brands exist to simplify choice. Shadow has developed brands through licensing agreements that support the consumer choice and what it stands for. The strategy involves a clear understanding of how brands and categories create opportunity. Duplication in categories is abundant and leads to failure. Finding the opportunity within the category that speaks to consumers understanding and confidence delivers results.



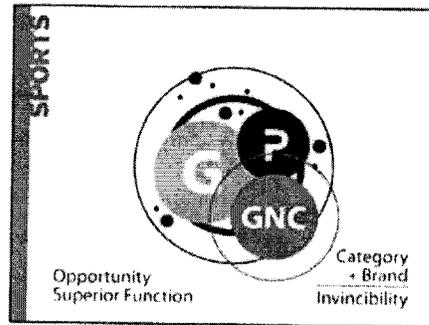
2



ACC000049  
SHADOW-8507

Once the opportunity in the category is identified, a brand is needed to speak to the consumer. Brand and category relevance are the ultimate combination. Existing brands that are trusted, credible and understood can leverage the opportunity.

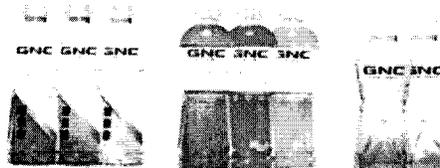
The GNC Beverages participate within segments of growing categories that provide consumers with a point of difference. Superior functionality is a segment that has no competition and one that consumers understand. The GNC brand holds the trust and credibility of consumers in the nutritional space. Category and brand strategies build successful products.



**OUR BRAND STORY TODAY**

Shadow's portfolio of products target the emerging and evolving categories of non-alcoholic beverages. The focus is on growth and innovation through white space opportunities and functionality. Shadow's brands exist in high growth categories and leverage the consumer demand for health, nutrition and functional ingredients. Our brands are delivering incremental volume and margin growth for our distributors while enhancing category margins for customers. That win-win formula provides Shadow with volume, revenue and industry level gross profit.

**GNC BEVERAGES**



**Categories – Sport Nutrition, Nutritional Water, and Protein Nutrition**  
**Consumer Positioning – Nutrition Based, Performance Driven**  
**Brand Performance Drivers – Consumer Trusted, Credibility in Nutrition**

- Currently under discussion with GNC to continue agreement
- Agreement includes rights to all RTD's categories for further expansion
- InterBev "Best Functional Beverage of the Year" Award in October 2012

**NO FEAR ENERGY**



IT'S AN ATTITUDE  
IT'S A LIFESTYLE  
IT'S A STATE OF MIND

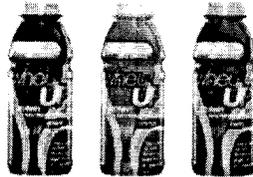
**Category** – *Energy Drinks*

**Consumer Positioning** – *Youthful and Super Aggressive*

**Brand Performance Drivers** – *Exploding Category and Monster Fighter*

- Ten-year licensing agreement with brand owner, IBML
- Rights to develop other RTD categories
- Trademark is expanding in mainstream apparel retailers under IBML
- Previously a multi-million case brand in the Pepsi System

**WheyUP PROTEIN**



**Category** – *Water Based Protein*

**Consumer Positioning** – *Serious about Fitness and Health Focused*

**Brand Performance Drivers** – *Combines Energy and Protein Category Growth*

- Acquired Trademark and formula in 2011
- Water based product / new segment in the protein category
- Fitness focused / pre-loading protein prior to a workout

**MOR**



No sugar. No caffeine.  
**mōr taste.**

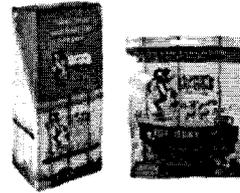
**Category** – *Sparkling Enhanced Water*

**Consumer positioning** – *Healthy Carbonated Beverage with Functionality*

**Brand Performance Drivers** – *ABA Compliant / USDA Certification*

- JV agreement with mōr Beverages Company
- Distribution agreement with Pepsi Beverages Company
- Functional beverage with a focus on the education, health and business channels

## HUNGRY MCGEE



**Categories** – *Meat Snacks, Sticks and Bites*

**Consumer positioning** – *Value Priced / Dual Impulse Merchandising*

**Brand Performance Drivers** – *Bottler Focused, Leverage Distribution Partnership*

- JV agreement
- Independent Pepsi Bottlers distribution agreement
- DTR broker agreement

## FAVEO



**Category** – *Hangover Relief*

**Consumer positioning** – *Lifestyle and Wellness*

**Brand Performance Drivers** – *New Category with Retailer Interest*

- JV agreement / 20% equity with performance
- Launch markets of Phoenix and Las Vegas
- Food Service and Retail channel opportunity

## INNOVATION PIPELINE

Shadow is currently in discussions with other brands that are leading the development of “Better for You Products”. Listed below are brands as prioritized for 2014:

**IMPERIAL PROTEINS:** The IPRO process produces an equal amount of SuperJuice – one gallon of SuperJuice per one pound of flour. This juice is an ideal 100% all-natural drink supplement. This juice may be quickly included in one of our current brands and/or has the potential to create a brand of its own.

**POP ALL NATURAL SODA:** The POP brand leverages the power of celebrity social networks and communicates the great tasting all natural soft-drink to aspiring consumers. Launch markets include Los Angeles, New York and Miami.

**CHERRISH:** A beverage that leverages the anti-oxidant power of the Montmorency Cherry. Currently this brand is authorized by the NFL, MLB and major colleges for their athletes. Shadow will take distribution to major retailers across the country.

## OUR COMPANY STORY FOR TOMORROW

We have assembled a seasoned management team and are setting the table for robust growth. The future requires us to have clear functional platforms that together build a roadmap to success. Our roadmap incorporates distinct strategies for manufacturing, sales and marketing, distribution and customer service. Each platform requires strategic investments that work in harmony to deliver the attached proforma.

### MANUFACTURING

Our formulation for the GNC, No Fear, and WheyUP brands are proprietary to Shadow Beverages and have been developed in conjunction with Wild Flavors, our flavor house supplier. The mōr, Faveo and Hungry McGee brands are not proprietary, but each is owned on a percentage basis with the founders, outside investors and Shadow Beverages. These Joint Venture agreements require that the brands bring with them the needed capital for the first two years of expenses and allow for Shadow to share in the profit margins.

Shadow uses co-packers to bottle and can their products and has entered into signed agreements with each strategically selected co-packer. In turn, Shadow requires all co-packers to sign our co-packer governance agreement which includes our production specification manual. This manual is provided to each co-packer before the start of production and is used as the foundation for our manufacturing relationship. Our agreements cover operating governance, tolling fees, yield analysis, forecasts, product quality testing, indemnification and terms.

In order of priority, our manufacturing strategy is one that emphasizes quality first and then prioritizes capability, capacity, location, cost and availability. Developing a network of co-packers based on the sales and distribution of each brand plays an integral role. The geographical alignment is necessary to deliver great customer service and minimize shipping cost. There will be times when we deviate from this strategy, but will take place only if there is a capacity issue for one of our portfolio drinks or a capability issue with one of our current co-packers.

Utilizing a partners manufacturing, warehouse or purchasing power is also a Shadow strategy. Key customers have manufacturing capacity that is underutilized and Shadow will take advantage of that scenario. Generally, this will lead to lower tolling fees and improved customer service. Some key partners have the ability to become "concentrate partners" versus just co-packers, which becomes a strategic advantage to Shadow and the partner. Shadow then sells the concentrate and the partner controls the entire manufacturing and purchasing process. This is advantageous to Shadow as it reduces working capital requirements by 30% - 40% and reduces raw material costs by tying into the partner's supply chain purchasing power.

Shadow has established a raw material supplier chain that partners with the top innovators in the industry. Wild Flavors, Flavor Infusion, Graham Packaging, Ball Corp, Brooke and Whittle and CSI are just a few of the partners where Shadow has developed great working relationships.

## MARKETING APPROACH

The development of consumer trial and repeat are fundamental marketing deliverables for the Shadow brands. Since these brands are new entries to key growth categories, our initial marketing strategy calls for targeted grass roots programs, sampling, web and social media to generate trial and develop repeat purchases that build consumer loyalty. The combination of these activities will complement our ability to gain distribution, grow categories and build volume and revenue for Shadow brands that can be invested in future brand development.

### **Grass Roots Marketing**

- Sampling to targeted consumers at retail and events to develop trial
- Continuity programs that reward repeat purchases and loyalty
- Print advertising to educate targeted consumers

### **Web and Social Media**

- Brand.com Homepages for each Shadow brand
- Facebook page for brand interaction by targeted consumers
- Development of consumer data base

## DISTRIBUTION AND CUSTOMERS

Distribution for Shadow Brands is a hybrid between Direct Store Delivery (DSD) and Direct to Retailer (DTR). Brands may be one or the other, or a combination of both depending on the consumer the brand is targeting.

There are current DSD distribution agreements in place with 18 independent Pepsi Bottlers and Pepsi Beverages Company (a division of PepsiCo) for the No Fear, mōr and Smoke E Bones brands. A network of independent distributors compliments this group across the country and their agreement may include the GNC and WheyUP brands. We will continue to expand our DSD network to grow distribution and are currently in contract discussions with 15 distributors that will grow our network in 2014.

Our current DTR agreements with national customers have secured shelf space for 2104 while including promotional activity for each brand with each national retailer. Current national retailers include:



As 2014 approaches, we are in final distribution discussions with the following retailers for one or more of the Shadow Beverages Brands:



7



ACC000054  
SHADOW-8507

## INFRASTRUCTURE AND CUSTOMER SERVICE

Shadow currently distributes products in 24 states across the U.S. through its network of DSD distributors. Within each distributor territory we support our brands with field sales personnel dedicated to that distributor. They are involved with customer presentations, selling, and execution with each distributor. They provide focus from the distributor on our brands. In addition to the field sales teams, we have a national account team supporting distributors and selling to all national retailers. Our sales reach is across all channels of business with a focus on supporting our distributor partners. Included in the organization is the support of logistics, supply chain, administration, and financial controls.

## EXECUTIVE AND SENIOR MANAGEMENT TEAM

The Shadow management team has more than 300 combined years of cross functional experience in the consumer products industry. The team is excited about the prospects for growth and is committed to do what it takes to win in the face of tough competitors, sophisticated customers, and an ever-evolving consumer dynamic. We have attracted industry leaders that are hungry for an entrepreneurial opportunity and value our high risk, high reward compensation approach. Running lean and rewarding for performance will allow us to develop a talented management team without over investing in G & A.

### Executive Team

#### **Eric Reinhard / CEO**

- 28 years: President of Pepsi Cola Bottlers Association
- General Manager of Pepsi Bottling Group

#### **George Martinez / President & COO**

- 20 year Pepsi career
- Sales, Operations and Executive Leadership

#### **Bob Shafer / Chief Marketing Officer**

- 28 years of Executive Leadership roles at Pepsi
- VP of Marketing and VP of Retail Sales at PBG

### National Sales and Distribution Management Team

#### **Bonnie Lowe / Division Vice President East**

- 18 years beverage sales National Account level
- Called on Drug, Mass. Grocery for PepsiCo

#### **Jeff Boucher / VP of National Sales**

- 25 years beverage knowledge/experience
- Pepsi National Account Sales Leadership

#### **Scott Pearce / Director of National Sales**

- 24 years convenience store sales and mgmt. experience
- 7-eleven Franchisee, amp/m Field Marketing Mgr.

### Finance and Administration Team

#### **Doug Iannarino / CFO - Consultant**

- 28 years of Beverage Finance Management
- VP of Finance with PBG Mid-Atlantic BU

#### **Kathy Reiser / Director of Administration**

- 10 years of beverage sales and administration
- HR and Corporate Reporting experience

#### **Josephine Dizon / Controller**

- 24 years of Controllership experience
- Manufacturing, Transportation and Service Industries

#### **Rick Peterson / SVP Capital Acquisition**

- 32 years in Consumer Product and Beverage industry
- Executive leadership at PepsiCo, PBG and Sara Lee

### Supply Chain and Manufacturing Logistics Team

#### **Richard Amrozowicz / VP of Supply Chain**

- 25 year Pepsi career, Field, HQ and Int'l experience
- Operations, Logistics, Sales, Marketing and Finance

#### **Allen Warner / Director of Supply Chain**

- 25 years of Supply Chain management
- Managed 22 Pepsi facilities across multiple states

**Our Team...Experienced, Knowledgeable, Nimble and Proven**

**ACC000055**  
SHADOW-8507

## THREE YEAR FINANCIAL PROJECTIONS

FINANCIAL RESULTS / PROJECTIONS (in thousands) with current brands:

Year	2012	2013	2014	2015	2016
Revenue	3,978	5,923	13,209	23,235	28,034
COGS	3,822	4,100	7,484	13,372	16,156
Expense	3,543	3,391	2,921	3,378	3,642
Net Profit	(3,387)	(1,568)	3,023	6,715	8,478

FINANCIAL PROJECTIONS (in thousands) with addition to IPRO:

Year	2012	2013	2014	2015	2016
Revenue			13,707	34,860	93,216
COGS			7,584	19,521	42,961
Expense			3,021	4,880	10,327
Net Profit			3,223	10,459	39,928

## LONG-TERM AND EXIT STRATEGIES

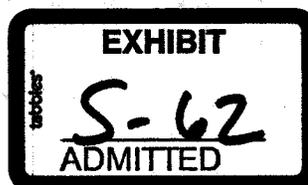
1. Increase sales thru distribution and marketing of current brand portfolio, and/or increase brands and leverage infrastructure to drive margin and revenue.
2. Sell one or multiple brands to companies that are looking for young emerging brands in the beverage industry. Likely candidates are PepsiCo, Coca Cola, Dr Pepper Snapple Group, or Nestle. These companies today are looking for growing brands that offset declines in their current portfolios.
3. Develop an IPO to create significant capital to compete as an independent beverage and snack wholesaler.

# SHADOW BEVERAGES AND SNACKS

Business Model and Opportunity Assessment

December 2014

*Martinez* EXHIBIT *84*  
DATE *10-15-15*  
Colette E. Ross  
CR No. 50658



SHADOW005150



Shadow was founded in 2008 by George Martinez and Sam Jones, Beverage Executives with broad experience from the Pepsi System. The vision since inception has been to be an accelerator of beverage and snack products in the "Better for You" and nutritional categories.

Shadow, headquartered in Phoenix, AZ, has built a base infrastructure to support brand incubation and growth through its network of distributors across the country. While having a firm belief that the optimal go-to-market method is direct store delivery (DSD), they have incorporated a direct to retailer (DTR) alternative to establish a hybrid distribution model. The direct delivery method is driven by national retailers and allows for national distribution quickly by utilizing retailer's warehouse delivery systems.

As the initial portfolio of brands was being developed, Shadow began the process of identifying and attracting experienced beverage experts from across all functional disciplines. Today the organization has 30 employees and a leadership team with a combined 300 years of beverage experience.

The Shadow brand portfolio competes effectively in four categories with a combined industry scale of approximately \$17 billion in sales. The categories are large, growing and filled with continuous innovation that will enable a pipeline of growth for years to come. The categories include Sports Nutrition, Enhanced Water, Protein Nutrition and Energy.

## EXECUTIVE AND SENIOR MANAGEMENT TEAM

The Shadow management team has more than 300 combined years of cross functional experience in the consumer products industry. The team is excited about the prospects for growth and is committed to do what it takes to win in the face of tough competitors, sophisticated customers, and an ever-evolving consumer dynamic. We have attracted industry leaders that are hungry for an entrepreneurial opportunity and value our high risk, high reward compensation approach. Running lean and rewarding for performance will allow us to develop a talented management team without over investing in G & A.

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- 7-11, 7-Eleven franchisee, national Field Marketing Mgr.

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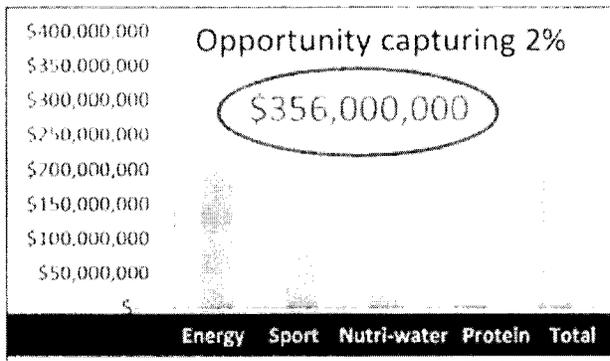
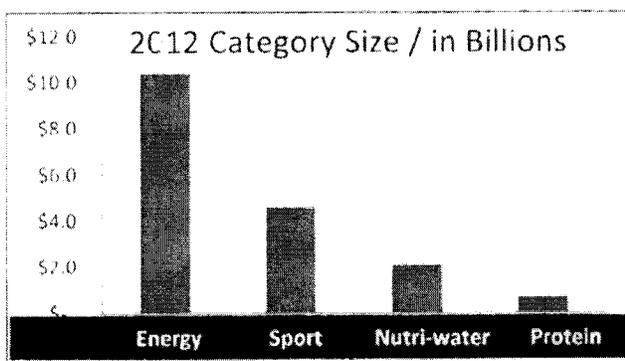
**Our Team...Experienced, Knowledgeable, Nimble and Proven**

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## THE MARKETPLACE

The U.S. Liquid Refreshment Beverage (LRB) industry is the largest and one of the most vibrant consumer products goods industries with annual volume of 10 billion cases and retail revenue of \$75 billion. The industry is comprised of Carbonated Soft Drinks (CSD) which represents 35% of industry revenue and Non-Carbonated Beverages (NCB) which total 65% of the industry. Over recent years, the NCB business has seen consistent 4-6% growth while CSD's have been down (3%-5%). Total industry revenues have been growing in the 3-4% range.

The NCB business is made up of several categories including Energy, Sports, Enhanced Water, Protein and Tea beverages. Aside from the Sports category, these categories have developed and have rapidly grown over the past 10 years. The emergence of these categories has been fueled by consumers transitioning out of CSD's and into these more functional beverage categories that provide a greater variety of beverage benefits. These key categories provide the opportunity for new and emerging brands. Shadow has built a portfolio of brands that target the opportunity of two percent in each of these growing categories.



The Energy category is growing rapidly, 19% YTD 2012, and is the second largest LRB category at \$10 billion. Key competitors in the category include Monster Beverages, Rockstar, PepsiCo and Red Bull. Growth will be fueled by consumers who continue to transition out of CSD's as they seek alternative beverages driven by category innovation.

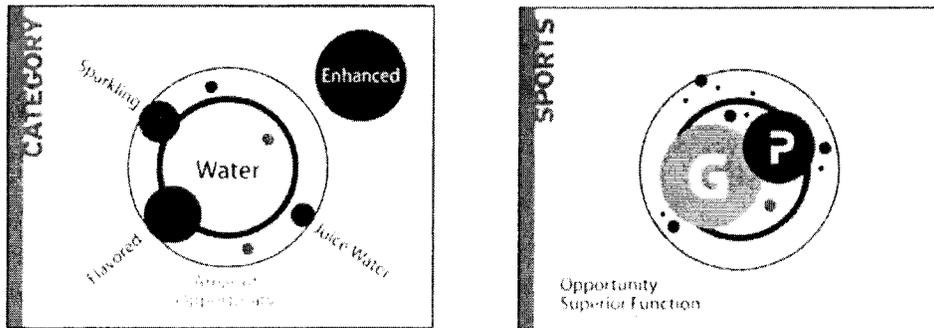
The Sports category has been the leading functional beverage category in the industry with total revenue of \$4.6 billion and growing 7% in 2012. Key competitors include category leader Gatorade (P/P) and PowerAde (KO). Continued consumer health and wellness trends will deliver category expansion in the mid-single digits.

The Enhanced Water category has rapidly developed over the past 10 years growing to \$2.1 billion in revenue with 2012 YTD growth of 3%. Key competitors include Vitamin Water (KO) and Sobe Life Water (P/P). Category growth will be robust behind functional innovation, flavor expansion and reduced caloric offerings.

The Protein category is experiencing rapid growth driven by health and wellness trends and the consumer adoption of the Protein category. Over the past five years, the category has grown to \$0.7 billion in revenue and 2012 growth rates are exceeding 25%. The major competitor in the category is Muscle Milk (CytoSport). Category growth will continue in the 20% range driven by multiple new entries and continued household penetration.

## OUR BRAND STRATEGY

Products exist to expand choice, brands exist to simplify choice. Shadow has developed brands through licensing agreements that support the consumer choice and what it stands for. The strategy involves a clear understanding of how brands and categories create opportunity. Duplication in categories is abundant and leads to failure. Finding the opportunity within the category that speaks to consumers understanding and confidence delivers results.



Once the opportunity in the category is identified, a brand is needed to speak to the consumer. Brand and category relevance are the ultimate combination. Existing brands that are trusted, credible and understood can leverage the opportunity as depicted in the example.

## OUR BRAND STORY TODAY

Shadow's portfolio of products target the emerging and evolving categories of non-alcoholic beverages. The focus is on growth and innovation through white space opportunities and functionality. Shadow's brands exist in high growth categories and leverage the consumer demand for health, nutrition and functional ingredients. Our brands are delivering incremental volume and margin growth for our distributors while enhancing category margins for customers. That win-win formula provides Shadow with volume, revenue and industry level gross profit.

### NO FEAR ENERGY



IT'S AN ATTITUDE  
IT'S A LIFESTYLE  
IT'S A STATE OF MIND

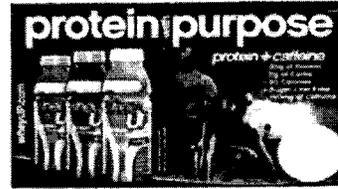
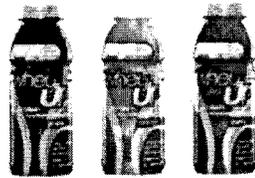
*Category – Energy Drinks*

*Consumer Positioning – Youthful and Super Aggressive*

*Brand Performance Drivers – Exploding Category and Monster Fighter*

- Ten-year licensing agreement with brand owner, IBMI.
- Rights to develop other RED categories
- Trademark is expanding in mainstream apparel retailers under IBMI.
- Previously a multi-million case brand in the Pepsi System

WheyUP PROTEIN



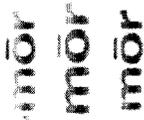
Category – *Water Based Protein*

Consumer Positioning – *Serious about Fitness and Health Focused*

Brand Performance Drivers – *Combines Energy and Protein Category Growth*

- Acquired Trademark and formula in 2011
- Water based product / new segment in the protein category
- Fitness focused / pre-loading protein prior to a workout

MOR



No sugar. No caffeine.  
**mōr** taste.

Category – *Sparkling Enhanced Water*

Consumer positioning – *Healthy Carbonated Beverage with Functionality*

Brand Performance Drivers – *ABA Compliant / USDA Certification*

- JV agreement with mōr Beverages Company
- Distribution agreement with Pepsi Beverages Company
- Functional beverage with a focus on the education, health and business channels

Hungry McGee



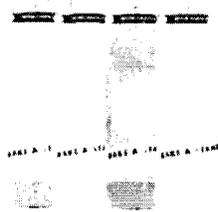
Category – *Meat Snacks, Sticks and Bites*

Consumer positioning – *Value Priced / Dual Impulse Merchandising*

Brand Performance Drivers – *Bottler Focused, Leverage Distribution Partnership*

- JV agreement / equity with performance
- Independent Pepsi Bottlers distribution agreement
- Meat Snacks are the fastest growing snack category in C&G

Make a Stand



**MAKE A STAND**

*Category – Premium Lemonade*

*Consumer positioning – Causal Marketing, end childhood slavery*

*Brand Performance Drivers – DSD driven, retailer support of causal marketing*

- JV agreement
- Marketing platform leverages social media
- Growth category for organic and all natural products

mix1



**mix1**

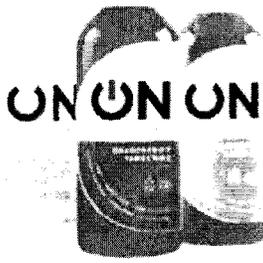
*Category – Protein Shake*

*Consumer positioning – Nutrition Based, All Natural*

*Brand Performance Drivers – Started in 2009 – Established Consumer Base*

- JV agreement / Sales Distribution Management
- Lifestyle and Nutrition Focused
- High growth category

ON



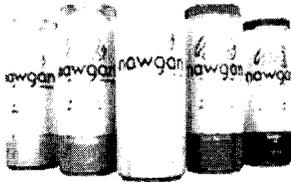
**Category** – All Natural Energy

**Consumer positioning** – Healthy, Active Lifestyle

**Brand Performance Drivers** – Consumer Focus on Natural Products

- JV Agreement with Kirin Beverages
- Science Based Platform
- Evolution of the High Growth Energy Category

Nawgan



**Category** – Mental Energy

**Consumer positioning** – Alertness and Focus Benefits

**Brand Performance Drivers** – Launched 2009

- JV agreement with Kirin Beverages
- Distribution Focus in Work Place and Colleges
- Science Based with Clinical Studies Completed

### INNOVATION PIPELINE

Shadow is currently in discussions with other brands that are leading the development of “Better for You Products”. Listed below are brands as prioritized for 2014:

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Our current DIR agreements with national customers have secured shelf space for 2014 while including promotional activity for each brand with each national retailer. Current national retailers include:



We continue to build market place availability. The following retailers are reviewing one or more of the Shadow Beverages brands for distribution in 2014:



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1. Increase sales thru distribution and marketing of current brand portfolio, and/or increase brands and leverage infrastructure to drive margin and revenue.
2. Sell one or multiple brands to companies that are looking for young emerging brands in the beverage industry. Likely candidates are PepsiCo, Coca Cola, Dr Pepper Snapple Group, or Nestle. These companies today are looking for growing brands that offset declines in their current portfolios.
3. Develop an IPO to create significant capital to compete as an independent beverage and snack wholesaler.

## Board of Directors Meeting Minutes

Date: February 1, 2013

Location: Shadow Conference Room

Time: 8:00am to Noon

Present: George Martinez, Sam Jones, Eric Reinhard and Brian Charneski

By Phone: Doug Iannarino

Others Present: Kathy Reiser

### Proceedings:

Meeting called to order at 8:30am by Eric Reinhard

Minutes from June 27, 2012 approved, seconded and passed.

Motion to grant Non Executive Board Members compensation of 10,000 shares a year; approved seconded and passed.

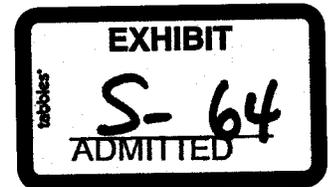
Motion to grant Chairman of Board compensation of 20,000 membership shares; approved, seconded and passed.

Motion to grant Board Advisor annual compensation of 10,000 membership shares; approved, seconded and passed.

### New Business

Board Governance - Protocol was established for future meetings

1. Quarterly Full Session
2. Monthly Conference Call
3. Agenda going forward to include:
  - Call to Order
  - Approval of Prior Minutes
  - Old Business
  - New Business
  - Executive Session



Per Operating Agreement the date of March 15 was determined for the Annual Membership Meeting. This will be a conference call. The current Operating Agreement states 1<sup>st</sup> Tuesday in April. This will need to be updated. Proxy will be used for absent members. Agenda will be as follows:

- Full Year 2012 Review
- 2013 Summary of Business
- Election of Board
- Board Compensation
- Amended Operating Agreement

Martinez, EXHIBIT 86  
DATE 5-10-15-15  
Colette E. Ross  
CR No. 50658

### Capital Raise Update

Eric reviewed PLA. George provided and reviewed funding handout. Continue the search for an additional \$1M.

### Business Review

George reviewed 2012 Full Year Actuals, 2013 Full Year Forecasted and compared best and worst case scenario's based on capital raise, and open orders and shipments, 90 day volume forecast and cash flow assumptions.

Discussion on GNC investing in the brand. Show GNC the value relationship/distribution system and if they would have to recreate themselves. Doug and George to model this. Category of opportunity is with Protein shakes (2 X pts of distribution).

George reviewed No Fear brand volume. Moving forward with approach for using California Wholesalers.

George communicated restructuring of licensing fees for No Fear.

Reviewed Strategic discussion document for project priorities.

Project review agenda item will be reviewed on a separate call on Friday, February 15 at 9am MST.

Meeting adjourned at 12pm.

Minutes submitted by Kathy Reiser



**Board of Directors Meeting Minutes**

**ATTACHMENT 1**

Date: March 21, 2013

Location: Shadow Conference Call

Time: 9am to 10:45am

Present: George Martinez, Sam Jones, Eric Reinhard, Brian Charneski, Frank Cooper, Doug Iannarino and Keith Reimer

Others Present: Kathy Reiser

Proceedings:

Meeting called to order at 9:00am by George Martinez

Minutes from February 15, 2013 approved (Eric), seconded (Frank) and passed.

Upon motion duly made, seconded and unanimously carried, it was resolved that Keith Reimer is elected and will serve as Chairman of the Board.

Old Business

Board discussed the following brand updates:

- **8 Hr Snooze** (Eric Reinhard) – A revised proposal needs to be submitted with an alternative equity position. Original equity stake proposed was too high. Frank was asked to provide help with revised proposal. Slower rollout beginning with New York market hospitality AOM's.
- **Aquacai** - (Sam Jones) - continued discussion with Matt Burns (founder). Endorsement deal with J. Lo continues. Pushing forward with distribution in New York (7-10 trucks). Matt is willing to spend money for larger distribution system and support. Follow-up call scheduled this month.
- **Lotus** (George Martinez) - In development. They are able to bring capital. Working on finalizing agreement.
- **Oogave** – (Eric Reinhard) - Nothing to report. Meeting was cancelled. They are tight on cash. Removing from brand list for now, not a good fit. This could be a conflict with POP.
- **POP** (Frank Cooper) - Initial bottles wrong size, waiting for samples of correct bottles. Sam communicated bottles were coming the next day. Frank said he is feeling pressure about celebrity driven drink and wants to get off ground by May if even in a small location. Trademark needs to show proof of use, Frank to extend if needed. George indicated great fit with Avanzar in LA. Follow-up call to be scheduled next week.

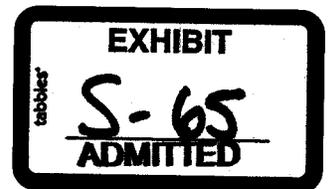
**Capital Funding Update:** Attachment 1 (George Martinez)

Key priorities are to build capital solutions which will allow company to grow. George and Rick Peterson's daily work is focused on capital raise. Discussions are favorable to close in next 30 to 60 days. New investor Dave Kelly referred contacts. Exploring another lead that has experience beverage investing (Behr family).

**Production Review:** Attachment 2 (George Martinez)

Production reviewed weekly based on forecast and cash flow. March 31 and weeks after are big weeks. Need \$1.1 to keep production running.

Martinez EXHIBIT 87  
 DATE 3/10-15-13  
 Colette E. Ross  
 CR No. 50658



SHADOW006010

**Performance Review thru February: 2 pages Attachment 3 (George Martinez)**

Pulled back growth from 20M to 16M. Concentrate with Honickman not factored in. Additional upside is Smoke E. Bones, not built into forecast. By closing \$2.5M gap, forecast of 16M is obtainable. Learning each week on how brands react. Doug Iannarino to help with bringing together concentrate model vs. capacity revenue. Sunsweet will provide an improvement with Cogs.

**New Business:**

**Kroger 4<sup>th</sup> of July GNC Activity – Attachment 4 (George Martinez)**

Handout reviewed. Call scheduled with buyer next week to build forecast. Good investment to make to drive margin, volume and trial. Doug Iannarino provided insight on the challenges of working with Kroger. George recommended a call with Kroger to ensure we are wired (sku authorization, accts payable – document specifics, etc.).

Other GNC discussion –

George explained the situation with Trinity/First Fruits foreclosure. Working to get all raw materials out and moved to Tampa Bay and AZ Production.

George asked the board about their perspective on 10/\$10. Brian's concern is being thrown in with Power Ade, but at this stage it is the right move. Brian indicated we need to plan for the future with a 4/\$5 strategy. Doug communicated that brand building in key accounts is critical. Doug indicated we need to model out a blended margin strategy. George and Bob are working on a model. Eric said we should go do this, but get out as fast as we can. The group agreed with Frank's idea of communicating to consumer that this is a one-time introductory offer.

**Nestle Waters**

Eric explained that there are no specific next steps w/ Kim after meeting. Door has been opened to Catterton and Tim Brown. Nestle is excited about Protein. Eric suggested going in with protein platform as first step to provide an opportunity to see what we can learn or build. Shadow team to work on Protein strategy.

**No Fear**

George communicated that we are in final stages with Honnickman. Final decision on the 27<sup>th</sup>. Additionally, great progress being made with 6 wholesalers for mid-April/ early May.

**Mor**

George indicated business up 20% in Colorado after six weeks in launch. Waiting for recap of test market. Market tour is scheduled.

**SEB – Attachment 5 (George Martinez)**

Handout reviewed. Incubating and testing is currently happening in Arizona. Distribution Agreement is in final stages with a 75/25 split. Tom Herb working to get freight included in pricing architecture.

Upon motion duly made, seconded and unanimously carried, it was resolved that Board of Directors meeting to adjourn at 10:45am.

Minutes submitted by Kathy Reiser

**Board of Directors Meeting Minutes**

Date: Thursday, January 30, 2014

Location: Shadow Conference Call

Time: 9:07am to 10:37am (AZ time)

Present: Eric Reinhard, George Martinez, Brian Charneski, Sam Jones, Doug Iannarino

Others Present: Kathy Reiser

Proceedings:

Meeting called to order at 9:07am by Eric Reinhard.

Waived reading and approved minutes from December 23, 2013. . Motion to approve by George, Second by Brian and passed.

**Old Business:**

GNC License Status

- Agreement is cancelled. IMG is out, next steps working with GNC. Potential supplier / Broker of trademark on beverage side. George is having a discussing tomorrow around business context of protein shakes. Very early to define next steps. Key is finding a deal that makes sense for us.

No Fear

- Re-negotiated license with no guarantees. Royalty payments for 2014 or 2015 moving from 7% to 5%. Provides window to make impactful growth over next 2 years.
- Opportunity with Sysco. 80% thru process with them. Big National play in Foodservice Channel.
- Allsup's - Approval in 320 convenience chain in W. Tex/ New Mexico.
- Next production run of 28,000 cases is mid-February - working with PNB to get on schedule. Paying in advance with PNB. 50k+ cases is the norm for production.
- Getting good response with new flavors and graphics. Very positive momentum.
- Working with Wild to get ingredients on floor.
- Agreement in place for paying down past due debt. Richard A. to forward documentation.

Funding

- Current options are 2 long term and 2 short term bridges. Immediate need for bridge - \$1M to 2.5M
  - Berna Capital - In underwriting process. George working with both underwriter and loan officer. Draw as you need it, 5% money. Debt of company will be restructured. 100% in collateral position. Going to loan committee on Friday or the next. Once approved get funding 10 days to 2 weeks.
  - I PRO - David Hull received 48 hr. notice that funding will happen. New York Hedge Fund, Debt facility at 4%.
  - Diamond Ventures - Possible answer tomorrow
  - Greentech - Range of \$1M to \$2M. Trying to move International money to the US
  -



Martinez EXHIBIT 92  
DATE 10-15-15  
Colette E. Ross  
CR No. 50658

SHADOW006157

#### Implications

- If no additional capital in next 60days, tough decisions will be made (Restructure company? Chapter 7/11 filing? Spyglass to call?).

#### Financials (Attachment 2)

- P & L – Dec Year End Revenue at \$5.3. Still finalizing some of the credits on how booked. Guarantee gone. Interest Expense \$125K. 4<sup>th</sup> Qtr. brings sustainable business model with right brands.
- Total Income Statement – Exceeded January number by \$75K. Forecast is conservative.
- Compensation Structure being worked on to reward sales roles differently.
- No Fear Income Statement reviewed. Very profitable business. Volume plan in order and weekly tracker in place provides focus to brand.

### New Business:

#### A/O Update

- Taking legal position with a \$125K risk. This was a license deal in snack category. Started some work but couldn't get it done. Attorneys working on this.

#### Rumble

- Separate LLC to house consulting brand management deals to keep any new business separated from Shadow. Operating agreement not built yet. First brand in is Faveo. Legacy shareholders to get piece of action in Rumble. Oogave and POP to fall under Rumble.

#### Shareholder Newsletter

Working on letter. Missed forecast. Get feedback from board and then send out.

#### Meat Snacks

- Name option is Happy or Lucky McGee. RSI moving forward with re-launch keeping culture, pricing production the same. Not using Shadows back office, RSI to manage. Opportunity for Shadow to be Distributor/Broker in 3 states. Shadow to get broker fee.

#### Right Sizing Organization

- Question around who we can afford. Creation of lower salary commission component. "Eat what you kill".

#### PBC Mor Expansion

- Conversion with Tim Trant around expansion to California. Volume to double if not triple. Move away from co-packers to inside system. Slim can line available in Fresno. Work around establishing 2015 national platform. Set meeting with Hopcroft to get aligned and get proposal to Tim Trant. George to send Doug docs on looking at cost saving with mor. Opportunity for the Mor brand to move east in August.

#### Other Business

- Close capital solution. George recommended we hold a face to face meeting to go through detail of what we are dealing with the cost of capital infrastructure. Work on new road map.
- Continue to work on the Oogave opportunity with all natural fountain business.
- Crest Foods – Excited about IPRO and has contacted David about possible production partner to build facility.
- Brian Charneski leaving board for external reasons effective February 1. Provide full accounting of what is owed. Holding seat open for next couple months pending one of capital relationships.

Meeting adjourned at 10:37AM

Minutes submitted by Kathy Reiser

## Board of Directors Meeting Minutes

ATTACHMENT 1

Date: Wednesday, March 12, 2014

Location: Shadow Conference Call

Time: 9:05am to 10:30am (AZ time)

Present: Eric Reinhard, George Martinez, Frank Cooper, Sam Jones, Doug Iannarino

Others Present: Kathy Reiser

### Proceedings:

Meeting called to order at 9:05am by Eric Reinhard.

Waived reading and approved minutes from January 30, 2014. Motion to approve by Sam, Second by Doug and passed.

## Old Business:

### Funding

Making good progress, but must find capital in 60 days. Shadow continues to bootstrap. No Fear Value program huge success. 1<sup>st</sup> goal is to refinance current debt, 2<sup>nd</sup> to facilitate growth.

- Berma Capital – Mid February decision. \$20m debt facility. Speaking to other companies to partner with Berma. Berma will only take half the risk.
- I PRO – Imperial Proteins has process that creates super juice (high fiber/high protein/low carb) Hedge fund from NY. Shadow is hitched to I PRO financing, with agreement to fund Shadow for \$20m.
- Priceline – verbally committed \$20M to I PRO project. Very interested in the space, \$1B fund
- Diamond Ventures – 98% of fund in real estate. Couldn't get comfortable in consumer products. Went in different direction.
- Pointe Financial – Venture Debt. Local company that we met with previous connected us again. Early discussions, high rate 12-15%.
- Venture East Capital - India debt facility \$10 to \$20m. Take products into India in the functional health & wellness category. Call on Thursday at 9pm. 3-4 months out for funding.
- Meridian Capital – Involved with Cherrish. Presented business plan to Sr Advisor/Founder.

### Financials (Attachment 2) – Reviewed

- No Fear Income Statement
  - New business with Affiliated with potential of 1200 new accounts
  - Sysco - Food service exclusive program with 600,000+ accounts
- WheyUP Income Statement
  - Re-launch with new graphics April / May
  - Eric Rothchild (Founder) back on board to help promote brand.
- Mor Income Statement

Meeting EXHIBIT 93  
DATE 3-10-15-15  
Colette E. Ross  
CR No. 50658



- Specific revenue per case. Volume goes up, rev per case goes down.
- Meeting on 4/4 around launch in California / Nevada around expanding into specific channels in BI&E.
- Currently does not meet requirements at high school level in California. Having to make slight changes to put in schools in California in August.
- Shadow Proforma
  - Mor in 110 Terrible Herbst convenience stores in April

## **New Business:**

### No Fear Authorizations – Attachment 3

- 27 selling 4 sku's in value program
- Jan/Feb – Up 90%
- Bullish on direction of brand
- Energy category still growing at national level of 10-15%
- Frank communicated concern of regulatory action in category
- Discussion around bringing No Fear to India with Pepsi. Frank to provide additional information after meeting next Wednesday.

### BRC Financing Option Model for Sysco - Attachment 4

- Buffalo Rock can build out 24pk and willing to do the deal due to low risk with a company like Sysco.
- Discussion around rate. Model to be changed to 12%.

### Hungry McGee

- New name approved
- Shadow will play a broker role. Tom Herb will build direct to retail accounts in 4 states, Texas, New Mexico, Arizona and Nevada.

### POP

- Frank dropped off call
- Ready to be produced. LA first market to launch in. Agencies have been retained. Shadow to play much smaller role ( logistics, black office, Dir. of Sales)

### Tax Planning

- K-1's to members by 3/28

Meeting adjourned at 10:30AM

Minutes submitted by Kathy Reiser

**SENIOR SECURED PROMISSORY NOTE DUE MARCH 29, 2010**

\$50,000.00

Dated January 29, 2010

FOR VALUE RECEIVED, the undersigned, SHADOW BEVERAGES AND SNACKS, LLC, an Arizona limited liability company ("Borrower"), promises to pay, in lawful money of the United States, to the order of **Matthew J. Murphy** of [REDACTED] AZ [REDACTED] ("Lender"), the principal sum of Fifty Thousand and No/100 Dollars (**\$50,000.00**) plus interest at the rate of 90% per annum based on the principal sum.

Principal and interest shall be due and payable in full at the completion of the 60 day term of the agreement. Interest shall be computed on the basis of the actual number of days elapsed and a year of 365 days. All interest hereunder shall begin to accrue on January 27, 2010 and shall be payable in full on the Maturity Date in cash. The overriding minimum interest charge is \$7,500.

This Note shall evidence the undersigned's obligation to repay all sums advanced by Lender.

This Note shall become due and payable sixty (60) days after the date of this Note with an option to extend for an additional sixty (60) day term under terms to be reviewed and jointly agreed upon by Borrower and Lender, which shall be evidenced by a subsequent written agreement signed by both parties.

Borrower hereby represents and agrees that proceeds from this senior secured promissory note (\$50,000) will be used for purchasing raw materials necessary to produce Iron Clad beverage products that will be sold through various distribution points.

Borrower hereby represents and agrees that the loan proceeds from this senior secured promissory note (\$50,000) will not be used for salaries or bonuses to any of its members.

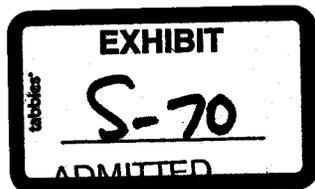
Borrower hereby represents and agrees that customer purchase orders currently exist for a minimum of 7,000 cases and that these customer purchase orders will materialize into approximately \$80,000 of cash revenue within the next 60 days.

Borrower hereby represents and agrees to pledge and grant a first position (SENIOR) security interest in all of the following: (i) interest in accounts receivables held by Borrower and (ii) interest in the inventory of Borrower. The amount of this security is limited and capped at the total amount of Principal plus accrued interest on the note. Borrower and Lender have formalized this agreement by signing a Security Agreement dated January 27, 2010, attached as Exhibit A.

On March 27, 2010 the entire principal balance of this Note plus interest shall be due and payable in full. Lender shall then have the option at any time and from time to time to exercise all of the rights and remedies set forth in this Note, as well as all rights and remedies otherwise available to Lender at law or in equity, to collect the unpaid indebtedness under this Note.

Initials  
*[Handwritten initials]*

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*Martinez*  
EXHIBIT 8  
DATE 10-15-15  
Colette E. Ross  
CR No. 50658

SHADOW006976

The undersigned shall have the right from time to time to prepay the whole or any part of the principal sum hereof without penalty, bonus or other prepayment charges. However, the minimum interest charge noted above shall not be reduced.

Borrower (i) waives presentment for payment, demand, protest and notice of presentment, notice of protest, notice of non-payment and notice of dishonor of this debt and each and every other notice of any kind respecting this Note and all lack of diligence or delays in collection or enforcement hereof, (ii) agrees that Lender and any subsequent holder of this Note, at any time or times, without notice to the undersigned or its consent, may grant extensions of time, without limit as to the number of the aggregate period of such extensions, for the payment of any principal, interest or other sums due hereunder, (iii) to the extent permitted by law, waives all exemptions under the laws of the State of Arizona and/or any state or territory of the United States, and (iv) to the extent permitted by law, waives the benefit of any law or rule of law intended for its advantage or protection as an obligor hereunder or providing for its release or discharge from liability hereon, in whole or in part, on account of any facts or circumstances other than full and complete payment of all amounts due hereunder.

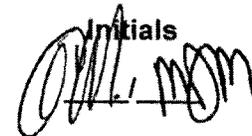
If any term, covenant or condition of this Note, or the application of such term, covenant or condition to any party or circumstance shall be found by a court of competent jurisdiction to be, to any extent, invalid or unenforceable, the remainder of this Note and the application of such term, covenant, or condition to parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition shall be valid and enforced to the fullest extent permitted by law. Upon determination that any such term is invalid, illegal or unenforceable, the undersigned shall cooperate with Lender to amend this Note so as to effect the original intent of the parties as closely as possible in an acceptable manner.

No amendment, supplement or modification of this Note nor any waiver of any provision hereof shall be made except in writing executed by the party against whom enforcement is sought.

This Note shall be binding upon the undersigned and its successors and assigns. Notwithstanding the foregoing, the undersigned may not assign any of its rights or delegate any of its obligations hereunder without the prior written consent of Lender, which will not be unreasonably withheld or delayed.

THIS NOTE IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ARIZONA WITHOUT RESPECT TO ANY OTHERWISE APPLICABLE CONFLICTS-OF-LAWS PRINCIPLES, BOTH AS TO INTERPRETATION AND PERFORMANCE, AND THE PARTIES EXPRESSLY CONSENT AND AGREE TO THE NON-EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF ARIZONA AND THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA AND TO THE LAYING OF VENUE IN THE STATE OF ARIZONA.

*[Signature block appears on the following page.]*

Initials  


IN WITNESS WHEREOF, the undersigned has executed this Note as of the date first above written.

SHADOW BEVERAGES AND SNACKS, LLC,  
an Arizona limited liability company

By: [Signature]

Its: President

By: [Signature]

Its: CEO

[Signature] 1/29/2010  
By: MATTHEW J. MURPHY, who resides at

[Redacted]  
[Redacted] AZ [Redacted]  
[Redacted]



**EMPLOYMENT AGREEMENT**

This Employment Agreement (this "Agreement"), dated July 1, 2012 (the "Effective Date"), is between SHADOW BEVERAGES AND SNACKS, LLC, an Arizona limited liability company (the "Company"), and Richard Peterson, an individual residing in the State of Arizona ("Employee").

**RECITALS**

A. The Company is engaged in manufacturing, marketing, and distributing non-alcoholic beverages, beverage concentrates, power and nutrition bars, snacks, meal replacements and dietary supplements in the beverage and functional food categories (the "Business").

B. The parties desire that the Company retain Employee under the terms and conditions set forth in this Agreement.

**AGREEMENT**

In consideration of the foregoing and the mutual covenants contained in this Agreement, the parties agree as follows:

1. Employment. The Company hereby employs Employee, and Employee accepts such employment, each doing so under the terms and conditions of this Agreement.

2. Duties.

a. The Employee shall serve as the EVP of Business Development of the Company. The Employee hereby accepts such employment and agrees to undertake the duties and responsibilities inherent in such position and such other duties and responsibilities as are commensurate with the title of EVP of Business Development. Employee may devote a portion of his attention and energies to other business and interests as required.

b. Employee warrants that during the term of his employment under this Agreement, Employee will not do any act or engage in any conduct, or permit, condone, or acquiesce in any act or conduct of other persons that could cause the Company to be in violation of any law, statute, or regulation.

c. Employee will report directly to the President.

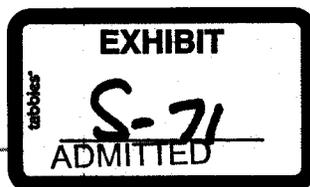
3. Compensation.

a. Base salary will be \$70,000 annually paid on a bi-monthly payroll schedule as established by the company.

b. Base salary will increase to \$100,000 after 6 month of employment.

c. Benefits Provided – Health and Dental coverage per company policy

*Martinez* EXHIBIT 28  
DATE 10-15-15  
Colette E. Ross  
CR No. 50658



d. Equity – membership shares of the company will be earned on the following schedule:

i. 1,500 Shares per quarter of employment. Shares become 100% vested 30 days post the closing of the quarter.

ii. Employee must be employed the entire quarter to qualify for the membership share award.

iii. Shares of equity follow the company Operating Agreement in place as of the time of this employment agreement.

e. Yearly Bonus: Employee will qualify for an annual Bonus to be determined by the Board of Directors. The minimum opportunity annually will be \$50,000 with objectives to be set by the Board of Directors. Bonus objectives must be met to qualify for payment.

4. Reimbursement of Reasonable Expenses. In the sole and absolute discretion of the Company, it may reimburse Employee for reasonable and necessary expenses that Employee incurs in carrying out Employee's duties under this Agreement, provided that Employee presents to the Company an itemized account of such expenses in such form and at such time as the Company may require.

5. Benefits. Subject to Employee's ability to qualify, Employee will be entitled to participate in such medical, accident, and health plans, and retirement and other employee benefit plans, in accordance with their terms, as the Company may make available generally to its employees, and the Company will pay such premiums arising with respect to Employee's coverage as it pays generally for employees of the same class. In addition, Employee will be entitled to receive such other benefits, as the Company provides for employees of the same class.

6. Insurance. During the Employment Period, the Company shall maintain directors and officers insurance which insurance shall cover all acts and omissions by any officer, including the Employee, during the employment period.

7. Indemnification. The Company hereby agrees to hold harmless and indemnify the Employee to the fullest extent permitted by the Arizona Limited Liability Company Act, and by its Operating Agreement each as they may be amended after the date hereof. The obligation of the Company under this Section 7 shall survive any termination of this Agreement.

8. Termination of Employment.

a. Termination for Cause. The Company may immediately terminate Employee's employment under this Agreement if any of the following occurs:

i. Employee's fraudulent misconduct in the performance of duties assigned under this Agreement; or

ii. Employee's conviction of a felony crime in a court of competent jurisdiction.

b. Termination With or Without Cause. Notwithstanding anything herein to the contrary, either party may terminate Employee's employment under this Agreement, for any reason or for no reason, upon the submission of thirty (30) days' written notice to the other party.

9. Confidential Commercial Information.

a. Employee acknowledges that Employee may be entrusted with confidential commercial information of the Company during his employment, including, but not limited to, price lists, customer lists, customer contact information, development and research work, marketing programs, plans, and proposals, and other information about internal systems, processes, concepts, practices, and procedures of the Company (collectively, the "Confidential Information"). Employee further acknowledges that Employee has been instructed by the Company to, and agrees that Employee will, maintain the Company's Confidential Information in a confidential manner.

b. During Employee's employment, Employee will not, directly or indirectly, disclose any Confidential Information to any person or entity not authorized by the Company to receive or use such Confidential Information. After the termination of Employee's employment, for whatever reason and by whatever party, Employee will not, directly or indirectly, use or disclose to any person or entity any Confidential Information without the express, written consent of the Company.

c. All documents and other tangible property relating in any way to the business of the Company that Employee develops or that come into Employee's possession during employment are the property of the Company, and Employee will return all such documents and tangible property to the Company upon the termination of Employee's employment, or at such earlier time as the Company may request.

d. Employee acknowledges that all of the commercially available software that the Company uses on its computer system that was not developed specially by or for the Company is either owned or licensed for use by the Company, and that the use of such software is governed strictly by the explicit terms and conditions of licensing agreements between the Company and the publisher of the software, and Employee agrees to adhere to those terms and conditions. Employee will not copy, duplicate, download, transfer, or otherwise make personal use of any software on the Company's computer system without the Company's express, written consent.

10. Inventions and Copyrights.

a. Employee acknowledges that, as a part of Employee's duties, during Employee's employment Employee may develop discoveries, concepts, and ideas concerning or relating to the Business, whether or not patentable, including, but not limited to, processes, methods, formulas, and techniques, as well as improvements thereof or know-how related thereto, and concerning any present or prospective activities of the Company that are published before such discoveries, concepts, and ideas (collectively, the "Inventions").

b. Employee will fully disclose and will continue to promptly disclose to the Company all Inventions that Employee makes or conceives, in whole or in part, at this time or during his employment with the Company.

c. Any and all Inventions will be the absolute property of the Company or its designees and, at the request of the Company and at its expense, but without additional compensation, Employee will make application in due form for United States letters patent and foreign letters patent on such Inventions, and will assign to the Company all right, title, and interest in such Inventions, and will execute any and all instruments and do any and all acts necessary or desirable in connection with any such application for letters patent or in order to establish and perfect in the Company the entire right, title, and interest in such Inventions, patent applications, or patents, and also execute any instrument necessary or desirable in connection with any continuations, renewals, or reissues thereof or in the conduct of any related proceedings or litigation.

d. The Company will own the copyright in all materials created by Employee relating to the Business and eligible for copyright (which will be deemed work made-for-hire). The Company will have the right to apply for copyright registration, including any renewals or extensions, whether under the laws of the U.S. or any country having jurisdiction over the copyright. Employee agrees to execute any documents necessary or appropriate for such registration. The Company will also own any trademark, service mark, or trade name created by Employee (alone or in conjunction with others) for the Company and used to identify any present or future product, service, activity, operation, or function of the Company. The Company may obtain trademark or service mark protection of the Company's rights including, at the Company's discretion, state, federal and international registration. The Company will own all right, title, and interest in and to all results and the work product of Employee's services for the Company (all of which will be deemed proprietary), free of any reserved rights by Employee, whether or not specifically enumerated in this Agreement.

#### 11. Post-Employment Restrictions.

a. Following the termination of Employee's employment, for whatever reason and by whatever party, and during any Restrictive Period, Employee will not, directly or indirectly, on his or her own behalf or on behalf of any other person or entity:

i. solicit or accept from any person or entity upon whom he or she called or with whom he or she had direct or indirect contact on behalf of the Company orders for supplies, equipment, products, goods, or services that are similar to or competitive with supplies, equipment, products, goods, or services that the Company marketed, distributed, or sold during his or her employment with the Company;

ii. solicit or accept from any person or entity who was a customer or client of the Company during his or her employment orders for supplies, equipment, products, goods, or services that are similar to or competitive with supplies, equipment, products, goods, or services that the Company marketed, distributed, or sold during Employee's employment with the Company;

iii. solicit or accept from any person or entity who at the time of such conduct is a customer or client of the Company orders for supplies, equipment, products, goods, or services that are similar to or competitive with supplies, equipment, products, goods, or services that the Company marketed, distributed, or sold during Employee's employment with the Company;

iv. encourage, entice, induce, or influence, directly or indirectly, any person or entity not to do business with the Company;

v. encourage, entice, induce, or influence, directly or indirectly, any person to terminate his or her employment with the Company; or

vi. engage in, or perform services for, any person or entity that is engaged in the Business within any Restrictive Area.

12. Remedies. Any breach of the duties and obligations imposed upon Employee by this Agreement would cause irreparable harm to the Company, and the Company could not be fully compensated for any such breach with money damages. Therefore, injunctive relief is an appropriate remedy for any such breach. Such injunctive relief will be in addition to and not in limitation of or substitution for any other remedies or rights to which the Company may be entitled at law or in equity.

13. Costs, Expenses, and Fees. Employee will pay the costs and expenses that the Company incurs in any action or proceeding that arises out of or relates to Employee's employment with or separation from, the Company, including, but not limited to, all reasonable attorneys' and accountants' fees.

14. Modification or Waiver of Agreement. No modification or waiver of this Agreement will be valid unless the modification or waiver is in writing and signed by both of the parties. The failure of either party at any time to insist upon the strict performance of any provision of this Agreement will not be construed as a waiver of the right to insist upon the strict performance of any other provision or the same provision at any future time.

15. Notices. Any notices required or permitted under this Agreement will be sufficient if in writing and sent by certified mail to, in the case of Employee, the last address Employee has filed in writing with the Company or, in the case of the Company, its principal office.

16. Legal Representation. Employee acknowledges that Employee has had a full opportunity to consider this Agreement, to offer suggested modifications to its terms and conditions, and to consult with an attorney of Employee's own choosing before deciding whether to sign it.

17. No Rule of Strict Construction. The language of this Agreement will be deemed to have been approved by both parties, and no rule of strict construction will be applied against either party.

18. Integration. This Agreement contains all of the agreements between the parties relating to the matters set forth in this Agreement. Accordingly, this Agreement supersedes any and all prior commitments, agreements and understanding between the parties, whether oral or written, that relate to the subject matter contained in this Agreement.

19. Further Acts. The parties will execute and deliver to each other any and all such further documents and instruments, and will perform any and all such other acts, as reasonably may be necessary or proper to carry out the purposes of this Agreement.

20. Assignment of Agreement. Employee has no right to transfer or assign any or all of Employee's rights or interests under this Agreement. The Company may assign its rights and interests under this Agreement to any successor entity as part of any sale, transfer, or other disposition of all or substantially all of the assets of the Company.

21. Headings. The descriptive headings of the paragraphs and subparagraphs of this Agreement are intended for convenience only, and do not constitute parts of this Agreement.

22. Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which, when taken together, will constitute one and the same instrument.

23. Venue. Any action or proceeding arising out of or relating to this Agreement or Employee's employment with the Company must be either litigated in the state and federal courts located in Maricopa County, Arizona, or arbitrated in Phoenix, Arizona.

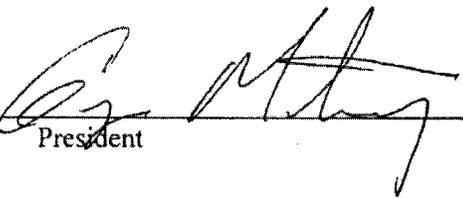
24. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Arizona.

*[Signatures appear on the following page.]*

The parties have executed and delivered this Employment Agreement; it is effective as of the Effective Date.

**COMPANY:**

SHADOW BEVERAGES AND SNACKS, LLC, an  
Arizona limited liability company

By:   
Its: President

**EMPLOYEE:**

  
Richard Peterson

**Finder's Fee Agreement**

This letter will serve as the agreement between Shadow Beverage and Snacks, LLC and Richard A. Peterson regarding the finder's fee Shadow Beverages and Snacks (Shadow) will pay to Richard A. Peterson (Peterson) for any and all introductions related to capital raising that produce capital for Shadow. Unless otherwise agreed to in writing, Shadow will pay finder's fees at the time capital is provided to Shadow.

The fee schedule to be paid is calculated as a percentage of the final value of all transactions. Value is defined as any actual collected benefit, such as cash, stock, notes, loans, royalties, ownership interests, and/or deferred payments.

Finder's fee schedule is based on total value of capital received by Shadow from any source provide by Peterson as follows:

5% Finder's Fee on all capital received by Shadow from such introductions

This agreement will become effective as of the date signed below by both parties and will remain in force for a period of three years after the last contact with any capital source is introduced to Shadow by Peterson.

If the foregoing terms correctly set forth our agreement, please confirm by signing and returning an original signed copy of this letter.

AGREED:

X

Print name: George Martinez

Title: President & Co-Founder  
Company: Shadow Beverages & Snacks, LLC  
Address: [REDACTED]

DATE: 7/1/12

AGREED:

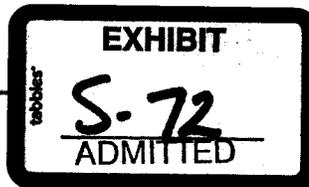
X

Print name: Richard A. Peterson

Title: EVP  
Company: Shadow Beverages & Snacks, LLC  
Address: [REDACTED]

DATE: 7/1/12

Martinez EXHIBIT 29  
DATE 10-15-15  
Colette E. Ross  
CR No. 50658



ACC000438.026  
SHADOW-8507

**FINDER'S FEE AGREEMENT**

THIS AGREEMENT is made dated as of 17th day of April, by and between (the "Consultant"), a corporation with its principal office at, Troy Bohlke and **Shadow Beverages and Snacks, LLC** (the "Client"), an Arizona limited liability company with its principal office at [REDACTED] AZ, [REDACTED].

The following represents mutual agreement, in consideration of each other's promises or acts with respect to this Finder's Fee Agreement. The Consultant has introduced and/or will introduce potential Investors to the Client in return for the Client's agreement to pay the Consultant (or nominee) compensation for these introductory services if an investment is made. Finder has existing relationships with persons who would be "accredited investors" within the meaning of federal and state securities laws. Finder will identify such persons to the Company for evaluation by the Company as Investors to make an investment in the Company, with the Company or into a venture in which the Company is an investor or becomes a shareholder or unit holder with such person whom Finder identifies in writing who arranges an introduction to the Company for purposes of investment in the Company or other entity with said Client whether under the Offering Summary or not is referred to in this Agreement as a "Client." The term Client will not include any broker, finder, or intermediary, or any persons or entities introduced to the Company by any broker, finder, or intermediary. Therefore, the parties herein agree as follows:

1. **Investor.** The "registered" Investors, i.e., those investors which the Consultant will introduce to the Client, will be named and listed by separate documents (per Schedule 'A'), shall be governed by, and included under the provisions of this Agreement as if included herein.

Further, the compensation the Client has agreed to pay the Consultant shall be payable in the event any registered investor, associate, co-investor or other entity procured by a "registered" Investor purchases from, invests in or advances funds toward the Client. All are defined as an "Investor."

2. **Fee.** Should an Investor purchase, invest and/or loan monies, properties, patents (or anything of value) toward any of the Client, regardless of the form such proceeds are so loaned, hypothecated, or invested then the Client agrees to pay the Consultant **\$12,500, concurrent with any funding for \$250,000, or prorata thereto and thereafter for any additional funding 6% of the first five million, 5% of the second five million, 4% of the third five million and 3% of the fourth five million and 2% of any additional investment of the proceeds (or value) so purchased, invested and/or loaned to the Client.** This compensation to the Consultant shall be based upon the gross amount loaned, boned, hypothecated or invested, prior to any deductions, expenses or offsets of any kind.

(a) As a condition to the payment of any Fee under this Agreement, Consultant will execute and deliver to the Company all instruments, agreements, and other documents required by the manager of the Company from time to time.

(b) The Company is not obligated to accept any offer of any kind from any Consultant and may refuse to conclude any agreement or transaction for any reason whatsoever, with or without good cause. No Fee or other compensation of any kind will, under any



*Martina* EXHIBIT 80  
DATE 0-10-15-15  
Colette E. Ross  
CR No. 50658

SHADOW006405

circumstances, be payable under this Agreement or otherwise if an investment transaction is not consummated with an Investor for any or no reason whatsoever.

(c) Subject to the other conditions and requirements set forth in this Agreement, the Company will pay the Fee to Finder within ten (10) business days of satisfaction of the following conditions: (i) funds for applicable investments have been received by the Company and have cleared; and (ii) Finder will have delivered all requested documentation to the Company.

Payment will be made by bank wire transfer upon the Client's receipt of funds (or value) within ten (10) business days of closing.

**3. Other Investments.** Should Investor invest additionally In Client's Company after the initial investment is made, Client will pay Consultant a fee of ( 4%) of any such additional funds (or value) later invested.

**4. Status of Finder.** Finder is an independent contractor and not an agent of the Company for any purpose whatsoever. Finder will not make any representations to Investors, except as provided by the Company in written documents for such purpose. Finder has no authority to, and agrees not to, assume or create any obligation or liability, express or implied, on the Company's behalf, or to bind the Company in any manner or to anything whatsoever. Finder will be liable for and will pay its own expenses. Finder represents and warrants to the Company that: (i) Finder is aware of all state and federal licensing and other regulatory requirements arising out of or relating to engaging in the securities brokerage business; (ii) Finder has made an independent investigation and analysis of such requirements; (iii) Finder has made a independent determination that Finder is not required to obtain a broker's license in connection with its performance as a Finder under this Agreement; and (iv) Finder is in compliance with all laws and regulations applicable to the performance by Finder under this Agreement. Finder hereby indemnifies and will pay, defend, and hold harmless the Company and its parents and subsidiaries, and each of their respective managers, members, officers, directors, shareholders, employees, and agents from and against any and all claims, loss, liability, damage, penalty, fine, investigation, cost, or award (including any loss of exemption or rescission by any investor) arising out of or relating to such licensing requirements or Finder's role in obtaining Investors for the Company as an unlicensed person or any breach of covenant or representation or warranty of Finder as set forth in this agreement.

Finder is familiar with the requirements of the conditions under which the Company is offering Units pursuant to an exemption from the registration provisions under Regulation D promulgated pursuant to the Securities Act of 1933, as amended (the "Securities Act"). Finder represents and warrants to the Company that Finder has a pre-existing substantive relationship with each Investor and that none of the Investors have been located by Finder pursuant to any means of general solicitation, including, without limitation, any advertisement or "cold calling" in any manner.

**5. Limitation of Service.** This Agreement relates solely to the Consultant's services as a finder in introducing the Client to prospective investors. There are no additional services that the Consultant is required to perform to be entitled to the above compensation in the event an investment is made. The Consultant will not engage in any negotiations whatsoever on behalf of the Client or any investor. Nor will the Consultant provide the Client or any investor with

information which may be used as a basis for such negotiations. The Consultant will have no responsibility for nor will the Consultant make recommendations concerning the terms, conditions or provisions of any agreement between the Client and an investor, including the manner or means of consummating the transaction. The Consultant accepts responsibility to pay damages for losses arising as a direct result of the Consultant's own gross negligence or willful default arising out of this Agreement, but the Consultant's liability shall not exceed actual fees paid to the Consultant by the Client, in the aggregate, in respect of all such services performed in connection with this Agreement.

THE CONSULTANT REPRESENTS THAT IT IS NOT A LICENSED SECURITIES DEALER, AND THAT THIS AGREEMENT IS NOT INTENDED FOR THE PURPOSE OF BUYING, SELLING OR TRADING SECURITIES.

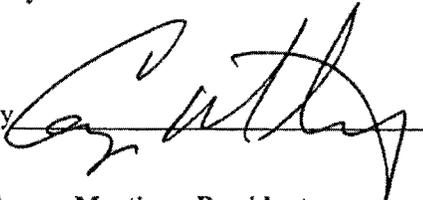
6. **Miscellaneous.** This Agreement shall be binding upon all parties and their respective estates, heirs, successors and permitted assigns. This Agreement may be changed only by the written consent of all parties. This Agreement may not be assigned by either party without the written consent of the other. This Agreement is the entire agreement between the Consultant and the Client. Should any legal proceeding be necessary to construe or enforce the provisions of this Agreement, then the prevailing party in such legal action shall be entitled to recover all court costs, reasonable attorney fees and costs of enforcing or collecting any judgment awarded. The judgment by any court of law that a particular section of this Agreement is illegal shall not affect the validity of the remaining provisions. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona.

The foregoing has been read, understood and accepted by the parties below on this 17th day of April, 2014:

For and on behalf of:  
**Shadow Beverages and Snacks, LLC**

By \_\_\_\_\_

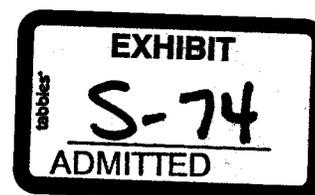
**Troy Bohlke**

By  \_\_\_\_\_

**George Martinez, President**

**SHADOW BEVERAGES AND SNACKS, LLC  
INVESTOR LIST  
FROM JUNE 1, 2009 THROUGH JULY 18, 2014**

	INVESTOR	INVESTMENT DATE	INVESTMENT AMOUNT	AMOUNT REPAID	BALANCE
A	GEORGE KARAS	6/1/2009	\$ 50,000	\$ 50,000	\$ 0
B	BRENT TUNNEL	2/17/2010	50,000	50,000	0
B	BRENT TUNNEL	3/17/2010	200,000	200,000	0
C	SCOTT JARUS (JARUS FAMILY TRUST)	9/1/2010	75,000	75,000	0
D	RONALD BARRETT	1/3/2011	125,000	125,000	0
E1	ROBERT & STACEY GERVASI	1/14/2011	50,000	2,500	47,500
E2	GARY & MICHELLE VAN KILSDONK	1/13/2011	50,000	2,500	47,500
F	CANIS MAJOR DEVELOPMENT (DAVID KELLY)	3/7/2013	500,000	0	500,000
G	RICK ANDERSEN	4/3/2013	250,000	0	250,000
G	RICK ANDERSEN - LEGACY INSURANCE SERVICES INC OF AMERICA	4/17/2014	250,000	0	250,000
H, I	DONALD J. JOHNSON JR. AND CATHERINE LEYEN	12/9/2013	25,000	1,250	23,750
I	RAVENSTEED ENTERPRISES, LLC (CATHERINE LEYEN)	5/12/2014	50,000	0	50,000
J	N. JAMES STEPHENSEN	1/13/2014	30,000	0	30,000
K, L	THE RJS TRUST - JASON A. SALGANICK TRUSTEE, ROBBYN A. SALGANICK TRUSTEE	1/16/2014	50,000	0	50,000
M	REED HATKOFF	3/21/2014	100,000	40,000	60,000
N	MICHAEL CRANE AND DEBRA J. MARTIN	7/21/2014	50,000	0	50,000
O	KURT MOORE	7/18/2014	100,000	0	100,000
<b>TOTAL</b>			<b>\$ 2,005,000</b>	<b>\$ 546,250</b>	<b>\$ 1,458,750</b>



AFFIDAVIT OF CUSTODIAN OF RECORDS

STATE OF OK )  
County of OK ) ss.  
 )

The undersigned hereby declares, under oath, that the following statements are true:

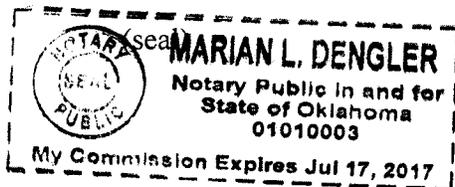
- 1. I am over the age of eighteen, have personal knowledge of the facts set forth below, and am competent to testify.
- 2. I am the duly authorized Custodian of Records of First Fidelity Bank
- 3. I have the authority to certify said records.
- 4. The records submitted herewith are true copies of all records under my possession or control responsive to the Subpoena directed to the Custodian of Records of the entity identified in paragraph 2 above.
- 5. The records were prepared or obtained by personnel or representatives of the entity or persons acting under the control of personnel or representatives of the entity identified in paragraph 2 above in the ordinary course of business at or near the time of the act, condition, or event in said records.
- 6. The records are kept in the course of regularly conducted business pursuant to the regular practice of the entity identified in paragraph 2 above.

Lisa M. Williams  
Custodian of Records

SUBSCRIBED and SWORN to before me this 10<sup>th</sup> day of April, 2015, by \_\_\_\_\_

My Commission Expires: 7-17-17

Marian L. Dengler  
NOTARY PUBLIC



ACC000099  
SHADOW-8507

AFFIDAVIT OF CUSTODIAN OF RECORDS

STATE OF Oklahoma )  
 ) ss.  
County of Oklahoma )

The undersigned hereby declares, under oath, that the following statements are true:

1. I am over the age of eighteen, have personal knowledge of the facts set forth below, and am competent to testify.

2. I am the duly authorized Custodian of Records of First Fidelity Bank

3. I have the authority to certify said records.

4. The records submitted herewith are true copies of all records under my possession or control responsive to the Subpoena directed to the Custodian of Records of the entity identified in paragraph 2 above.

5. The records were prepared or obtained by personnel or representatives of the entity or persons acting under the control of personnel or representatives of the entity identified in paragraph 2 above in the ordinary course of business at or near the time of the act, condition, or event in said records.

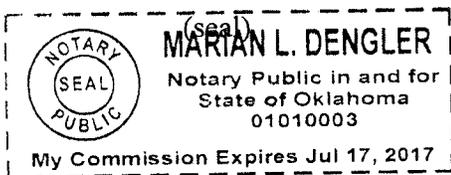
6. The records are kept in the course of regularly conducted business pursuant to the regular practice of the entity identified in paragraph 2 above.

Lisa Williams  
Custodian of Records

SUBSCRIBED and SWORN to before me this 1<sup>st</sup> day of March, 2016, by \_\_\_\_\_

My Commission Expires: 7-17-17

Marian Dengler  
NOTARY PUBLIC



ACC009659  
SHADOW-8507

<b>NEW ACCOUNT INFORMATION</b>		First Fidelity Bank Greenway-Hayden 16277 North Greenway Hayden Lp Scottsdale, AZ 85260 403
Shadow Beverages and Snacks, LLC	<input type="checkbox"/> TEMPORARY <input type="checkbox"/> REPLACEMENT	
DATE 8/07/08	OPENED BY B30LCROSS	

<b>ACCOUNT INFORMATION</b>		ACCOUNT NUMBER 6031
AMOUNT OF DEPOSIT \$	PLAN # SAA5153	ACCOUNT T.I.N. [REDACTED]
TITLE OF ACCOUNT Shadow Beverages and Snacks, LLC		
[REDACTED]		
OWNERSHIP TYPE Limited Liability		
PRODUCT NAME Free Small Business Checking 1		
Words, numbers or phrases preceded by a <input type="checkbox"/> are applicable only if the <input checked="" type="checkbox"/> is marked.		

<b>BUSINESS ENTITY INFORMATION</b>		BUSINESS FILING STATE ARIZONA
BUSINESS NAME AND ADDRESS		ENTITY DOCUMENT
Shadow Beverages and Snacks, LLC		LAST FILING DATE
[REDACTED]		FILING EXPIRATION
[REDACTED] AZ [REDACTED]		DATE ESTABLISHED
ASSUMED NAME IF D/B/A		NATURE OF BUSINESS
CONTACT NAME		PRIMARY LOCATION
CONTACT TITLE		RESOLUTION DATE
CONTACT PHONE		E-MAIL ADDRESS
OTHER		FACSIMILE AUTHORIZATION ON FILE <input type="checkbox"/> YES <input type="checkbox"/> NO

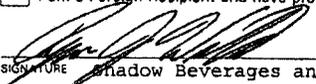
**TAXPAYER IDENTIFICATION NUMBER CERTIFICATION**

I certify under penalties of perjury that the taxpayer identification number (TIN) provided is correct, I am a U.S. person (including a U.S. resident alien), and I am either exempt from backup withholding under Internal Revenue Service regulations, or I am not subject to backup withholding. The above statement is true with the exception that:

I am subject to backup withholding because of underreported interest and dividends.

I have applied or will soon apply for a TIN. If one is not provided to this institution within 60 days from today, I will be subject to backup withholding.

I am a Foreign Recipient and have provided this institution with the appropriate Form W-8 certification.

SIGNATURE  DATE 8/20/08 Taxpayer Identification Number: [REDACTED]

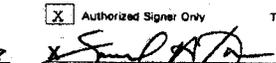
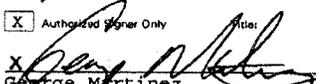
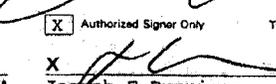
**ADDITIONAL TERMS**

New client opening free small business account  
lmc 403 5140 08/07/08

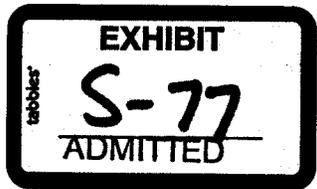
**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

**ACKNOWLEDGMENT.** By signing this document, the undersigned acknowledge that they have opened the type of account designated above, and have received, understand and agree to be bound by the terms of the Account Agreement for that account type. If this is a consumer account, the undersigned acknowledge receipt of an Account Disclosure, and a copy of this institution's Privacy Policy. The undersigned also acknowledge receipt, where applicable, of this institution's Funds Availability Policy and/or Electronic Fund Transfer Agreement. If this account is opened in the name of the business entity, all signers are acting on behalf of the business entity. All signers authorize this institution to make inquiries from any consumer reporting agency, including a check protection service, in connection with this account.

# OF SIGNATURES REQUIRED: 1  FACSIMILE ALLOWED

<input checked="" type="checkbox"/> Authorized Signer Only	Title:	<input checked="" type="checkbox"/> Authorized Signer Only	Title:	<input type="checkbox"/> FACSIMILE ALLOWED
				
Ryan James Weissmueller		Samuel A Jones		
Date 8/20/08		Date 8/20/08		
<input checked="" type="checkbox"/> Authorized Signer Only	Title:	<input checked="" type="checkbox"/> Authorized Signer Only	Title:	
				
George Martinez		Joseph E Dunnigan		
Date 8/20/08		Date 8/20/08		

ACC009664  
SHADOW-8507



SIGNER #1 NAME AND ADDRESS

Ryan James Weissmueller

[Redacted] AZ [Redacted]

Title/Capacity:

EMPLOYER NAME AND ADDRESS

Shadow Beverages and Snacks LLC

Tax ID Number:

Date of Birth:

Primary Phone:

Secondary Phone:

ID Type:

ID Number:

ID Issued By:

AZ

ID Issuing Location:

ID Issue Date:

ID Expiration:

ID Type:

ID Number:

ID Issued By:

ID Issuing Location:

ID Issue Date:

ID Expiration:

Verification:

Unique Identifier:

E-Mail Address:

SIGNER #2 NAME AND ADDRESS

Samuel A Jones

[Redacted] CT [Redacted]

Title/Capacity:

EMPLOYER NAME AND ADDRESS

Tax ID Number:

Date of Birth:

Primary Phone:

Secondary Phone:

ID Type:

ID Number:

ID Issued By:

CT

ID Issuing Location:

ID Issue Date:

ID Expiration:

ID Type:

ID Number:

ID Issued By:

ID Issuing Location:

ID Issue Date:

ID Expiration:

Verification:

Unique Identifier:

E-Mail Address:

SIGNER #3 NAME AND ADDRESS

George Martinez

[Redacted] AZ [Redacted]

Title/Capacity:

EMPLOYER NAME AND ADDRESS

Tax ID Number:

Date of Birth:

Primary Phone:

Secondary Phone:

ID Type:

ID Number:

ID Issued By:

CT

ID Issuing Location:

ID Issue Date:

ID Expiration:

ID Type:

ID Number:

ID Issued By:

ID Issuing Location:

ID Issue Date:

ID Expiration:

Verification:

Unique Identifier:

E-Mail Address:

SIGNER #4 NAME AND ADDRESS

Joseph E Dunnigan

[Redacted] AZ [Redacted]

Title/Capacity:

EMPLOYER NAME AND ADDRESS

Shadow Beverages and Snacks LLC

Tax ID Number:

Date of Birth:

Primary Phone:

Secondary Phone:

ID Type:

ID Number:

ID Issued By:

AZ

ID Issuing Location:

ID Issue Date:

ID Expiration:

ID Type:

ID Number:

ID Issued By:

ID Issuing Location:

ID Issue Date:

ID Expiration:

Verification:

Unique Identifier:

E-Mail Address:

VERIFICATION / FOLLOW-UP

BENEFICIARY DESIGNATION. THE FOLLOWING BENEFICIARY(IES) ARE DESIGNATED:

1.

3.

2.

4.

See Addendum

ACC009665  
SHADOW-8507

**NEW ACCOUNT INFORMATION**

Shadow Beverages and Snacks LLC

TEMPORARY

REPLACEMENT

DATE 11/16/09

OPENED BY B30LCROSS

**Financial Institution Name And Address**

First Fidelity Bank  
Greenway-Hayden  
16277 North Greenway Hayden Lp  
Scottsdale, AZ 85260

403

**ACCOUNT INFORMATION**

AMOUNT OF DEPOSIT \$

PLAN # SAA5153

ACCOUNT NUMBER [REDACTED] 2848

TITLE OF ACCOUNT Shadow Beverages and Snacks LLC

ACCOUNT T.I.N. [REDACTED]

[REDACTED]

OWNERSHIP TYPE Limited Liability

PRODUCT NAME Free Small Business Checking 1

Words, numbers or phrases preceded by a  are applicable only if the  is marked.

**BUSINESS ENTITY INFORMATION**

BUSINESS NAME AND ADDRESS

Shadow Beverages and Snacks LLC

[REDACTED]

[REDACTED] AZ [REDACTED]

ASSUMED NAME IF D/B/A

CONTACT NAME

CONTACT TITLE

CONTACT PHONE

OTHER

BUSINESS FILING STATE ARIZONA

ENTITY DOCUMENT

LAST FILING DATE

FILING EXPIRATION

DATE ESTABLISHED

NATURE OF BUSINESS

PRIMARY LOCATION

RESOLUTION DATE

E-MAIL ADDRESS ryanw@ [REDACTED]

FACSIMILE AUTHORIZATION ON FILE  YES  NO

LIMITED LIABILITY COMPANY TAX CLASSIFICATION

BUSINESS ENGAGES IN INTERNET GAMBLING\*

\* If box is checked you must provide evidence of authority to engage in internet gambling.

**TAXPAYER IDENTIFICATION NUMBER CERTIFICATION**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding (Notice: If you are subject to backup withholding, cross out this line), and
3. I am a U.S. citizen or other U.S. person.

*[Signature]*  
SIGNATURE Shadow Beverages and Snacks LLC

11/18/09

Taxpayer Identification Number: [REDACTED]

DATE

**ADDITIONAL TERMS**

Existing client opening a free small business account  
403 LMC 5140 11/16/09

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

**ACKNOWLEDGMENT.** By signing this document, the undersigned acknowledge that they have opened the type of account designated above, and have received, understand and agree to be bound by the terms of the Account Agreement for that account type. The undersigned certify that all information provided to the institution is true and accurate. If this is a consumer account, the undersigned acknowledge receipt, where applicable, of an Account Disclosure and Electronic Fund Transfer Agreement. The undersigned also acknowledge receipt, where applicable, of this institution's Funds Availability Policy and Privacy Policy. If this account is opened in the name of the business entity, all signers are acting on behalf of the business entity. All signers authorize this institution to make inquiries from any consumer reporting agency, including a check protection service, in connection with this account.

# OF SIGNATURES REQUIRED: 1

Authorized Signer Only

Title:

X *[Signature]*  
Ryan James Weissmueller

11/16/09  
Date

Authorized Signer Only

Title:

X  
Samuel Jones

Date

Authorized Signer Only

Title:

X *[Signature]*  
Joseph Dunnigan

11/17/09  
Date

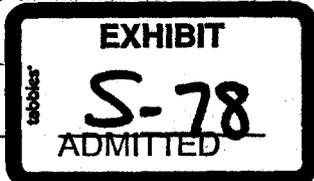
Authorized Signer Only

Title:

X *[Signature]*  
George Martinez

11/17/09  
Date

FACSIMILE ALLOWED



ACC009886  
SHADOW-8507

**OWNER/SIGNER #1 NAME AND ADDRESS**

Ryan James Weissmueller

[REDACTED]

[REDACTED] AZ [REDACTED]

Title/Capacity:

EMPLOYER NAME AND ADDRESS

Shadow Beverages and Snacks LLC  
Owner

Tax ID Number: [REDACTED]

Date of Birth: [REDACTED]

Primary Phone: [REDACTED]

Secondary Phone: [REDACTED]

ID Type:

ID Number: [REDACTED]

ID Issued By: AZ

ID Issuing Location:

ID Issue Date: [REDACTED]

ID Expiration:

ID Type:

ID Number:

ID Issued By:

ID Issuing Location: USA

ID Issue Date:

ID Expiration:

Verification:

Unique Identifier:

E-Mail Address:

**OWNER/SIGNER #2 NAME AND ADDRESS**

Joseph Dunnigan

Title/Capacity:

EMPLOYER NAME AND ADDRESS

Tax ID Number: [REDACTED]

Date of Birth: [REDACTED]

Primary Phone: [REDACTED]

Secondary Phone: [REDACTED]

ID Type:

Driver's license (w/

ID Number:

ID Issued By:

ID Issuing Location:

ID Issue Date:

ID Expiration:

ID Type:

ID Number:

ID Issued By:

ID Issuing Location:

ID Issue Date:

ID Expiration:

Verification:

Unique Identifier:

E-Mail Address:

**OWNER/SIGNER #3 NAME AND ADDRESS**

Samuel Jones

Title/Capacity:

EMPLOYER NAME AND ADDRESS

Tax ID Number: [REDACTED]

Date of Birth: [REDACTED]

Primary Phone: [REDACTED]

Secondary Phone: [REDACTED]

ID Type:

ID Number:

ID Issued By:

ID Issuing Location:

ID Issue Date:

ID Expiration:

ID Type:

ID Number:

ID Issued By:

ID Issuing Location:

ID Issue Date:

ID Expiration:

Verification:

Unique Identifier:

E-Mail Address:

**OWNER/SIGNER #4 NAME AND ADDRESS**

George Martinez

Title/Capacity:

EMPLOYER NAME AND ADDRESS

Tax ID Number: [REDACTED]

Date of Birth: [REDACTED]

Primary Phone: [REDACTED]

Secondary Phone: [REDACTED]

ID Type:

ID Number:

ID Issued By:

ID Issuing Location:

ID Issue Date:

ID Expiration:

ID Type:

ID Number:

ID Issued By:

ID Issuing Location:

ID Issue Date:

ID Expiration:

Verification:

Unique Identifier:

E-Mail Address:

**VERIFICATION / FOLLOW-UP**

Document Discrepancy:

**BENEFICIARY DESIGNATION. THE FOLLOWING BENEFICIARY(IES) ARE DESIGNATED:**

- |    |    |
|----|----|
| 1. | 2. |
| 3. | 4. |

(Check if applicable) Designation and Revocation of Beneficiary is attached.

**RESOLUTION OF LIMITED LIABILITY COMPANY**

Authority to Open Account(s), to Deposit and Withdraw Funds, and to Open and Have Access to Safe Deposit Box(es)

<b>TO:</b> (Name/Address of Financial Institution) First Fidelity Bank Greenway-Hayden 16277 North Greenway Hayden Lp Scottsdale, AZ 85260 403	<b>FROM:</b> (Name/Address of Limited Liability Company) Shadow Beverages and Snacks LLC <div style="background-color: black; width: 100px; height: 15px; margin-top: 5px;"></div> <div style="background-color: black; width: 100px; height: 15px; margin-top: 5px;"></div> AZ
---	---

Words or phrases preceded by a  are applicable only if the  is marked.

The entire management     All of the members

of the above described limited liability company ("Company"), validly organized and operating as required by law, certify to the above named financial institution ("Financial Institution") that the following is a true and complete copy of a resolution duly adopted at a meeting of  all of the members of the Company  all of the individuals appointed by the members to manage the Company ("Managers").

This is a  For - Profit     Nonprofit Company.

**"IT IS RESOLVED THAT.**

This Resolution is permitted and in accordance with the Company's articles or certificate of organization and operating agreements;

The Financial Institution may rely upon our certification as to our authority to execute this Resolution and make the representations in this Resolution;

All Managers or members of this Company whose names and signatures appear below, and any agent(s) also named, are authorized for and on behalf of this Company to open and maintain a depository account(s) of the Company with Financial Institution, subject to the terms and conditions specified in the applicable Account Agreement(s), to endorse and deposit with Financial Institution negotiable instruments or other orders for the payment of money, which endorsements may be made in writing or by stamp and without the designation of the person endorsing, and to open and have access to a safe deposit box(es), subject to the terms and conditions specified in the applicable Lease(s);

All Managers or members named whose signatures appear below, and any agent(s) also named, are authorized for and on behalf of the Company to sign checks and orders for the payment of money withdrawing funds from a depository account(s) regardless of whether such action will create or increase an overdraft of the involved account (payment or nonpayment of an item which would create an overdraft of the involved account shall be at the sole discretion of the Financial Institution);

All Managers or members named whose signatures appear below, and any agent(s) also named, can endorse for negotiation, negotiate, and receive the proceeds of any negotiable instruments or orders for the payment of money payable to or belonging to the Company, can approve, endorse, guarantee and identify the endorsement of any payee or endorser of any checks or drafts whether drawn by the Company or anyone else and can guarantee the payment of any checks or drafts, and can delegate to others authority to identify, endorse, approve and guarantee the endorsement of any payee or endorser of any such checks or drafts and to guarantee the payment of any checks or drafts;

Unless specifically designated, each Manager or member named whose signature appears below may sign without the other(s); and

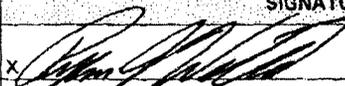
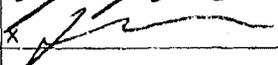
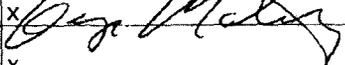
The Financial Institution is authorized to honor facsimile and other non-manual signatures and may honor and charge the Limited Liability Company for all negotiable instruments, checks, drafts, and other orders for payment of money drawn in the name of the Limited Liability Company, on its regular accounts, including an order for electronic debit, whether by electronic tape, or otherwise, regardless of by whom or by what means the facsimile signature or other non-manual signature may have been affixed, or electronically communicated, if such facsimile signature resembles the specimen attached to this Resolution if filed with the Financial Institution, regardless of whether any misuse of a specimen or non-manual signature is with or without the negligence of the Limited Liability Company. The Specimen Facsimile Signature Exhibit attached is incorporated into and is an integral part of this Regulation. Limited Liability Company indemnifies the Financial Institution for all claims, expenses, and losses resulting from the honoring of any signature certified or refusing to honor any signature not so certified;

Further, this Resolution is continued on Page 2 of this document, and all of the power and authority granted are incorporated in this Resolution."

**THIS RESOLUTION APPLIES TO:**  ALL ACCOUNTS     SAFE DEPOSIT BOX NUMBER:

(Check all that apply)  SPECIFIC ACCOUNT NUMBER(S):

**DATE OF RESOLUTION:**

NAME AND TITLE	MANAGERS / MEMBERS/ AGENTS SIGNATURE	NO. OF NECESSARY COUNTER SIGNATURES
Ryan James Weissmueller	X 	
Joseph Dunnigan	X 	
Samuel Jones	X 	
George Martinez	X 	
	X	
	X	

**SIGNATURE CERTIFICATION**

I certify that the foregoing are titles, names, and genuine signatures of the present Managers, members and agents of this Company authorized by the above Resolution.

IN WITNESS WHEREOF, I have subscribed my name on the date shown below.

X       11/18/09  
 Signature Shadow Beverages and Snacks LLC      Date  
 Title:

<b>NEW ACCOUNT INFORMATION</b> Shadow Beverages and Snacks LLC  <input type="checkbox"/> TEMPORARY <input checked="" type="checkbox"/> REPLACEMENT DATE 11/16/09      OPENED BY B30MLANDER	<b>Financial Institution Name And Address</b> First Fidelity Bank Greenway-Hayden 16277 North Greenway Hayden Lp Scottsdale, AZ 85260  403
--	--

<b>ACCOUNT INFORMATION</b> AMOUNT OF DEPOSIT \$ _____ PLAN # SAA5153 TITLE OF ACCOUNT Shadow Beverages and Snacks LLC  ACCOUNT NUMBER [REDACTED] 2848 ACCOUNT T.I.N. [REDACTED]
[REDACTED] AZ [REDACTED] OWNERSHIP TYPE Limited Liability PRODUCT NAME Free Small Business Checking 1 Words, numbers or phrases preceded by a <input type="checkbox"/> are applicable only if the <input checked="" type="checkbox"/> is marked.

<b>BUSINESS ENTITY INFORMATION</b> BUSINESS NAME AND ADDRESS Shadow Beverages and Snacks LLC  [REDACTED] AZ [REDACTED] ASSUMED NAME IF D/B/A _____  CONTACT NAME _____ CONTACT TITLE _____ CONTACT PHONE _____ OTHER _____	BUSINESS FILING STATE ARIZONA ENTITY DOCUMENT _____ LAST FILING DATE _____ FILING EXPIRATION _____ DATE ESTABLISHED _____ NATURE OF BUSINESS _____ PRIMARY LOCATION _____ RESOLUTION DATE _____ E-MAIL ADDRESS Georgem@ [REDACTED] FACSIMILE AUTHORIZATION ON FILE <input type="checkbox"/> YES <input type="checkbox"/> NO LIMITED LIABILITY COMPANY TAX CLASSIFICATION _____ BUSINESS ENGAGES IN INTERNET GAMBLING* <input type="checkbox"/> <small>* If box is checked you must provide evidence of authority to engage in internet gambling.</small>
--	--

**TAXPAYER IDENTIFICATION NUMBER CERTIFICATION**  
 Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding. Notice: If you are subject to backup withholding, cross out this line), and
- I am a U.S. citizen or other U.S. person.

SIGNATURE Shadow Beverages and Snacks LLC      DATE 2/17/2012      Taxpayer Identification Number: [REDACTED]

**ADDITIONAL TERMS**  
 Updated signers. This card supersedes all others. mla5140

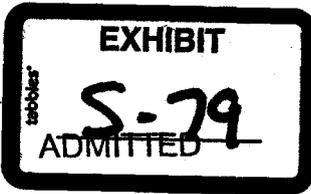
**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

**ACKNOWLEDGMENT.** By signing this document, the undersigned acknowledge that they have opened the type of account designated above, and have received, understand and agree to be bound by the terms of the Account Agreement for that account type. The undersigned certify that all information provided to the institution is true and accurate. If this is a consumer account, the undersigned acknowledge receipt, where applicable, of an Account Disclosure and Electronic Fund Transfer Agreement. The undersigned also acknowledge receipt, where applicable, of this institution's Funds Availability Policy and Privacy Policy. If this account is opened in the name of the business entity, all signers are acting on behalf of the business entity. All signers authorize this institution to make inquiries from any consumer reporting agency, including a check protection service, in connection with this account.

# OF SIGNATURES REQUIRED: 1

<input type="checkbox"/> Authorized Signer Only      Title: COO <u>X</u> <u>Samuel A Jones</u> Date: _____ <input type="checkbox"/> Authorized Signer Only      Title: CFO <u>X</u> <u>Robert M Korte</u> Date: <u>2/13/2012</u>	<input type="checkbox"/> Authorized Signer Only      Title: President <u>X</u> <u>George Martinez</u> Date: <u>2/17/2012</u> <input type="checkbox"/> Authorized Signer Only      Title: _____ _____      Date: _____
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FACSIMILE ALLOWED



ACC009882  
SHADOW-8507

OWNER/SIGNER #1 NAME AND ADDRESS

Samuel A Jones

Title/Capacity: COO  
EMPLOYER NAME AND ADDRESS

Tax ID Number:  
Date of Birth:  
Primary Phone:  
Secondary Phone:

ID Type:  
ID Number:  
ID Issued By: CT  
ID Issuing Location:  
ID Issue Date:  
ID Expiration:  
ID Type:  
ID Number:  
ID Issued By:  
ID Issuing Location: USA  
ID Issue Date:  
ID Expiration:  
Verification:  
Unique Identifier:  
E-Mail Address: samuelj@

OWNER/SIGNER #2 NAME AND ADDRESS

George Martinez

Title/Capacity: President  
EMPLOYER NAME AND ADDRESS

Tax ID Number:  
Date of Birth:  
Primary Phone:  
Secondary Phone:

ID Type: Driver's license (w/  
ID Number:  
ID Issued By: AZ  
ID Issuing Location:  
ID Issue Date:  
ID Expiration:  
ID Type:  
ID Number:  
ID Issued By:  
ID Issuing Location:  
ID Issue Date:  
ID Expiration:  
Verification:  
Unique Identifier:  
E-Mail Address: georgme

OWNER/SIGNER #3 NAME AND ADDRESS

Robert M Korte

Title/Capacity: CFO  
EMPLOYER NAME AND ADDRESS  
Shadow Beverage

Tax ID Number:  
Date of Birth:  
Primary Phone:  
Secondary Phone:

ID Type: Driver's license (w/  
ID Number:  
ID Issued By: AZ  
ID Issuing Location:  
ID Issue Date:  
ID Expiration:  
ID Type:  
ID Number:  
ID Issued By:  
ID Issuing Location:  
ID Issue Date:  
ID Expiration:  
Verification:  
Unique Identifier:  
E-Mail Address: dkorte@

OWNER/SIGNER #4 NAME AND ADDRESS

Title/Capacity:  
EMPLOYER NAME AND ADDRESS

Tax ID Number:  
Date of Birth:  
Primary Phone:  
Secondary Phone:

ID Type: Driver's license (w/  
ID Number:  
ID Issued By:  
ID Issuing Location: ARIZONA  
ID Issue Date:  
ID Expiration:  
ID Type:  
ID Number:  
ID Issued By:  
ID Issuing Location:  
ID Issue Date:  
ID Expiration:  
Verification:  
Unique Identifier:  
E-Mail Address:

VERIFICATION / FOLLOW-UP  
Document Discrepancy:

BENEFICIARY DESIGNATION. THE FOLLOWING BENEFICIARY(IES) ARE DESIGNATED:

- 1.
- 2.
- 3.
- 4.

(Check if applicable) Designation and Revocation of Beneficiary is attached.

**RESOLUTION OF CORPORATION, PARTNERSHIP & LLCs**

DATE:

<p>TO: NAME AND ADDRESS OF FINANCIAL INSTITUTION</p> <p>First Fidelity Bank Greenway-Hayden 16277 North Greenway Hayden Lp Scottsdale, AZ 85260 403</p>	<p>FROM: NAME AND ADDRESS OF ENTITY</p> <p>Shadow Beverages and Snacks LLC</p> <p>██</p> <p>██████████ AZ ██████████</p>
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Use this Resolution of Corporation, Partnership and LLCs to document the granting of Deposit authority by the governing body of the business entity to specified individuals. This form may be used by legal entities, such as corporations, professional corporations, general partnerships, limited partnerships, limited liability partnerships, and limited liability companies.

Words or phrases preceded by a  are applicable only if the  is marked.

I certify that I am a duly and legally elected/appointed, qualified representative and keeper of the records ("Designated Representative") of/for the legal entity ("Entity") named above, that the following is a true and complete copy of a Resolution duly adopted at a meeting of the governing body of the Entity held on the \_\_\_\_\_ day of \_\_\_\_\_ in accordance with law and the governing documents of the Entity, and that my delivery of this Resolution to Financial Institution certifies to Financial Institution that such Resolution is still in full force and effect.

This is a  For Profit  Nonprofit Entity.

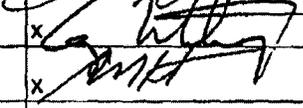
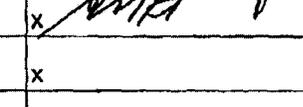
**IT IS RESOLVED THAT:**

The following described officers, members, managers, partners, employees, designated parties or agents of the Entity referred to below as "Authorized Parties", whose names and signatures appear below, are authorized for and on behalf of the Entity to have the following indicated powers as contained in this Resolution:

- |  | Authorized Parties |
|--|--------------------|
| <input checked="" type="checkbox"/> <b>DEPOSITORY ACCOUNT.</b> Open and maintain the depository account(s) indicated on Page 2 in the name of the Entity subject to any terms and conditions governing the account(s), including:  |                    |
| 1. Make deposits to the account(s);  | All                |
| 2. Endorse for negotiation, negotiate, and receive the proceeds of any negotiable instrument, check, draft, or order for the payment of money payable to or belonging to the Entity by writing, stamp, or other means permitted by this Resolution without the designation of the person endorsing;                            | All                |
| 3. Make withdrawals from the account(s) in any manner permitted by the account(s);   | All                |
| 4. Transfer funds from the account(s) in Financial Institution to any account whether or not held at this Financial Institution and whether or not held by this Entity;  | All                |
| 5. Transfer funds to the account(s) in Financial Institution from any account whether or not held at this Financial Institution and whether or not held by this Entity;  | All                |
| 6. Approve, endorse, guarantee, and identify the endorsement of any payee or any endorser of any negotiable instrument, check, draft or order for the payment of money whether drawn by the Entity or anyone else and guarantee the payment of any negotiable instrument, check, draft, or order for the payment of money; and | All                |
| 7. Delegate to others the authority to approve, endorse, guarantee, and identify the endorsement of any payee or endorser on any negotiable instrument, check, draft, or order for the payment of money and to guarantee the payment of any such negotiable instrument, check, draft, or order for the payment of money.       | All                |
| 8. All of the above.   | All                |
| <input checked="" type="checkbox"/> <b>SAFE DEPOSIT BOX.</b> Lease a Safe Deposit Box(es) with Financial Institution, make inspections of, deposits to and removals from Box(es), and exercise all rights and be subject to all responsibilities under the Lease.  | All                |
| <input checked="" type="checkbox"/> <b>NIGHT DEPOSITORY.</b> Enter into a Night Depository Agreement with Financial Institution and exercise all rights and be subject to all responsibilities under the Agreement.  | All                |
| <input checked="" type="checkbox"/> <b>LOCKBOX.</b> Enter into a Lockbox Agreement with Financial Institution and exercise all rights and be subject to all responsibilities under the Agreement.  | All                |
| <input checked="" type="checkbox"/> <b>DEBIT CARD/ATM CARD.</b> Apply for, receive and utilize debit cards, automated teller machine cards, or other access devices to exercise those powers authorized by this Resolution or other Resolutions then in effect.  | All                |
| <input checked="" type="checkbox"/> <b>CASH MANAGEMENT.</b> Enter into a Cash Management Agreement with Financial Institution, and exercise all rights and be subject to all responsibilities under the Agreement  | All                |
| <input type="checkbox"/> <b>OTHER AUTHORITY-</b> describe:   | All                |

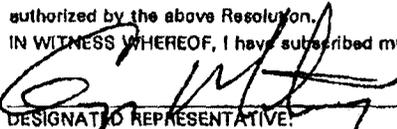
Further, this Resolution continues on Page 2 of this document, and all of the power and authority granted are incorporated in this Resolution.

RESOLUTION APPLIES TO (check all that apply):  ALL ACCOUNTS  SAFE DEPOSIT BOX NUMBER(S):  
 SPECIFIC ACCOUNTS ACCOUNT NUMBER(S):

NAME AND TITLE	SIGNATURE	LIMITATIONS
1. Samuel A Jones COO	X 	COUNTERSIGNERS: 1
2. George Martinez President	X 	COUNTERSIGNERS:
3. Robert M Korte CEO	X 	COUNTERSIGNERS:
4.	X	COUNTERSIGNERS:
5.	X	COUNTERSIGNERS:
6.	X	COUNTERSIGNERS:
7.	X	COUNTERSIGNERS:
8.	X	COUNTERSIGNERS:

**SIGNATURE CERTIFICATION.** I certify that the foregoing are names, titles, and genuine signatures of the current Authorized Parties of the Entity authorized by the above Resolution.

IN WITNESS WHEREOF, I have subscribed my name as Designated Representative of the Entity on the date shown below.

  
 DESIGNATED REPRESENTATIVE:

2/17/2012  
 DATE

Shadow Beverages and Snacks LLC

IT IS FURTHER RESOLVED AS FOLLOWS, the Entity certifies to the Financial Institution that:

- Unless specifically designated, each of the Authorized Parties whose signature appears above may sign without the other(s);
- Facsimile Signatures. (Select if applicable):  The Financial Institution is authorized to honor facsimile and other non-manual signatures and may honor and charge the Entity for all negotiable instruments, checks, drafts, and other orders for payment of money drawn in the name of the Entity, on its regular accounts, including an order for electronic debit, whether by electronic tape or otherwise, regardless of by whom or by what means the facsimile signature or other non-manual signature may have been affixed, or electronically communicated, if such facsimile signature resembles the specimen attached to this Resolution or filed with the Financial Institution, regardless of whether any misuse of a specimen or non-manual signature is with or without the negligence of the Entity. The Specimen Facsimile Signature Exhibit attached is incorporated into and is an integral part of this Resolution. Entity indemnifies the Financial Institution for all claims, expenses, and losses resulting from the honoring of any signature certified or refusing to honor any signature not so certified;
- As used herein, any pronouns relative to the signers for the Entity shall include the masculine, feminine, and neutral gender, and the singular and plural number, wherever the context so admits or requires;
- All items deposited with prior endorsements are guaranteed by the Entity;
- All items not clearly endorsed by the Entity may be returned to the Entity by the Financial Institution or, alternatively, the Financial Institution is granted a power of attorney in relation to any such item to endorse any such item on behalf of the Entity in order to facilitate collection;
- Financial Institution shall have no liability for any delay in the presentment or return of any negotiable instrument or other order for the payment of money, that is not properly endorsed;
- Financial Institution is directed and authorized to act upon and honor any withdrawal or transfer instructions issued and to honor, pay and charge to any depository account or accounts of the Entity, all checks or orders for the payment of money so drawn when signed consistent with this Resolution without inquiring as to the disposition of the proceeds or the circumstances surrounding the issuance of the check or the order for the payment of the money involved, whether such checks or orders for the payment of money are payable to the order of, or endorsed or negotiated by any one or more of the Authorized Parties signing them or such party in their individual capacities or not, and whether they are deposited to the individual credit of or tendered in payment of the individual obligation of any one or more of the Authorized Parties signing them or of any other such party or not;
- Financial Institution shall be indemnified for any claims, expenses or losses resulting from the honoring of any signature certified or refusing to honor any signature not so certified; and
- Notwithstanding any modification or termination of the power of any Authorized Party of the Entity, this Resolution shall remain in full force and bind the Entity and its legal representatives, successors, assignees, receivers, trustees or assigns until written notice to the contrary signed by, or on behalf of, the Entity shall have been received by the Financial Institution, and that receipt of such notice shall not affect any action taken by the Financial Institution prior to receipt of such notice in reliance on this Resolution.

Additional comments or instructions:

**NEW ACCOUNT INFORMATION**

Shadow Beverages and Snacks LLC

**Financial Institution Name And Address**

First Fidelity Bank  
Greenway-Hayden  
16277 North Greenway Hayden Lp  
Scottsdale, AZ 85260 403

TEMPORARY

REPLACEMENT

DATE 10/01/08

OPENED BY B30MLANDER

**ACCOUNT INFORMATION**

AMOUNT OF DEPOSIT \$

PLAN # SAA5153

ACCOUNT NUMBER [REDACTED] 5023

TITLE OF ACCOUNT Shadow Beverages and Snacks LLC

ACCOUNT T.I.N. [REDACTED]

OWNERSHIP TYPE Limited Liability  
PRODUCT NAME Commercial Money Market

Words, numbers or phrases preceded by a  are applicable only if the  is marked.

BUSINESS FILING STATE ARIZONA

ENTITY DOCUMENT

LAST FILING DATE

FILING EXPIRATION

DATE ESTABLISHED

NATURE OF BUSINESS

PRIMARY LOCATION

RESOLUTION DATE

E-MAIL ADDRESS Georgem@ [REDACTED]

FACSIMILE AUTHORIZATION ON FILE  YES  NO

LIMITED LIABILITY COMPANY TAX CLASSIFICATION

BUSINESS ENGAGES IN INTERNET GAMBLING\*

\* If box is checked you must provide evidence of authority to engage in Internet Gambling.

**BUSINESS ENTITY INFORMATION**

BUSINESS NAME AND ADDRESS

Shadow Beverages and Snacks LLC

ASSUMED NAME IF O/B/A

CONTACT NAME

CONTACT TITLE

CONTACT PHONE

OTHER

**TAXPAYER IDENTIFICATION NUMBER CERTIFICATION**

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding (Notice: If you are subject to backup withholding, cross out this line), and
3. I am a U.S. citizen or other U.S. person.

SIGNATURE *George Martinez* Shadow Beverages and Snacks LLC

2/17/2012 DATE

Taxpayer Identification Number: [REDACTED]

**ADDITIONAL TERMS**

updated signers. This card supersedes all others 2/8/2012 mla5140

**IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT.** To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account.

What this means for you: When you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

**ACKNOWLEDGMENT.** By signing this document, the undersigned acknowledge that they have opened the type of account designated above, and have received, understand and agree to be bound by the terms of the Account Agreement for that account type. The undersigned certify that all information provided to the institution is true and accurate. If this is a consumer account, the undersigned acknowledge receipt, where applicable, of an Account Disclosure and Electronic Fund Transfer Agreement. The undersigned also acknowledge receipt, where applicable, of this institution's Funds Availability Policy and Privacy Policy. If this account is opened in the name of the business entity, all signers are acting on behalf of the business entity. All signers authorize this institution to make inquiries from any consumer reporting agency, including a check protection service, in connection with this account.

# OF SIGNATURES REQUIRED: 1

Authorized Signer Only Title: COO

*Samuel A Jones*  
Samuel A Jones

2/17/12 Date

Authorized Signer Only Title: President

*George Martinez*  
George Martinez

2/17/2012 Date

Authorized Signer Only Title: CFO

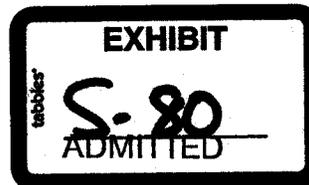
*Robert M Korte*  
Robert M Korte

2/13/2012 Date

Authorized Signer Only Title:

X

ACC009926  
SHADOW-8507



**OWNER/SIGNER #1 NAME AND ADDRESS**

Samuel A Jones

[REDACTED]  
[REDACTED] CT [REDACTED]

Title/Capacity: COO  
EMPLOYER NAME AND ADDRESS

Tax ID Number: [REDACTED]  
Date of Birth: [REDACTED]  
Primary Phone: [REDACTED]  
Secondary Phone: [REDACTED]

ID Type:  
ID Number: [REDACTED]  
ID Issued By: CT  
ID Issuing Location:  
ID Issue Date: [REDACTED]  
ID Expiration:  
ID Type:  
ID Number:  
ID Issued By:  
ID Issuing Location: US  
ID Issue Date:  
ID Expiration:  
Verification:  
Unique Identifier:  
E-Mail Address: samuelj@ [REDACTED]

**OWNER/SIGNER #2 NAME AND ADDRESS**

George Martinez

[REDACTED] AZ [REDACTED]  
Title/Capacity: President  
EMPLOYER NAME AND ADDRESS

Tax ID Number: [REDACTED]  
Date of Birth: [REDACTED]  
Primary Phone: [REDACTED]  
Secondary Phone: [REDACTED]

ID Type: Driver's license (w/  
ID Number: [REDACTED]  
ID Issued By: AZ  
ID Issuing Location:  
ID Issue Date: [REDACTED]  
ID Expiration:  
ID Type:  
ID Number:  
ID Issued By:  
ID Issuing Location:  
ID Issue Date:  
ID Expiration:  
Verification:  
Unique Identifier:  
E-Mail Address: georgm@ [REDACTED]

**OWNER/SIGNER #3 NAME AND ADDRESS**

Robert M Korte

[REDACTED] AZ [REDACTED]  
Title/Capacity: CFO  
EMPLOYER NAME AND ADDRESS  
Shadow Beverage

Tax ID Number: [REDACTED]  
Date of Birth: [REDACTED]  
Primary Phone: [REDACTED]  
Secondary Phone: [REDACTED]

ID Type: Driver's license (w/  
ID Number: [REDACTED]  
ID Issued By: AZ  
ID Issuing Location:  
ID Issue Date: [REDACTED]  
ID Expiration:  
ID Type:  
ID Number:  
ID Issued By:  
ID Issuing Location:  
ID Issue Date:  
ID Expiration:  
Verification:  
Unique Identifier:  
E-Mail Address: dkorte@ [REDACTED]

**OWNER/SIGNER #4 NAME AND ADDRESS**

Title/Capacity:  
EMPLOYER NAME AND ADDRESS

Tax ID Number:  
Date of Birth:  
Primary Phone:  
Secondary Phone:

ID Type: Driver's license (w/  
ID Number:  
ID Issued By:  
ID Issuing Location: ARIZONA  
ID Issue Date:  
ID Expiration:  
ID Type:  
ID Number:  
ID Issued By:  
ID Issuing Location:  
ID Issue Date:  
ID Expiration:  
Verification:  
Unique Identifier:  
E-Mail Address:

**VERIFICATION / FOLLOW-UP**  
Document Discrepancy:

BENEFICIARY DESIGNATION. THE FOLLOWING BENEFICIARY(IES) ARE DESIGNATED:

(Check if applicable) Designation and Revocation of Beneficiary is attached.

1. 2.
3. 4.

**RESOLUTION OF CORPORATION, PARTNERSHIP & LLCS**

DATE:

<b>TO: NAME AND ADDRESS OF FINANCIAL INSTITUTION</b> First Fidelity Bank Greenway-Hayden 16277 North Greenway Hayden Lp Scottsdale, AZ 85260 403	<b>FROM: NAME AND ADDRESS OF ENTITY</b> Shadow Beverages and Snacks LLC [REDACTED] [REDACTED] AZ [REDACTED]
---	--

Use this *Resolution of Corporation, Partnership and LLCs* to document the granting of Deposit authority by the governing body of the business entity to specified individuals. This form may be used by legal entities, such as corporations, professional corporations, general partnerships, limited partnerships, limited liability partnerships, and limited liability companies.

Words or phrases preceded by a  are applicable only if the  is marked.

I certify that I am a duly and legally elected/appointed, qualified representative and keeper of the records ("Designated Representative") of/for the legal entity ("Entity") named above, that the following is a true and complete copy of a Resolution duly adopted at a meeting of the governing body of the Entity held on the \_\_\_\_\_ day of \_\_\_\_\_ in accordance with law and the governing documents of the Entity, and that my delivery of this Resolution to Financial Institution certifies to Financial Institution that such Resolution is still in full force and effect.

This is a  For Profit  Nonprofit Entity.

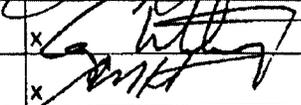
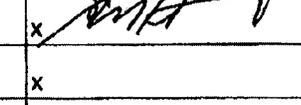
**IT IS RESOLVED THAT:**

The following described officers, members, managers, partners, employees, designated parties or agents of the Entity referred to below as "Authorized Parties", whose names and signatures appear below, are authorized for and on behalf of the Entity to to have the following indicated powers as contained in this Resolution:

- |  | Authorized Parties |
|--|--------------------|
| <input checked="" type="checkbox"/> <b>DEPOSITORY ACCOUNT.</b> Open and maintain the depository account(s) indicated on Page 2 in the name of the Entity subject to any terms and conditions governing the account(s), including:  |                    |
| 1. Make deposits to the account(s);  | All                |
| 2. Endorse for negotiation, negotiate, and receive the proceeds of any negotiable instrument, check, draft, or order for the payment of money payable to or belonging to the Entity by writing, stamp, or other means permitted by this Resolution without the designation of the person endorsing;                            | All                |
| 3. Make withdrawals from the account(s) in any manner permitted by the account(s);   | All                |
| 4. Transfer funds from the account(s) in Financial Institution to any account whether or not held at this Financial Institution and whether or not held by this Entity;  | All                |
| 5. Transfer funds to the account(s) in Financial Institution from any account whether or not held at this Financial Institution and whether or not held by this Entity;  | All                |
| 6. Approve, endorse, guarantee, and identify the endorsement of any payee or any endorser of any negotiable instrument, check, draft or order for the payment of money whether drawn by the Entity or anyone else and guarantee the payment of any negotiable instrument, check, draft, or order for the payment of money; and | All                |
| 7. Delegate to others the authority to approve, endorse, guarantee, and identify the endorsement of any payee or endorser on any negotiable instrument, check, draft, or order for the payment of money and to guarantee the payment of any such negotiable instrument, check, draft, or order for the payment of money.       | All                |
| 8. All of the above.   | All                |
| <input checked="" type="checkbox"/> <b>SAFE DEPOSIT BOX.</b> Lease a Safe Deposit Box(es) with Financial Institution, make inspections of, deposits to and removals from Box(es), and exercise all rights and be subject to all responsibilities under the Lease.  | All                |
| <input checked="" type="checkbox"/> <b>NIGHT DEPOSITORY.</b> Enter into a Night Depository Agreement with Financial Institution and exercise all rights and be subject to all responsibilities under the Agreement.  | All                |
| <input checked="" type="checkbox"/> <b>LOCKBOX.</b> Enter into a Lockbox Agreement with Financial Institution and exercise all rights and be subject to all responsibilities under the Agreement.  | All                |
| <input checked="" type="checkbox"/> <b>DEBIT CARD/ATM CARD.</b> Apply for, receive and utilize debit cards, automated teller machine cards, or other access devices to exercise those powers authorized by this Resolution or other Resolutions then in effect.  | All                |
| <input checked="" type="checkbox"/> <b>CASH MANAGEMENT.</b> Enter into a Cash Management Agreement with Financial Institution, and exercise all rights and be subject to all responsibilities under the Agreement  | All                |
| <input type="checkbox"/> <b>OTHER AUTHORITY- describe:</b>   | All                |

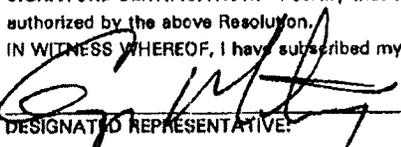
Further, this Resolution continues on Page 2 of this document, and all of the power and authority granted are incorporated in this Resolution.

RESOLUTION APPLIES TO (check all that apply):  ALL ACCOUNTS  SAFE DEPOSIT BOX NUMBER(S):  
 SPECIFIC ACCOUNTS ACCOUNT NUMBER(S):

NAME AND TITLE	SIGNATURE	LIMITATIONS
1. Samuel A Jones COO	X 	COUNTERSIGNERS: 1
2. George Martinez President	X 	COUNTERSIGNERS:
3. Robert M Korte CEO	X 	COUNTERSIGNERS:
4.	X	COUNTERSIGNERS:
5.	X	COUNTERSIGNERS:
6.	X	COUNTERSIGNERS:
7.	X	COUNTERSIGNERS:
8.	X	COUNTERSIGNERS:

SIGNATURE CERTIFICATION. I certify that the foregoing are names, titles, and genuine signatures of the current Authorized Parties of the Entity authorized by the above Resolution.

IN WITNESS WHEREOF, I have subscribed my name as Designated Representative of the Entity on the date shown below.

  
DESIGNATED REPRESENTATIVE:

2/17/2012  
DATE

Shadow Beverages and Snacks LLC

IT IS FURTHER RESOLVED AS FOLLOWS, the Entity certifies to the Financial Institution that:

- Unless specifically designated, each of the Authorized Parties whose signature appears above may sign without the other(s);
- Facsimile Signatures. (Select if applicable):  The Financial Institution is authorized to honor facsimile and other non-manual signatures and may honor and charge the Entity for all negotiable instruments, checks, drafts, and other orders for payment of money drawn in the name of the Entity, on its regular accounts, including an order for electronic debit, whether by electronic tape or otherwise, regardless of by whom or by what means the facsimile signature or other non-manual signature may have been affixed, or electronically communicated, if such facsimile signature resembles the specimen attached to this Resolution or filed with the Financial Institution, regardless of whether any misuse of a specimen or non-manual signature is with or without the negligence of the Entity. The Specimen Facsimile Signature Exhibit attached is incorporated into and is an integral part of this Resolution. Entity indemnifies the Financial Institution for all claims, expenses, and losses resulting from the honoring of any signature certified or refusing to honor any signature not so certified;
- As used herein, any pronouns relative to the signers for the Entity shall include the masculine, feminine, and neutral gender, and the singular and plural number, wherever the context so admits or requires;
- All items deposited with prior endorsements are guaranteed by the Entity;
- All items not clearly endorsed by the Entity may be returned to the Entity by the Financial Institution or, alternatively, the Financial Institution is granted a power of attorney in relation to any such item to endorse any such item on behalf of the Entity in order to facilitate collection;
- Financial Institution shall have no liability for any delay in the presentment or return of any negotiable instrument or other order for the payment of money, that is not properly endorsed;
- Financial Institution is directed and authorized to act upon and honor any withdrawal or transfer instructions issued and to honor, pay and charge to any depository account or accounts of the Entity, all checks or orders for the payment of money so drawn when signed consistent with this Resolution without inquiring as to the disposition of the proceeds or the circumstances surrounding the issuance of the check or the order for the payment of the money involved, whether such checks or orders for the payment of money are payable to the order of, or endorsed or negotiated by any one or more of the Authorized Parties signing them or such party in their individual capacities or not, and whether they are deposited to the individual credit of or tendered in payment of the individual obligation of any one or more of the Authorized Parties signing them or of any other such party or not;
- Financial Institution shall be indemnified for any claims, expenses or losses resulting from the honoring of any signature certified or refusing to honor any signature not so certified; and
- Notwithstanding any modification or termination of the power of any Authorized Party of the Entity, this Resolution shall remain in full force and bind the Entity and its legal representatives, successors, assignees, receivers, trustees or assigns until written notice to the contrary signed by, or on behalf of, the Entity shall have been received by the Financial Institution, and that receipt of such notice shall not affect any action taken by the Financial Institution prior to receipt of such notice in reliance on this Resolution.

Additional comments or instructions:

ACC009929  
SHADOW-8507



Wells Fargo Bank, N.A.  
 Subpoena Processing Chandler  
 PO Box 29728 S3928-020  
 Phoenix, AZ 85038  
 Voice: (480)724-2000

**BUSINESS RECORDS DECLARATION**

I, Connie Mitchareune, declare that I am employed by Wells Fargo Bank, N. A. ("Wells Fargo") in the Legal Order Processing Department and am a duly authorized and qualified witness to certify the authenticity of the attached documents and/or information produced pursuant to the legal order. The Bank reserves the right to designate another Custodian as it deems appropriate in the event an actual appearance is required concerning the records produced. I certify that the attached records:

- A) Were prepared by personnel of Wells Fargo in the ordinary course of business at or near the time of the acts, conditions or events described in the records; and
- B) It was the ordinary course of business for Wells Fargo employees or representatives with knowledge of the act, event, or condition recorded to make the record or transmit the information therein to be included in such record.

The records produced are described as follows:

Case No: 11677433

Document Type	Account #	Paper Count	Total Copies
Statements	XXXXXX8254	34	34
Signature Cards	XXXXXX4679	7	7
Signature Cards	XXXXXX8254	4	4
Statements	XXXXXX6698	15	15
Statements	XXXXXX4679	58	58
Signature Cards	XXXXXX6698	6	6

**Total Copies Delivered: 124**

Additional comments: Unable to locate any accounts in the name of Lucio George Martinez. Unable to locate account [REDACTED] 0248. Unable to locate any loans and/or safe deposit box. Production limited to statements, signature cards, Know Your Customer per requesting party.

I declare under penalty of perjury under the law(s) of the state of Arizona that the foregoing is true and correct according to my knowledge and belief. Executed on this 21st day of April, 2015, in the City of Chandler, State of ARIZONA.

*Connie Mitchareune*

Subpoena Processing Representative (480)724-2000

Image copies of requested transactions may be missing for the following reasons: Items not imaged, corrupted, blank, damaged, destroyed or not available, item(s) piggy-backed, electronic transaction(s). If the legal order requests certain types of loan information and other non-depository information, it was forwarded to other departments for compliance.



Case No: 11677433; Agency Case No: 8507



Wells Fargo Bank, N.A.  
 Subpoena Processing Chandler  
 PO Box 29728 S3928-020  
 Phoenix, AZ 85038  
 Voice: (480)724-2000

### BUSINESS RECORDS DECLARATION

I, Jesse Plumb, declare that I am employed by Wells Fargo Bank, N. A. ("Wells Fargo") in the Legal Order Processing Department and am a duly authorized and qualified witness to certify the authenticity of the attached documents and/or information produced pursuant to the legal order. The Bank reserves the right to designate another Custodian as it deems appropriate in the event an actual appearance is required concerning the records produced. I certify that the attached records:

- A) Were prepared by personnel of Wells Fargo in the ordinary course of business at or near the time of the acts, conditions or events described in the records; and
- B) It was the ordinary course of business for Wells Fargo employees or representatives with knowledge of the act, event, or condition recorded to make the record or transmit the information therein to be included in such record.

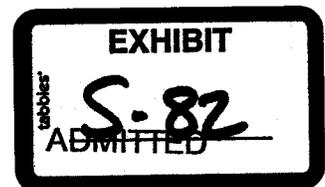
The records produced are described as follows:

Case No: 12322700

Document Type	Account #	Paper Count	Total Copies
Wire Request	XXXXXX4679	75	75
Returned Checks-Dpt item	XXXXXX4679	0	0
Account: [REDACTED] 4679; Return Item Charge Amount: \$2,900.00; Date: 10/09/14.			
Checks/Debits	XXXXXX4679	175	175
Returned Checks-Dpt item	XXXXXX4679	0	0
The return item charge on 10/15/2014 was a result of a deposit being returned. No image available.			
ACH	XXXXXX4679	1	1
ACH	XXXXXX4679	2	2
Deposits with offsets	XXXXXX4679	171	171
Returned Checks-Dpt item	XXXXXX4679	0	0
Account: [REDACTED] 4679 check #176 date: 12/18/14 amount: \$19,000.00 return item charge on 12/23/2014 is the returning of the deposit on 12/19/2014 for \$19,000.00 no image available			

**Total Copies Delivered: 424**

Case No: 12322700; Agency Case No: Not Provided



ACC008691  
SHADOW-8507

I declare under penalty of perjury under the law(s) of the state of Arizona that the foregoing is true and correct according to my knowledge and belief. Executed on this 13th day of June, 2015, in the City of Chandler, State of ARIZONA.



Subpoena Processing Representative (480)724-2000

Image copies of requested transactions may be missing for the following reasons: Items not imaged, corrupted, blank, damaged, destroyed or not available, item(s) piggy-backed, electronic transaction(s). If the legal order requests certain types of loan information and other non-depository information, it was forwarded to other departments for compliance.

Case No: 12322700; Agency Case No: Not Provided

Page 2 of 2

ACC008692  
SHADOW-8507



Wells Fargo Bank, N.A.  
 Subpoena Processing Chandler  
 PO Box 29728 S3928-020  
 Phoenix, AZ 85038  
 Voice: (480)724-2000

**BUSINESS RECORDS DECLARATION**

I, Charlene Hilton, declare that I am employed by Wells Fargo Bank, N. A. ("Wells Fargo") in the Legal Order Processing Department and am a duly authorized and qualified witness to certify the authenticity of the attached documents and/or information produced pursuant to the legal order. The Bank reserves the right to designate another Custodian as it deems appropriate in the event an actual appearance is required concerning the records produced. I certify that the attached records:

- A) Were prepared by personnel of Wells Fargo in the ordinary course of business at or near the time of the acts, conditions or events described in the records; and
- B) It was the ordinary course of business for Wells Fargo employees or representatives with knowledge of the act, event, or condition recorded to make the record or transmit the information therein to be included in such record.

The records produced are described as follows:

Case No: 14602333

Document Type	Account #	Paper Count	Total Copies
Signature Cards	XXXXXX4679	5	5
Statements	XXXXXX4679	30	30
<b>Total Copies Delivered:</b>			<b>35</b>

Additional comments: Unable to locate account ending 0248. Unable to locate accounts ending 6698 and 8254 within time frame provided.

I declare under penalty of perjury under the law(s) of the state of Arizona that the foregoing is true and correct according to my knowledge and belief. Executed on this 2nd day of February, 2016, in the City of Chandler, State of ARIZONA.

*Charlene Hilton*

Subpoena Processing Representative (480)724-2000

Image copies of requested transactions may be missing for the following reasons: Items not imaged, corrupted, blank, damaged, destroyed or not available, item(s) piggy-backed, electronic transaction(s). If the legal order requests certain types of loan information and other non-depository information, it was forwarded to other departments for compliance.

Case No: 14602333; Agency Case No: 8507



# Business Account Application



Bank Name:	Wells Fargo Bank , N.A.			Store Name:	Ahwatukee		
Banker Name:	DONOVAN SUTTON		Officer/Portfolio Number:	P6698	Date:	08/31/2011	
Banker Phone:	480/705-9039	Store Number:	00896	Banker AU:	0007324	Banker MAC:	S3812-011

To help the government fight the funding of terrorism and money laundering activities, U.S. Federal law requires financial institutions to obtain, verify, and record information that identifies each person (individuals and businesses) who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

## New Account Information

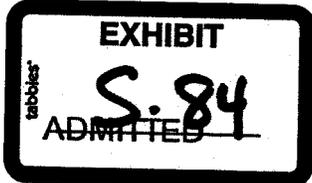
- New Deposit Account(s) Only       New Deposit Account(s) and Business Credit Card

Account 1 Product Name				
Analyzed Business Checking				
COID:	Product:	Account Number:	Opening Deposit:	Type of Funds:
038	DDA	██████████ 4679	\$100.00	WIRE

New Account Kit:  
b20110404-0005769205

## Authorized Signers

Business Name:	Other Related Customer Name:
SHADOW BEVERAGES AND SNACKS, LLC	
Authorized Signer Name(s):	
RICHARD AMROZOWICZ	SAMUEL A JONES
GEORGE MARTINEZ	



**Checking/Savings Statement Mailing Information**

Name(s) and Information Listed on Statement: <b>SHADOW BEVERAGES AND SNACKS, LLC</b>		Statement Mailing Address: [REDACTED]	
		Address Line 2: [REDACTED]	
		City: [REDACTED]	State: <b>AZ</b>
		ZIP/Postal Code: [REDACTED]	Country: <b>US</b>

**Business Information**

Business Name: <b>SHADOW BEVERAGES AND SNACKS, LLC</b>		Street Address: [REDACTED]	
Taxpayer Identification Number (TIN): [REDACTED]		TIN Type: <b>EIN</b>	Address Line 2: [REDACTED]
Business Type: <b>Limited Liability Company</b>		Address Line 3: [REDACTED]	
Business Sub-Type: [REDACTED]		Non-Profit: <b>No</b>	City: [REDACTED]
Date Originally Established: <b>06/25/2008</b>		Current Ownership Since: [REDACTED]	State: <b>AZ</b>
Annual Gross Sales: <b>\$50,000.00</b>		Year Sales Reported: <b>12/31/2010</b>	ZIP/Postal Code: [REDACTED]
Primary Financial Institution: [REDACTED]		Number of Employees: <b>5</b>	Country: <b>US</b>
Sales Market: <b>LOCAL</b>		Fiscal Year End: [REDACTED]	Business Phone: <b>(480) 371-1071</b>
Primary State 1: [REDACTED]		Number of Locations: <b>1</b>	Cellular Phone: [REDACTED]
Primary State 2: [REDACTED]		Fax: [REDACTED]	
Primary State 3: [REDACTED]		Pager: [REDACTED]	
Primary Country 1: [REDACTED]		e-Mail Address: [REDACTED]	
Primary Country 2: [REDACTED]		Website: [REDACTED]	
Primary Country 3: [REDACTED]		[REDACTED]	

Industry:

**Accommodation and Food Services**

Description of Business:

**Beverage & Snack Service**

Major Suppliers/Customers:  
[REDACTED]

**Bank Use Only**

Name/Entity Verification: <b>Articles of Organization</b>		Address Verification: <b>PERSONAL</b>		BACC Reference Number: <b>611BAC0495243</b>	
Document Filing Number/Description: <b>L-14661102</b>		Filing Country: <b>US</b>	Filing State: <b>AZ</b>	Filing Date: <b>06/25/2008</b>	Expiration Date: [REDACTED]
Country of Registration: <b>US</b>	State of Registration: <b>AZ</b>	International Transactions: [REDACTED]		Check Reporting: <b>NO RECORD</b>	
Internet Gambling Business: <b>No</b>					

**Owner/Key Individual 1 Information**

Customer Name: RICHARD AMROZOWICZ	Primary ID Type: DLIC	Primary ID Description: [REDACTED]
Position/Title: DR OF SALES	Primary ID St/City/Prov: CA	Primary ID Issue Date: [REDACTED]      Primary ID Expiration Date: [REDACTED]
Check Reporting: NO RECORD	Secondary ID Type: OTHR DC	Secondary ID Description: MASTERCARD
	Secondary ID State/Country: [REDACTED]	Secondary ID Issue Date: [REDACTED]      Secondary ID Expiration Date: [REDACTED]

**Owner/Key Individual 2 Information**

Customer Name: SAMUEL A JONES	Primary ID Type: DLIC	Primary ID Description: [REDACTED]
Position/Title: COO	Primary ID St/City/Prov: CT	Primary ID Issue Date: [REDACTED]      Primary ID Expiration Date: [REDACTED]
Check Reporting: NO RECORD	Secondary ID Type: PASP	Secondary ID Description: [REDACTED]
	Secondary ID State/Country: US	Secondary ID Issue Date: [REDACTED]      Secondary ID Expiration Date: [REDACTED]

**Owner/Key Individual 3 Information**

Customer Name: GEORGE MARTINEZ	Primary ID Type: DLIC	Primary ID Description: [REDACTED]
Position/Title: PRES	Primary ID St/City/Prov: AZ	Primary ID Issue Date: [REDACTED]      Primary ID Expiration Date: [REDACTED]
Check Reporting: NO RECORD	Secondary ID Type: OTHR DC	Secondary ID Description: VISA
	Secondary ID State/Country: [REDACTED]	Secondary ID Issue Date: [REDACTED]      Secondary ID Expiration Date: [REDACTED]

**Certificate of Authority**

Each person who signs the "Certified/Agreed To" section of this Application certifies that:

- A. The Customer's use of any Bank deposit account, product or service will confirm the Customer's receipt of, and agreement to be bound by, the Bank's applicable fee and information schedule and account agreement that includes the Arbitration Agreement under which any dispute between the Customer and the Bank relating to the Customer's use of any Bank deposit account, product or service will be decided in an arbitration proceeding before a neutral arbitrator as described in the Arbitration Agreement and not by a jury or court trial.
- B. Each person who signs the "Certified/Agreed To" section of this Application or whose name, any applicable title and specimen signature appear in the "Authorized Signers - Signature Capture" section of this Application is authorized on such terms as the Bank may require to:
  - (1) Enter into, modify, terminate and otherwise in any manner act with respect to accounts at the Bank and agreements with the Bank or its affiliates for accounts and/or services offered by the Bank or its affiliates (other than letters of credit or loan agreements);
  - (2) Authorize (by signing or otherwise) the payment of items from the Customer's account(s) listed on this Business Account Application (including without limitation any item payable to (a) the individual order of the person who authorized the item or (b) the Bank or any other person for the benefit of the person who authorized the item) and the endorsement of Deposited Items for deposit, cashing or collection (see the Bank's applicable account agreement for the definitions of "Item" and "Deposited Item");
  - (3) Give instructions to the Bank in writing (whether the instructions include the manual signature or a signature that purports to be the facsimile or other mechanical signature including a stamp of an Authorized Signer as the Customer's authorized signature without regard to when or by whom or by what means or in what ink color the signature may have been made or affixed), orally, by telephone or by any electronic means in regard to any item and the transaction of any business relating to the Customer's account(s), agreements or services, and the Customer shall indemnify and hold the Bank harmless for acting in accordance with such instructions; and
  - (4) Delegate the person's authority to another person(s) or revoke such delegation, in a separate signed writing delivered to the Bank.
- C. If a code must be communicated to the Bank in order to authorize an item, and the code is communicated, the item will be binding on the Customer regardless of who communicated the code.
- D. Each transaction described in this Certificate of Authority conducted by or on behalf of the Customer prior to delivery of this Certificate is in all respects ratified.
- E. If the Customer is a tribal government or tribal government agency, the Customer waives sovereign immunity from suit with respect to the Customer's use of any Bank account, product or service referred to in this Certificate.
- F. The information provided in this Application is correct and complete, each person who signs the "Certified/Agreed To" section of this Application and each person whose name appears in the "Authorized Signers-Signature Capture" section of this Application holds any position indicated, and the signature appearing opposite the person's name is authentic.
- G. The Customer has approved this Certificate of Authority or granted each person who signs the "Certified/Agreed To" section of this Application the authority to do so on the Customer's behalf by:
  - (1) resolution, agreement or other legally sufficient action of the governing body of the Customer, if the Customer is not a trust or a sole proprietor;
  - (2) the signature of each of the Customer's trustee(s), if the Customer is a trust; or
  - (3) the signature of the Customer, if the Customer is a sole proprietor.

**Certified/Agreed To**

Owner/Key Individual 1 Name  
RICHARD AMROZOWICZ

Position/Title:  
DR OF SALES CEO

Owner/Key Individual 1 Signature



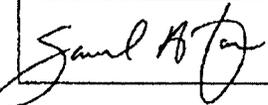
- Submit manually
- Signature not required

Date:  
08/31/2011

Owner/Key Individual 2 Name  
SAMUEL A JONES

Position/Title:  
COO

Owner/Key Individual 2 Signature



- Submit manually
- Signature not required

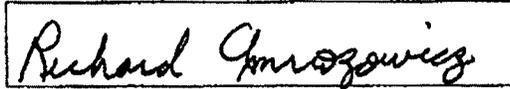
Date:  
08/31/2011

Authorized Signers - Signature Capture

Authorized Signer 1 Name  
RICHARD AMROZOWICZ

Position/Title:  
~~CEO~~ CEO

Authorized Signer 1 Signature



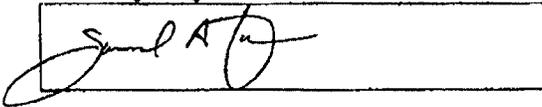
- Submit manually  
 Signature not required

Date:  
08/31/2011

Authorized Signer 2 Name  
SAMUEL A JONES

Position/Title:  
COO

Authorized Signer 2 Signature



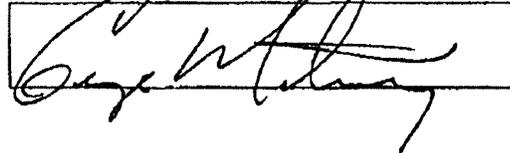
- Submit manually  
 Signature not required

Date:  
08/31/2011

Authorized Signer 3 Name  
GEORGE MARTINEZ

Position/Title:  
PRES

Authorized Signer 3 Signature



- Submit manually  
 Signature not required

Date:  
08/31/2011



# Addendum to Certificate of Authority

## Deposit Accounts Only

Use this document when new signers are being added or deleted to a Certificate of Authority currently on file and a new, signed Certificate of Authority has not been obtained. This addendum may not be used to add or delete those persons authorized to engage in credit transactions. A new Certificate of Authority, or other proper written notification, must be obtained for that purpose.

Bank name Wells Fargo Bank, N.A.	COA# 038	Date 12/17/2013
Officer name James Wardle (by MLille)	Branch # 6124	COA control 03802
	Officer number P1495	Phone # (480) 377-1552

### Addendum to Certificate of Authority

Date 12/17/2013	Customer name SHADOW BEVERAGES AND SNACKS, LLC
Account Number(s) [REDACTED] 4679	

Authorized Signers currently on the account (sample signature not required): Attach a separate sheet if necessary.

Signer name RICHARD AMROZOWICZ	Signer name
Signer name SAMUEL A JONES	Signer name
Signer name LUCIO G MARTINEZ	Signer name
Signer name	Signer name

### Description of the requested change to Authorized Signers

Action requested	Print name, title and customer number	Sample signature (Required only for persons being added as authorized signers)
<input checked="" type="radio"/> Add <input type="radio"/> Delete	Eric Reinhard (ECN # [REDACTED])	Customer 1 Authorized Signature
<input type="radio"/> Add <input checked="" type="radio"/> Delete	Samuel A Jones	Customer 2 Authorized Signature
<input type="radio"/> Add <input checked="" type="radio"/> Delete	Richard Amrozowicz	Customer 3 Authorized Signature
<input type="radio"/> Add <input type="radio"/> Delete		Customer 4 Authorized Signature
<input type="radio"/> Add <input type="radio"/> Delete		Customer 5 Authorized Signature
<input type="radio"/> Add <input type="radio"/> Delete		Customer 6 Authorized Signature
<input type="radio"/> Add <input type="radio"/> Delete		Customer 7 Authorized Signature

continued...



ACC000493 SHADOW-8507

RECEIVED TIME DEC. 19. 7:37AM





# Addendum to Certificate of Authority

## Deposit Accounts Only

Use this document when new signers are being added or deleted to a Certificate of Authority currently on file and a new, signed Certificate of Authority has not been obtained. This addendum may not be used to add or delete those persons authorized to engage in credit transactions. A new Certificate of Authority, or other proper written notification, must be obtained for that purpose.

...continued

### The person(s) signing below:

- direct the Bank to recognize the signature(s) and/or written, telephone, electronic and oral instructions of any person who has been added as an authorized signer;
- direct the Bank to discontinue acting on the instructions of any person who has been deleted as an authorized signer;
- acknowledge that these modifications become effective only after this addendum has been received by the Bank and the Bank has had a reasonable opportunity to act on instructions it contains;
- certifies that the account owner has taken all action under its organizational documents, if any, including passage of resolutions by its board of directors, trustees, or other governing body, required to make these modifications and to authorize the undersigned to execute and deliver this addendum;
- direct the Bank that the additional authorized signers identified above shall have all of the authority granted to the persons identified as authorized signers on the Certificate of Authority.

Accurate as of

12-18-2013

*12-19-13*

Certified / Agreed To By

Certification Signature 1

Certification Signature 2

Name

Name

Title

Title

Manual Submission Instructions: Documentation supporting the addendum is attached, if applicable.

ACC000494  
SHADOW-8507

RECEIVED TIME DEC. 19. 7:37AM

# Business Account Application



Bank Name: WELLS FARGO BANK, N.A.	Store Name: DOWNTOWN TEMPE		
Banker Name: DECLAN WALL	Officer/Portfolio Number: P1900	Date: 09/10/2014	
Banker Phone: 480/377-1500	Store Number: 00670	Banker AU: 0006042	Banker MAC: S3902-011

To help the government fight the funding of terrorism and money laundering activities, U.S. Federal law requires financial institutions to obtain, verify, and record information that identifies each person (individuals and businesses) who opens an account. What this means for you: When you open an account, we will ask for your name, address, date of birth and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents.

## New Account Information

- New Deposit Account(s) Only       New Deposit Account(s) and Business Credit Card

Account 1 Product Name: Business Market Rate Savings	Purpose of Account 1: Savings			
COID: 038	Product: DDA	Account Number: [REDACTED] 6698	Opening Deposit: \$50.00	Type of Funds: CHECK
New Account Kit: Printed	Checking/Savings Bonus Offer Available: NO			

## Related Customer Information

Customer 1 Name: SHADOW BEVERAGES AND SNACKS, LLC	Enterprise Customer Number (ECN): [REDACTED]	Account Relationship: Sole Owner
Customer 2 Name: LUCIO G MARTINEZ	Enterprise Customer Number (ECN): [REDACTED]	Account Relationship: Signer
Customer 3 Name: ERIC W REINHARD	Enterprise Customer Number (ECN): [REDACTED]	Account Relationship: Signer

## Checking/Savings Statement Mailing Information

Name(s) and Information Listed on Statement: SHADOW BEVERAGES AND SNACKS, LLC	Statement Mailing Address: [REDACTED]	
REFUND VALUE ACCOUNT-NEW YORK	Address Line 2: [REDACTED]	
	City: [REDACTED]	State: AZ
	ZIP/Postal Code: [REDACTED]	Country: US





**Owner/Key Individual 1 Information**

Customer Name: LUCIO G MARTINEZ			Residence Address: [REDACTED]	
Business Relationship: Key Executive with Control of the Entity			Address Line 2:	
Position/Title: PRES	Date of Birth: [REDACTED]	Enterprise Customer Number (ECN): [REDACTED]	Address Line 3:	
Taxpayer Identification Number (TIN): [REDACTED]		TIN Type: SSN	City: [REDACTED]	State: AZ
Primary ID Type: DLIC	Primary ID Description: [REDACTED]		ZIP/Postal Code: [REDACTED]	Country: US
Primary ID St/Ctry/Prov: AZ	Primary ID Issue Date: [REDACTED]	Primary ID Expiration Date: [REDACTED]	Check Reporting: NO RECORD	
Secondary ID Type: OTHR	Secondary ID Description: SS CARD [REDACTED]			
Secondary ID State/Country:	Secondary ID Issue Date:	Secondary ID Expiration Date:		
Country of Citizenship: US	Permanently Resides in US:			

**Owner/Key Individual 2 Information**

Customer Name: ERIC W REINHARD			Residence Address: [REDACTED]	
Business Relationship: Key Executive with Control of the Entity			Address Line 2:	
Position/Title: CEO	Date of Birth: [REDACTED]	Enterprise Customer Number (ECN): [REDACTED]	Address Line 3:	
Taxpayer Identification Number (TIN): [REDACTED]		TIN Type: SSN	City: [REDACTED]	State: CO
Primary ID Type: DLIC	Primary ID Description: [REDACTED]		ZIP/Postal Code: [REDACTED]	Country: US
Primary ID St/Ctry/Prov: CO	Primary ID Issue Date: [REDACTED]	Primary ID Expiration Date: [REDACTED]	Check Reporting: NO RECORD	
Secondary ID Type: OTHR CC	Secondary ID Description: CHASE			
Secondary ID State/Country:	Secondary ID Issue Date:	Secondary ID Expiration Date:		
Country of Citizenship: US	Permanently Resides in US:			

**Owner/Key Individual 3 Information**

Customer Name: RICHARD AMROZOWICZ			Residence Address: [REDACTED]	
Business Relationship: Key Executive with Control of the Entity			Address Line 2:	
Position/Title: CEO	Date of Birth: [REDACTED]	Enterprise Customer Number (ECN): [REDACTED]	Address Line 3:	
Taxpayer Identification Number (TIN): [REDACTED]		TIN Type: SSN	City: [REDACTED]	State: NV
Primary ID Type: NOTR AC	Primary ID Description: CUST		ZIP/Postal Code: [REDACTED]	Country: US
Primary ID St/Ctry/Prov:	Primary ID Issue Date:	Primary ID Expiration Date:	Check Reporting: NO RECORD	
Secondary ID Type: OTHR	Secondary ID Description: SSCARD [REDACTED]			
Secondary ID State/Country:	Secondary ID Issue Date:	Secondary ID Expiration Date:		
Country of Citizenship: US	Permanently Resides in US:			

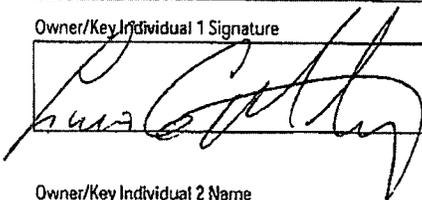
**Certificate of Authority**

Each person who signs the "Certified/Agreed To" section of this Application certifies that:

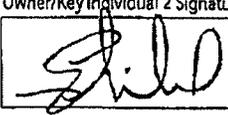
- A. The Customer's use of any Bank deposit account, product or service will confirm the Customer's receipt of, and agreement to be bound by, the Bank's applicable fee and information schedule and account agreement that includes the Arbitration Agreement under which any dispute between the Customer and the Bank relating to the Customer's use of any Bank deposit account, product or service will be decided in an arbitration proceeding before a neutral arbitrator as described in the Arbitration Agreement and not by a jury or court trial.
- B. Each person who signs the "Certified/Agreed To" section of this Application or whose name, any applicable title and specimen signature appear in the "Authorized Signers - Signature Capture" section of this Application is authorized on such terms as the Bank may require to:
  - (1) Enter into, modify, terminate and otherwise in any manner act with respect to accounts at the Bank and agreements with the Bank or its affiliates for accounts and/or services offered by the Bank or its affiliates (other than letters of credit or loan agreements);
  - (2) Authorize (by signing or otherwise) the payment of Items from the Customer's account(s) listed on this Business Account Application (including without limitation any Item payable to (a) the individual order of the person who authorized the Item or (b) the Bank or any other person for the benefit of the person who authorized the Item) and the endorsement of Deposited Items for deposit, cashing or collection (see the Bank's applicable account agreement for the definitions of "Item" and "Deposited Item");
  - (3) Give instructions to the Bank in writing (whether the instructions include the manual signature or a signature that purports to be the facsimile or other mechanical signature including a stamp of an Authorized Signer as the Customer's authorized signature without regard to when or by whom or by what means or in what ink color the signature may have been made or affixed), orally, by telephone or by any electronic means in regard to any Item and the transaction of any business relating to the Customer's account(s), agreements or services, and the Customer shall indemnify and hold the Bank harmless for acting in accordance with such instructions; and
  - (4) Delegate the person's authority to another person(s) or revoke such delegation, in a separate signed writing delivered to the Bank.
- C. If a code must be communicated to the Bank in order to authorize an item, and the code is communicated, the item will be binding on the Customer regardless of who communicated the code.
- D. Each transaction described in this Certificate of Authority conducted by or on behalf of the Customer prior to delivery of this Certificate is in all respects ratified.
- E. If the Customer is a tribal government or tribal government agency, the Customer waives sovereign immunity from suit with respect to the Customer's use of any Bank account, product or service referred to in this Certificate.
- F. The information provided in this Application is correct and complete, each person who signs the "Certified/Agreed To" section of this Application and each person whose name appears in the "Authorized Signers-Signature Capture" section of this Application holds any position indicated, and the signature appearing opposite the person's name is authentic.
- G. The Customer has approved this Certificate of Authority or granted each person who signs the "Certified/Agreed To" section of this Application the authority to do so on the Customer's behalf by:
  - (1) resolution, agreement or other legally sufficient action of the governing body of the Customer, if the Customer is not a trust or a sole proprietor;
  - (2) the signature of each of the Customer's trustee(s), if the Customer is a trust; or
  - (3) the signature of the Customer, if the Customer is a sole proprietor.

**Certified/Agreed To**

Owner/Key Individual 1 Name: LUCIO G MARTINEZ Position/Title: PRES

Owner/Key Individual 1 Signature:   Submit manually  Signature not required Date: 09/10/2014

Owner/Key Individual 2 Name: ERIC W REINHARD Position/Title: CEO

Owner/Key Individual 2 Signature:   Submit manually  Signature not required Date: 09/10/2014

**Request for Taxpayer Identification Number and Certification**

(Substitute Form W-9)

Under penalties of perjury, I certify that:

- 1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- 2. **UNLESS I HAVE CHECKED ONE OF THE BOXES BELOW, I am not subject to backup withholding either because I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or the IRS has notified me that I am no longer subject to backup withholding (does not apply to real estate transactions, mortgage interest paid, the acquisition or abandonment of secured property, contributions to an Individual Retirement Arrangement (IRA), and payment other than interest and dividends).**  I am subject to backup withholding  I am exempt from backup withholding
- 3. I am a U.S. citizen or other U.S. person.
- 4. I am exempt from Foreign Account Tax Compliance Act (FATCA) reporting.

**Note: The Internal Revenue Service does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.**

Tax Responsible Customer Name:  
SHADOW BEVERAGES AND SNACKS, LLC

Taxpayer Identification Number (TIN):

TIN Certification Signature:

- Submit manually
- Signature not required

Date: 9-25-2014

**Authorized Signers - Certificate of Authority Cross Reference**

Existing Customers - New Accounts

For use when persons identified as authorized signers on the customer's existing Business Account Application/Certificate of Authority are identical to the persons designated as authorized signers for the accounts listed on this Business Account Application. Please refer to the Business Account Application/Certificate of Authority currently on file for the following account.

Existing Account Number to be Cross Referenced:

**Authorized Signers - Signature Capture**

Authorized Signer 1 Name  
LUCIO G MARTINEZ

Position/Title:  
PRES

Authorized Signer 1 Signature

- Submit manually
- Signature not required

Date: 09/10/2014

Authorized Signer 2 Name  
ERIC W REINHARD

Position/Title:  
CEO

Authorized Signer 2 Signature

- Submit manually
- Signature not required

Date: 09/10/2014

BEFORE THE  
ARIZONA CORPORATION COMMISSION  
SECURITIES DIVISION

IN THE MATTER OF THE INVESTIGATION)  
OF: ) FILE NO. 8507  
)  
SHADOW BEVERAGES AND SNACKS, LLC. )  
\_\_\_\_\_)

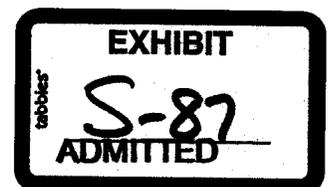
EXAMINATION UNDER OATH OF LUCIO GEORGE MARTINEZ

VOLUME I  
(Pages 1 through 150, inclusive.)

Phoenix, Arizona  
October 15, 2015

COASH & COASH, INC.  
Court Reporting, Video & Videoconferencing  
1802 N. 7th Street, Phoenix, AZ 85006  
602-258-1440 mh@coashandcoash.com

Prepared By:  
Colette E. Ross, CR  
Certified Reporter #50658



## 1 INDEX TO EXAMINATIONS

2	WITNESS	PAGE
3	LUCIO GEORGE MARTINEZ	
4	Examination by Mr. Kitchin	5
	Examination by Mr. Millecam	104
5	Examination by Mr. Kitchin Continued	126

6

7

## 8 INDEX TO EXHIBITS

9	NO.	DESCRIPTION	MARKED	IDENTIFIED
10	Exhibit 1	Amended Operating Agreement, Bates Nos. SHADOW005738-5778	5	104
11	Exhibit 2	Letter of Resignation, Korte, Bates Nos. SHADOW004944-4947	5	116
12	Exhibit 3	12/31/14 Balance Sheet, Bates Nos. SHADOW005483, 5484	5	124
13	Exhibit 4	12/31/13 Balance Sheet, Bates Nos. SHADOW005515, 5516	5	122
14		(Exhibits 5 - 75 were not utilized.)		
15	Exhibit 76	Investor Equity Holder Investment Sheet and Contact Information Bates Nos. SHADOW007186, 7187	5	129
16	Exhibit 77	Shadow Beverages and Snacks Offering Summary, Bates Nos. SHADOW007582-7596	5	131
17	Exhibit 78	Rick Peterson Employment Agreement, Bates Nos. SHADOW004555-4561	5	132
18	Exhibit 79	Finder's Fee Agreement, Bates No. ACC000438.026	5	133
19				
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## INDEX TO EXHIBITS

NO.	DESCRIPTION	MARKED	IDENTIFIED
Exhibit 80	Finder's Fee Agreement, Bates Nos. SHADOW006405-6407	5	136
	(Exhibit 81 was not utilized.)		
Exhibit 82	GNC Judgment, Bates No. ACC000464	5	138
Exhibit 83	Business Model Opportunity Assessment, 3/2014, Bates Nos. ACC000047-56	5	140
Exhibit 84	Business Model Opportunity Assessment, 12/2014, Bates Nos. SHADOW005150-5160	5	145
	(Exhibits 85 - 123 were not utilized.)		

1 EXAMINATION UNDER OATH OF LUCIO GEORGE MARTINEZ  
2 was taken on October 15, 2015, commencing at 9:07 a.m.,  
3 at the Arizona Corporation Commission, Securities  
4 Division, 1300 West Washington Street, Phoenix, Arizona,  
5 before COLETTE E. ROSS, Certified Reporter No. 50658 in  
6 and for the County of Maricopa, State of Arizona.

7

8 APPEARANCES:

9

For the ACC Securities Division:

10

Messrs. Paul Kitchin and Ryan Millecam  
Enforcement Attorneys  
1300 West Washington Street, Third Floor  
Phoenix, Arizona 85007

11

12

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14

15

ALSO PRESENT:

16

Mr. Avi Beliak, Forensic Accountant, Securities  
Division

17

Mr. Mike Brokaw, Special Investigator, Securities  
Division

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1 (Exhibits 1 through 123 were marked for  
2 identification.)

3 LUCIO GEORGE MARTINEZ,  
4 called as a witness herein, having been first duly sworn  
5 by the Certified Reporter to speak the truth and nothing  
6 but the truth, was examined and testified as follows:

7

8 EXAMINATION

9 BY MR. KITCHIN:

10 Q. Good morning. And I am Paul Kitchin for the  
11 Securities Division.

12 MR. BROKAW: Special investigator Michael  
13 Brokaw.

14 THE WITNESS: Good to meet you.

15 MR. BELIAK: Avi Beliak, forensic accountant  
16 for the Securities Division.

17 MR. MILLECAM: Ryan Millecam, Staff attorney  
18 for the Division.

19 THE WITNESS: Okay.

20 BY MR. KITCHIN:

21 Q. This is part of an inquiry by the Securities  
22 Division of the Arizona Corporation Commission in the  
23 matter of Shadow Beverages and Snacks, LLC, and Lucio  
24 George Martinez --

25 Am I pronouncing that right?

Coash & Coash, Inc. 602-258-1440

1 A. Lucio.

2 Q. -- to determine if there has been full  
3 compliance with the Securities Act of the State of  
4 Arizona. The information obtained today may reveal  
5 violations of statutes outside the Securities Act.

6 Mr. Martinez, you have the right to refuse to  
7 answer any question if you think the answer may tend to  
8 incriminate you. You have the right to refuse to  
9 produce any private papers which you feel may tend to  
10 incriminate you. You do not have the right to refuse to  
11 produce corporate papers based on any claim of  
12 self-incrimination.

13 Do you understand that you have the right to be  
14 represented by counsel today?

15 A. Yes. I think we spoke to that, right?

16 Q. I just need to repeat some of this now that we  
17 are being recorded.

18 A. Okay.

19 Q. Would you like to go forward without an  
20 attorney?

21 A. Yes.

22 Q. All right. If so, it will be assumed that you  
23 are waiving your right to counsel. If at any time you  
24 feel you need legal counsel, tell me immediately, and we  
25 will stop and allow you to obtain counsel, and then we

1 can reschedule it at that point.

2 The reporter will go off the record at my  
3 direction. If you would like to go off the record, tell  
4 me, and I will try to accommodate you.

5 Since your testimony is being recorded by a  
6 reporter, please respond verbally as opposed to nodding  
7 or shaking your head. Also please let me finish asking  
8 a question before you answer so there will be not two  
9 people speaking at once. If you don't hear a question  
10 or don't understand a question, say so, and the reporter  
11 will repeat it or I will explain the question further.

12 And you are under oath, so any false statements  
13 you make may be criminally prosecuted as perjury.

14 Do you understand what I have explained so far?

15 A. I do.

16 Q. What is your full name?

17 A. Lucio George Martinez.

18 Q. Have you ever used any other name?

19 A. I go by the name of George Martinez. Lucio is  
20 my given name.

21 Q. Are you taking any medication or do you have a  
22 physical problem that would prevent you from hearing or  
23 understanding my questions?

24 A. I do not.

25 Q. What is your home address?

1 A. [REDACTED].

2 Q. And how long --

3 A. [REDACTED], Arizona.

4 Q. How long have you lived there?

5 A. Nearing 14 years, 13 and a half years.

6 Q. Do you rent or own your home?

7 A. Own.

8 Q. What is your home telephone number?

9 A. [REDACTED]

10 Q. Next I am going to ask you for your Social  
11 Security number. However, under the federal Right to  
12 Privacy Act you are not obligated to answer. If you do  
13 answer, the information will only be used for  
14 identification purposes. What is your Social Security  
15 number?

16 A. [REDACTED]

17 Q. And what is your occupation?

18 A. I am an executive sales leader.

19 Q. And where are you currently employed?

20 A. I currently am not employed.

21 Q. Where were you previously employed?

22 A. Well, my previous actual employment was with  
23 PepsiCo for 23 years. And then I was employed by  
24 Pelican, The Pelican Group, as a consultant for a couple  
25 years. And then in 2008 we started this venture of

Coash & Coash, Inc. 602-258-1440

1 Shadow Beverages and Snacks. And I was an executive of  
2 the company but not necessarily on payroll at different  
3 times.

4 Q. And where did you work before Pepsi?

5 A. For my dad on the farm in Wyoming.

6 Q. What is your educational background?

7 A. I went to junior college in Sheridan, Wyoming,  
8 or what they call Northwest College now, got my  
9 associate's degree there. And I finished my bachelor's  
10 degree at the University of Phoenix while employed at  
11 PepsiCo.

12 Q. Have you taken any courses in investing?

13 A. None.

14 Q. Have you taken any courses in accounting?

15 A. None.

16 Q. Are you an officer, director, manager or owner  
17 of any company?

18 A. That would be of Shadow Beverages.

19 Q. Any others?

20 A. We had a partnership in Torrington, in Wyoming  
21 under L&L partnership. That was closed about a year  
22 ago. But it was really under horse management, where we  
23 had some horses partnered with some family members.

24 Q. And what does, what does the L and L in the  
25 name stand for?

1 A. Lucio and my wife, Lisa.

2 Q. And what is GRC Capital Partners, LLC?

3 A. Oh, GRC is a group of friends and another  
4 executive at Shadow that invested some money to a  
5 company called Greentech. So it was kind of an  
6 investment that we made.

7 Q. And the company was a way to invest as a group?

8 A. Yeah. It is really not an operating company.  
9 It is just an LLC where four members put in capital and  
10 we made an investment as one.

11 Q. And the company doesn't have any business apart  
12 from that investment?

13 A. None.

14 Q. Are you connected to any businesses other than  
15 the ones we have mentioned so far?

16 A. I don't know if you mean connected. I do some  
17 consulting work. And I was a member of a consulting  
18 company named Rumble, which is an LLC out of Colorado.

19 Q. And when was, when were you involved with  
20 Rumble?

21 A. Rumble was formed, you know, kind of mid 2014.  
22 And I exited January, maybe March of 2015.

23 Q. And what consulting work did you do?

24 A. It was a beverage consulting group with two  
25 other partners that were all PepsiCo executives. And

1 the real purpose of that company was to go out and find  
2 brands that were, you know, in the young incubating  
3 stage, brands that we could do some consulting work and  
4 then bring into Shadow as an operating side. So if  
5 Shadow had an operating -- which was an operating  
6 company, could assist these brands outside of just some  
7 basic consulting strategy work, then Shadow was the  
8 outsourcing company to take on that work.

9 Q. Why did you leave Rumble?

10 A. Why did I leave Rumble?

11 Q. Yes.

12 A. It became a conflict of interest when we did a  
13 transaction with Mix 1, Incorporated, the public company  
14 that purchased our largest asset, which was No Fear.  
15 Rumble is, was also doing some consulting work for  
16 Mix 1. And I was moving over to Mix 1 to become the  
17 president of Mix 1. So there was definitely a  
18 consulting -- or a conflict of interest. I couldn't run  
19 this company and be a consultant for the company as  
20 well. So I exited and terminated my partnership  
21 position with Rumble.

22 Q. Did you have a position with Mix 1?

23 A. I did as of April 1. When the transaction was  
24 completed, part of our agreement was for me to become  
25 the president of Mix 1 and shepherd the transaction at

1 least for a year, which was kind of our customer base,  
2 the brand, the operating system for No Fear that we sold  
3 to Mix 1, which was part of the transaction agreement.  
4 It was my job to go in and ensure that happened  
5 smoothly.

6 Q. And do you still have a position at Mix 1?

7 A. No. I resigned that position with Mix 1  
8 August 12th of this year.

9 Q. And Mix 1 is Mix 1 Life, Incorporated?

10 A. Correct.

11 Q. Is that the correct name?

12 A. Yes. I just refer to it as Mix 1.

13 Q. Have you ever been convicted of any crime other  
14 than a minor traffic offense?

15 A. None.

16 Q. Actually, backing up for a moment. You might  
17 have mentioned other consulting firms that you work  
18 with, if I am remembering that correctly. What were  
19 they, the other firms?

20 A. I did some consulting work for a company called  
21 Links, and kind of tied to The Pelican Group, which is  
22 between my Pepsi and Shadow career. The Pelican Group  
23 is a vending management company. And they go out and  
24 manage the vending business and kind of anything from  
25 ATMs to bubble gum machines for different clients. I

1 did some consulting work for them and then moved over to  
2 Shadow.

3           And there was a company out of Australia named  
4 Give that is moving a product, a kiosk for gift cards  
5 into the US. And they were looking for some consulting  
6 on how to bring that business in. It is also being  
7 looked at by Black Hawk, a marketing company out of  
8 northern California. And there was a division,  
9 application more than a division, an application from  
10 this kiosk that fit into the marijuana business in  
11 Colorado where the state was having issues with the  
12 money processing. So it was going to convert this over  
13 to gift cards.

14           So I did some work with them, just trying to  
15 understand how that sales process would go and some of  
16 the marketing stuff, that just kind of, from my  
17 expertise, is kind of sales leadership, how to build a  
18 sales plan to go execute that business.

19       Q.     And what was your position at Pelican Group?

20       A.     I was the vice president of sales, really in  
21 charge -- when I first started my role was to kind of  
22 help build a succession plan with the owner, Richard  
23 Scherer.

24           Richard Scherer has two young sons that he is  
25 getting ready to take over the business. Richard and I

1 did business together at PepsiCo. So after I left  
2 PepsiCo, he asked if I could kind of help do some work.  
3 And then we had some issues with some of their business  
4 accounts. So I went out and helped them secure accounts  
5 like Family Dollar, Safeway. And I worked with his  
6 sales team and was kind of the lead salesperson to get  
7 that done.

8 Q. What was the time frame during which you worked  
9 at Pelican Group?

10 A. '6, so it would have probably been '2007 to  
11 kind of early 2009. So as we started Shadow, I was  
12 still assisting The Pelican Group.

13 Q. Have you ever been arrested?

14 A. Arrested. No.

15 Q. Have you ever been indicted?

16 A. No.

17 Q. Have you ever been the defendant in a civil  
18 lawsuit?

19 A. In a civil lawsuit. Other than recently some  
20 of the -- to the best of my knowledge of answering your  
21 question, it would be in some of the Shadow business  
22 that we are in the middle of right now.

23 Q. And where are those lawsuits? Are they here in  
24 Maricopa County?

25 A. Uh-huh.

1 Q. And which, what are the plaintiffs in those  
2 cases?

3 A. They were all, every one of them are, you kind  
4 of use the word investors, but they provided cash for us  
5 to keep Shadow going based on some new contracts that we  
6 got to. And there was a portion of the company's  
7 responsibility and a couple of them that brought in  
8 their own promissory notes and kind of personal  
9 guarantees that, where I guaranteed my portion of Shadow  
10 to help cover those loans.

11 Q. Have you ever filed for bankruptcy?

12 A. No.

13 Q. Have you ever been the subject of an  
14 investigation by any governmental agency?

15 A. Not to the best of my knowledge.

16 Q. Have you ever given any prior testimony in  
17 connection with Shadow Beverages and Snacks?

18 A. I would say yes, one testimony, deposition in  
19 Pittsburgh against American Outdoorsman and an old  
20 partner of ours, Sam Jones.

21 Q. And can you describe what that case is?

22 A. That case is -- I had a -- one founding partner  
23 of Shadow Beverages and Snacks was Sam Jones, another  
24 ex-Pepsi employee. And we both started underbuilding  
25 this business and building brands and products for

1 really our PepsiCo bottling partners. I went and  
2 secured the No Fear license, which used to be an energy  
3 drink licensed by Pepsi but then went through  
4 bankruptcy.

5 Q. Sorry. Go ahead.

6 A. That was acquired by a company named IBML out  
7 of London. I went and secured that deal. Sam went, was  
8 looking for other deals. And we kind of unilaterally  
9 made a deal with Jim Mueller with American Outdoorsman  
10 on a licensing agreement, which was basically to take  
11 his brand name and build snack products using that snack  
12 name with the demographics of American Outdoorsman,  
13 hunters, beef jerky, those kinds of things, all with the  
14 pretense that Shadow was getting some funding, that Jim  
15 Mueller and a group was helping Shadow help fund that  
16 development group and then the distribution group.

17 Funding never happened so we never got started  
18 on that work. So we cancelled the agreement with Jim  
19 Mueller and American Outdoorsman. And shortly after the  
20 agreement was cancelled, they filed -- it was a 15-year  
21 deal. They filed a lawsuit against us for the, I am  
22 using rough numbers, six and a half million dollars for  
23 the 15 years of the agreement that was, they felt would  
24 have been a royalty opportunity that they would have  
25 earned if we would have built products.

1 Our attorney at the time and our defense was it  
2 was a little bit of double jeopardy. The agreement was  
3 cancelled. They pulled the license away from us after  
4 we owed them about \$150,000. And they pulled the  
5 license away from us and then were trying to charge us  
6 for 15 years of using the license, which that's where  
7 our attorneys -- and it was in the court of  
8 Pennsylvania. So I flew out to be a part of that, with  
9 Sam Jones and our attorneys, that we were trying to  
10 settle on we owed you \$150, 150,000 versus \$6 million  
11 because we didn't even have the license at the time it  
12 was pulled from us. And their licensing program had  
13 actually gone away.

14 Q. And when you say the American Outdoorsman filed  
15 against us and you refer to our defense, who is us?

16 A. Well, Shadow, yeah.

17 Q. What is the status of that case now?

18 A. Well, it was an interesting turn of events.  
19 And I will give you my perspective not -- from a  
20 business perspective, not from a legal perspective.

21 It was in the Pennsylvania court for almost two  
22 years. And our defense of course was it was double  
23 jeopardy: you pulled the license from us and you  
24 couldn't -- we have had numerous calls with Jim Mueller,  
25 who is the CEO, on a settlement agreement of just trying

1 to come up what is fair and what we could settle on.  
2 Their counsel had wanted nothing to do with the  
3 settlement agreement, and it actually kind of went away.  
4 And we kind of appealed their position.

5 We believe, again I am giving you a business  
6 perspective, that once Jim Mueller and their attorney  
7 found out, because it was public knowledge that we were  
8 under a letter of intent to sell an asset for  
9 \$12.2 million, that they went back to the court of  
10 Pennsylvania and forced the issue. And the judge  
11 basically told our counsel and them she was tired of  
12 that holding up her process in her court. And she was  
13 just making an automatic demand or judgment and asked us  
14 to move that case out of her court and into somebody  
15 else's court and ruled against us.

16 And as interesting as it was, that all happened  
17 while we were under a letter of intent. And our deal  
18 was signed to be closed April 1st. And April 6, when  
19 they knew it was closed, they moved it to the State of  
20 Arizona and filed against us. Because they were  
21 actually waiting because they, they also knew at the  
22 time we had no cash, the company was struggling to stay  
23 alive. And what we were doing was we were positioning  
24 the cash, the company, for sale, or an asset thereof, so  
25 that we could meet our liabilities and obligations.

1 Q. So the case is ongoing in a different forum now  
2 in Arizona?

3 A. Now in Arizona. We actually, through the  
4 process of getting the transaction agreement done with  
5 Mix 1, we had numerous conversations with their counsel  
6 on settling, knowing that, you know, what they were  
7 asking for for the 15-year royalties off of a product  
8 and a license that they removed, that it was valued  
9 somewhere around the \$200,000 range. And they actually  
10 agreed to a settlement agreement with us. I would have  
11 to say the timing is probably mid May to early  
12 June where a settlement document was conducted. And it  
13 was both going to be in cash and in stock, because that  
14 was really our currency that we accepted for the  
15 transaction, until Mix 1, and again I am using rough  
16 time frames, late June or early July, their stock took a  
17 big dive from what we acquired the stock at, at \$6 under  
18 our transaction, and at one time in July it went down to  
19 80 cents.

20 And at that time the counsel from American  
21 Outdoorsman, and probably four or five other folks that  
22 we have on the list that we had already worked  
23 settlement agreements with, said, you know, we can give  
24 you this cash and here is this stock that becomes, you  
25 know, restricted stock for another four months and then

1 it becomes liquid. And what we are doing, we are  
2 working on this side of the fence to continue to drive  
3 value in that stock.

4 And, again, so public record through the Mix 1  
5 SEC and filings, you know, the 8-Ks filed and press  
6 releases that were filed in July, there was some issue  
7 with short selling of stock in a couple of brokers that  
8 had stock certificates from maybe a year and a half ago  
9 when they first bought the shell of Mix 1. And they  
10 were driving the stock price down. And the CEO, Cameron  
11 Robb, put out a press release that, you know, there was  
12 an investigation going on, or they were requesting  
13 investigation from FINRA and the SEC on these brokers  
14 for basically manipulating our stock price and value  
15 down.

16 And that's, I guess that time frame of June or  
17 late May to the first of August when I resigned my  
18 position then because of this conflict that presented  
19 itself, that's really when everything kind of went  
20 haywire. We had settlement agreements with almost  
21 every, I guess, debtor or creditor that we had on our  
22 side, either through a cash or through a stock payment.  
23 And we had a stock certificate that we received the day  
24 of closing, which was, you know, again rough numbers,  
25 you know, 1.2 million shares of stock, which at that

1 point was, you know, about \$7 million worth of stock.

2 We took that, put it under lock and key in our  
3 attorney's office. And it was kind of, as a board and a  
4 group, we made the decision that we were not going to  
5 transfer any of that stock to any individual or company  
6 until we had everybody settled. So we weren't going to  
7 start breaking that up and then watch, because the stock  
8 price could go either way. And we would get in those  
9 discussions.

10 So even as it sits today, that certificate that  
11 has Shadow Beverages and Snacks, LLC on it is under lock  
12 and key, and not one share has been transferred to any  
13 individual or any creditor or any investor. It is still  
14 under lock and key until we figure out kind of where  
15 this process is going.

16 Q. And this settlement agreement with the  
17 investors that you mentioned, were any of those  
18 finalized or are they still waiting to be signed?

19 A. None of them were signed. There is a bunch of  
20 e-mail trails. And there is a document that was put  
21 together by our attorney and counsel at the time that  
22 was the settlement agreement that clearly stated this is  
23 what we owed you, this is how we are going to settle it.

24 Once we transfer the stock to you, which that  
25 transfer of stock, you know, and again I am not a

1 transfer agent by any means, but the best of our  
2 knowledge, that transfer of stock could take three to  
3 four weeks. And we were working with a company out of  
4 Florida called Island Transfer at the time. And they,  
5 again, had all the stock and we were waiting for every  
6 settlement agreement to come in so that we could say,  
7 okay, all in one big swoop -- there is also some costs  
8 associated with that -- but we could go to the transfer  
9 agent and say here is 1.2 million shares and they are  
10 all divvied up this way to take care of the debt that we  
11 had to all creditors and debtors.

12 And that was the strategy from the very  
13 beginning, from the time that it became kind of fourth  
14 quarter, first quarter, and we had debt coming due that  
15 we could not -- we didn't have the cash flow to produce.  
16 And it primarily came for the one reason of our Sysco  
17 agreement in 2014.

18 We signed an exclusive 16-ounce energy  
19 agreement with Sysco out of Dallas -- Sysco Foods out of  
20 Houston. I am sorry. And we started the process  
21 through our sales folks and a broker of getting that  
22 program ready to be rolled out. And we were under the  
23 gun of being able to have inventory, in which you can  
24 imagine, if you were a national distributor of Sysco and  
25 17 different warehouses and locations across the country

1 for Sysco to start pulling from.

2 We started that process and was really why we  
3 went out and looked for cash to produce product. And we  
4 brought that cash in. We produced product. We shipped  
5 it out. And in the middle of kind of that whole  
6 producing product and shipping product, as we all know,  
7 the announcement of the merger between US Foods and  
8 Sysco Foods was announced publicly, and that was going  
9 on. And at the same time they were centralizing all  
10 their procurement into Houston. And that was kind of  
11 what we were a part of.

12 And the reason we had an opportunity for Shadow  
13 to even be a part of that is the chief operating officer  
14 at Sysco is Tom Bené, which is an ex-PepsiCo guy that we  
15 used to work with, and we met with him in late 2013.  
16 And he gave us kind of his vision of centralized  
17 procurement and buying products that were mid-tier  
18 national brands and finding suppliers that could give  
19 him a price advantage.

20 So we negotiated for about six months. And we  
21 got to a point where we felt, you know, we had a great  
22 program to assist what he was trying to do. He could  
23 help. What we were trying to do is build a national  
24 brand. At the time we only had regional distribution on  
25 that brand.

1           We entered into that agreement. We started  
2 shipping product. And that's when the Sysco and US  
3 Foods merger was being debated and trying to get  
4 approved. They put us all on hold, all new products.  
5 There was five products, five beverages that they put  
6 under a beverage program. As of May, maybe May, June of  
7 2015, three of those brands had went under and filed  
8 bankruptcy and two of them were left. And it was called  
9 Boylan's Sodas, and you are probably familiar with that  
10 brand, and No Fear Energy. The other three, because of  
11 what they -- we all pushed to get inventory into  
12 warehouses. And then we were all put on hold and  
13 inventory sat in warehouses. And as you know, we have  
14 product that is dated. So we started to get pushed  
15 towards dating periods of when we could even ship. And  
16 the loss of all that revenue and product sitting there  
17 destroyed three other companies.

18           Again, that closed down in mid June. And the  
19 only ones remaining were Boylan's and No Fear. And the  
20 only reason No Fear was still alive in that contract was  
21 because of the transaction that we did with Mix 1. So  
22 we really felt if we didn't do something we were going  
23 to be in that same situation as those other three  
24 situations. But if we did something with Mix 1, and we  
25 did this transaction of \$12.2 million, we had enough,

1 however you want to term it, currency, so it could be in  
2 the form of cash, some debt obligation that they took  
3 over, and stock, that we could get back all of our  
4 creditors and debtors in a position to ensure they were  
5 secured through, you know, what had happened through  
6 this last 12 months of the business with Sysco Foods.

7 Q. And when you were referring just now to we were  
8 producing product, referring to Shadow Beverages?

9 A. Shadow, yeah.

10 And I am sorry. Am I giving you too much --

11 Q. No, that's fine.

12 A. -- stuff?

13 Q. I was just --

14 A. I don't know if you want just quicker, direct  
15 answers. And I could -- I am trying to give you the  
16 full perspective of what we were dealing with and why,  
17 when you ask some of those questions, what the answers  
18 are. They are not necessarily yes or noes, or there is  
19 a little bit of the process that you have to  
20 understand --

21 Q. That's fine.

22 A. -- what we were trying to accomplish.

23 Q. That's fine if you need to explain things.

24 Are you a registered broker/dealer?

25 A. I am not.

1 Q. Are you a registered securities salesman?

2 A. I am not.

3 Q. Are you a licensed investment advisor?

4 A. I am not.

5 Q. Have you ever been a registered broker/dealer,  
6 registered security salesman or licensed investment  
7 advisor?

8 A. Or licensed investment advisor?

9 Q. Right.

10 A. I have not.

11 Q. Do you have any state licenses other than a  
12 driver's license?

13 A. I do not.

14 Q. What is your date of birth?

15 A. [REDACTED].

16 Q. What is your place of birth?

17 A. [REDACTED], Nebraska.

18 Q. What is your marital status?

19 A. Married.

20 Q. And your spouse's name?

21 A. Lisa Martinez.

22 Q. And when were you married?

23 A. I guess we are all supposed to know this,  
24 right? March 17th, 1997.

25 Q. Do you have any children?

1 A. I have four, one deceased and three living.

2 Q. What are their full names?

3 A. Michael George Martinez, Eric Anthony Martinez,  
4 and Lisa Renee Martinez.

5 Q. And what are their ages?

6 A. Michael Martinez would -- 1987 to -- is 28  
7 years old, going to be 29. And Lisa and Eric are twins  
8 and they are 26 years old.

9 Q. What are their addresses?

10 A. Michael, my oldest, lives in [REDACTED],  
11 Colorado, recently moved there for work. I don't have  
12 that with me at this time. Lisa and Eric live together  
13 in [REDACTED] about six blocks from me on [REDACTED]. And I  
14 don't have that exact address at this time.

15 Q. Where did Shadow Beverages and Snacks have its  
16 business bank accounts?

17 A. We started with First Fidelity in Scottsdale  
18 with a banker named Rick Baker. And then we also had a  
19 bank account at Wells Fargo in a different point in  
20 time. We used the two different banks. Those were the  
21 only two. And we had a banking relationship, which was  
22 primarily factoring, with First Community.

23 Q. Who were the signers on those bank accounts?

24 A. It varied from time to time. You know, at  
25 First Fidelity it could have been Sam Jones, myself, and

1 I don't know if Richard Amrozowicz was part of that at  
2 that time.

3 Q. I think we have the spelling somewhere we can  
4 get later.

5 A. Yeah.

6 Q. Any other signers?

7 A. And Eric Reinhard was probably a signer at one  
8 of the banks at Wells Fargo. And our controller,  
9 Josephine, at one point was a signer. Josephine Dizon,  
10 D-I-Z-O-N, was our controller.

11 Q. Do you have access to Shadow Beverages' bank  
12 accounts, debit cards, and electronic transfers?

13 A. We never had debit cards. And electric --  
14 transfers and wires were all done by Josephine, our  
15 controller, and another person Kathy Reiser, who was our  
16 director of administration. And those two had to have  
17 both sign, signatures to be able to do a wire transfer  
18 or anything else.

19 Q. Did anyone else have access to do electronic  
20 transfers even if they didn't actually ever do so?

21 A. I probably, listed as a statutory agent and  
22 signer on the bank cards, probably had the right to do  
23 it. I never did one. I didn't know how to do one. And  
24 it always required two people to do it.

25 Q. Who has done any accounting for Shadow

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1 Beverages and Snacks?

2 A. Who has done the accounting work. Well, we  
3 have had, in the course depending on what time frame, so  
4 at one point in time our accounting CFO was Bob Korte,  
5 who was an owner in CKS Investments Securities up in  
6 Scottsdale. Bob was with us for a little over a year.  
7 And for health reasons he left. And when he left, prior  
8 to him leaving, he hired for Shadow, the company,  
9 Josephine. And Josephine had been a controller and  
10 accountant all her career of 30 years. And then our tax  
11 filings and that work was handled by Henry & Horne in  
12 Tempe, Jeremy Smith.

13 And in 2014, I am sorry, '13 we had reviewed  
14 financials by Darlene Accounting. So they were not  
15 audited but they were reviewed. So we have a statement  
16 of reviewed financials. And, quite frankly, the only  
17 reason that we didn't get to the auditing side was cost  
18 basis, so a \$45,000 bill to have financials completely  
19 audited. So we had a review done, which is kind of  
20 halfway in the middle, just adding some comfort to  
21 everybody we were dealing with that financials were  
22 under control and being reviewed.

23 Q. Has anyone else done any accounting work for  
24 Shadow Beverages and Snacks?

25 A. Not to the best of my knowledge. I would have

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1 to go back. If you are talking in the early stages of  
2 Shadow, when we first formed the company, Ryan  
3 Weissmueller was a member of Shadow. And he was, by  
4 trade, a CPA and accountant and helped set up some of  
5 the things that we were doing. Then, through the  
6 transition of, kind of call it March or late February to  
7 April, until the transaction was done, Chris Larson, who  
8 was a CFO of Mix 1 and CPA, helped do some review of the  
9 books as also part of their process of due diligence  
10 that they were going through at the time.

11 Q. Where do you hold your personal bank accounts?

12 A. My personal is Bank of America and Platte  
13 Valley Bank in Torrington, Wyoming. And that was closed  
14 when we closed. It was really -- it is not a -- well, I  
15 guess the answer to your question, personal bank  
16 accounts would be Bank America. Our L&L partnership in  
17 Wyoming was held at Platte Valley Wyoming. But that was  
18 never a personal account. It was a partnership account.  
19 And that was closed when the business, we closed that  
20 business down.

21 Q. Where does GSRC Capital Partners hold its bank  
22 account?

23 A. We don't have a bank account.

24 Q. How was Shadow Beverages and Snacks started?

25 A. How was it started? You know, it was started

1 by Sam Jones and I and a guy who, it was four of us, Joe  
2 Dunnigan, Ryan Weissmueller. Joe was kind of a local  
3 entrepreneur that we had run into. Sam and I both came  
4 from the Pepsi world.

5 The last five years of my career I managed the  
6 Costco business for the US. And in that role, again, I  
7 don't know if you know this or not, but there are 80  
8 some independent Pepsi bottlers across the country. And  
9 I was working with Costco. Costco wanted a one plan,  
10 one price for distribution in the Pepsi world. So kind  
11 of my work, I would say what my major accomplishment in  
12 that last role at PepsiCo was I was the person that  
13 developed the 36 pack, that packaging and that pricing  
14 plan. And then my job was to, at Costco -- once Costco  
15 agreed to do, Costco said we will do this across the  
16 country only if every building serviced by Pepsi persons  
17 sells that product to us.

18 So I spent about a year, year and a half  
19 working with all the independent bottlers across the  
20 country, getting them to align with the program so that  
21 we could have a national program with Costco. And  
22 through that, I built relationships with independent  
23 bottlers.

24 And in their struggles, if you know the  
25 industry, the struggles are, you know, Coke and Pepsi

1 continue to decline. Consumers aren't looking for what  
2 we refer to as the indulgent beverages. They are  
3 looking for better-for-you beverages. And we always had  
4 discussions. I always had discussions with principals  
5 of those bottlers that the mother ship of PepsiCo was  
6 way behind the times of bringing them brands that fit  
7 this better for you. Indra Nooyi at the time was the  
8 CFO, still.

9           So through that discussion, we all felt there  
10 was an opportunity to go out and help them find new  
11 brands. And at the same time, the No Fear brand,  
12 PepsiCo had just did a deal with Rock Star nationally.  
13 They used to distribute No Fear and Amp. And they did a  
14 deal with Rock Star. And the gap in that was only  
15 72 percent of the country or the bottlers got the Rock  
16 Star rights. The other 28 percent were left with  
17 nothing, because Rock Star held that for its original  
18 distributors.

19           So these guys wanted to do No Fear. PepsiCo  
20 had the license agreement. They all kind -- we all got  
21 together and said if we can form a company to get that  
22 license, we will be the one distributing, and we can  
23 start looking at other products to bring to us, new  
24 ideas.

25           So we agreed to start the company. The  
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1 bottlers agreed to put together a fund to help us fund  
2 the company and look for different ideas. And that fund  
3 that they put together was called Spyglass Capital. And  
4 Spyglass Capital was a fund of a little over \$8 million.  
5 And it was really designed to go after three different  
6 sectors of the beverage industry.

7 One was manufacturing, where they invested into  
8 an air compressor, compressed air technology that had  
9 just started to form; vending equipment that had  
10 technology to be able to, kind of like Blue Tooth  
11 technology, where you could access all the inventory out  
12 of a vending machine from a computer; and Shadow  
13 Beverages looking for new brands, now that we had No  
14 Fear.

15 And we also had a relationship with Tom Dowd at  
16 GNC, which Tom had a great relationship with PepsiCo.  
17 And PepsiCo at the time was producing a coconut water  
18 under a joint venture with GNC. And it was named  
19 Phenom. The product wasn't doing very well. GNC really  
20 wanted to produce beverages with their name on it. And  
21 Pepsi, of course, didn't want to do that. So the  
22 bottler said if we form our group, George, you and Sam,  
23 and Sam was an equal partner at the time, you come  
24 together with us and we will distribute No Fear for you  
25 so you will have a base business, then you guys go help

Coash & Coash, Inc. 602-258-1440

1 develop some of these other brands.

2           And I don't have my dates exactly right. In  
3 2012 we signed an agreement with GNC to take the license  
4 of their brands and launch out into the marketplace.  
5 And we did that in 2012 and '13. And we had, I would  
6 describe it as, good to great success because we  
7 launched, we had GNC beverages into Kroger, into  
8 Safeway, into Albertsons. We had Kalil here in town  
9 distributing the product. We had Polar Beverages on the  
10 East Coast. We had a ton of people very excited about  
11 the GNC brand and the two categories that we were  
12 participating in.

13           And then, as anything else, the leadership at  
14 GNC changed. Tom Dowd, who was their chief operating  
15 officer, left the company. Their retail business was  
16 struggling dramatically. And they basically told us  
17 they could not fund the marketing side of the brand we  
18 were trying to build. And it all had to be put back on  
19 our shoulders to build the brand. And there was just --  
20 a company our size was not funded to do that. We were a  
21 very slow moving, you know, kind of breakeven cash flow  
22 company really waiting with exit plans on every brand,  
23 exit meaning we could build GNC up get good distribution  
24 of it and GNC would buy that development with us.

25           And that's what the bottlers agreed to. That

Coash & Coash, Inc. 602-258-1440

1 is when the Pepsi bottlers, who absolutely loved the  
2 concept of GNC, that's when they made their investment  
3 on the equity side and they made their investment on a  
4 loan side. And they were our largest investor  
5 throughout the time frame that we were an operating  
6 company. They made those investments. And then when  
7 GNC had their own stock price issue, issues were very  
8 prevalent, they were declining, their retail business  
9 was struggling, they started closing some stores, and  
10 they just wanted nothing to do with continuing to build  
11 their brand outside of their four walls. Their retail  
12 business was, is the majority of what they do.

13 So at that point the company took a really big  
14 hit. We were supposed to be operating in positive  
15 operating profit the next two years. And we took a  
16 major list -- major hit with, you know, GNC completely  
17 stopping almost on a dime with us. We had product that  
18 we couldn't market, distributors that started to go the  
19 other way. Nevada Beverages, one of them, they launched  
20 it in Vegas. They were excited about. But without any  
21 marketing dollars or way to build a brand, it just  
22 doesn't work.

23 MR. MILLECAM: Quick question. When did GNC  
24 pull the marketing funds? What was the time?

25 THE WITNESS: It would have been kind of the  
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1 fall of '13. And I don't have those exact dates. I  
2 would have to go back, go through e-mails and when Tom  
3 Dowd left his position with GNC.

4 BY MR. KITCHIN:

5 Q. And you mentioned one company investing in  
6 another. Was that referring to, Pepsi investing in  
7 Shadow or Spyglass investing in Shadow?

8 A. Spyglass invested in Shadow.

9 And Spyglass was a group, and I don't know the  
10 exact number, but it is probably about 23 independent  
11 Pepsi bottlers and beverage executives, or not all Pepsi  
12 bottlers, but all that built this first, this fund. And  
13 it had a cap on it. It was an \$8 million fund. And it  
14 was only to be used for beverage companies or beverage  
15 businesses, so, again, compressed air, vending, and  
16 Shadows, where they put the majority of their money in  
17 to help us with the GNC build, inventory, the  
18 development work that we went along with, as well as  
19 they were customers. Right?

20 That was one other. They were buying the No  
21 Fear Energy brand from us to put in distribution. So  
22 they were a real strategic investor because they  
23 actually wanted to. And we presented the GNC brand to  
24 people like Al Carey and Indra Nooyi, you know, at  
25 PepsiCo. Those are their key executives at PepsiCo and

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1 Frito-Lay. And they loved the brand. They wanted us to  
2 build the brand for another year and a half. And then  
3 they wanted to get involved with GNC nationally around  
4 PepsiCo. But we never got that far. We got to about  
5 the 40 yard line and then GNC pulled the plug on  
6 marketing dollars and didn't want to have anything to do  
7 with the beverage anymore.

8 Q. Who else was involved with the start of Shadow  
9 Beverages beyond the four people you mentioned so far,  
10 if anyone?

11 A. Those were the founding partners. And then a  
12 little bit later Richard Scherer was introduced to it,  
13 who is the owner of The Pelican Group. And Richard  
14 became an owner of it because he could -- he has the  
15 network of vending operators that buy product all the  
16 time. And we were actually going to help use his  
17 network to sell those people our product, those  
18 operators. So Richard Scherer was also one of the early  
19 founding members.

20 Q. How was Shadow Beverages funded?

21 A. At any time? What point in time?

22 Q. Over time.

23 A. How was it funded? You know, in the early  
24 stages, it was funded, you know, in just the early work  
25 that we did, it was by the four or five of us, so, you

1 know, fairly minimal because we were very small and we  
2 were not getting paid. So I think it depended on what  
3 portion somebody owned. It was somewhere between 8,000  
4 and 32,000 what somebody owned. And we were able to  
5 start there.

6 Then we went out and started looking for  
7 capital investors to help us with different brands. And  
8 our first brand was Ironclad Energy & Hydration with the  
9 Ironclad apparel company out of southern California.  
10 And we got a couple investors to come in, help us with  
11 that. And we got started there. And then the next  
12 major investor was Spyglass, if you look at it from kind  
13 of investors.

14 So then it was also kind of a circle of family  
15 and friends and folks that I knew that knew our  
16 business, what we were doing. I had a brother that  
17 invested. I had, you know, some neighbors that  
18 invested. Everybody that was working at Shadow all had  
19 investments into it.

20 And when we first started, there was only one  
21 person getting paid. And that was kind of our office  
22 person. That was Kathy Reiser, who was also an  
23 ex-PepsiCo person. She was on salary, but she also made  
24 an investment into Shadow, her and her husband  
25 personally. So everybody was kind of required, you had

1 to be an investor and you had to have skin in the game.

2 Q. The friends and family investors you mentioned,  
3 what form did their investment take?

4 A. The first one was the PPM that we did at the  
5 very early rounds. That changed a couple different  
6 times, but that was the form of investment that we put  
7 together.

8 Q. What was the -- what was -- when was the PPM  
9 issued?

10 A. Well, it would have to have been early 2009.  
11 And, you know, to the best of my knowledge right now, I  
12 would have to go back and pull all that, but we started  
13 in 2008, November of, when we opened our first office.  
14 And the strategy worked, probably lasted three to four  
15 months. And then the PPM, you know, the operating  
16 agreement was put in place and then we started the PPM  
17 work.

18 Q. Was that, the PPM, for LLC units or promissory  
19 notes or something different?

20 A. No, it was primarily all, it was all equity.  
21 So it was all membership shares.

22 Q. How many employees or independent contractors  
23 did Shadow have?

24 A. Well, I would say, you know, at its peak when  
25 we were doing GNC and we had distribution, you know, in

1 the northeast and across the country, we were  
2 probably -- employees meaning people that were getting  
3 paid?

4 Q. Not necessarily getting paid, but who were  
5 acting as employees.

6 A. We were probably, to the best of my knowledge,  
7 and I would have, again, to go back and get exact  
8 figures, but we were probably as high as 23 at one time.  
9 And that included the four or five executives that were  
10 not getting paid.

11 Q. What sources of revenue has Shadow beverages  
12 had?

13 A. The sources of revenue. It is 100 percent  
14 selling product until the fourth quarter of last year  
15 where we started to outsource some of our other  
16 services, kind of from our selling services more than  
17 anything else. And those would be, you know, under  
18 agreements we did with Rumble.

19 So we brought three other brands that our  
20 people were out selling and our manufacturing people  
21 were helping coordinating. And we were getting paid for  
22 that work. And that was kind of another effort to help  
23 drive some revenue into the company.

24 So we outsourced some of our employees that --  
25 you know, our No Fear brand, when we lost GNC, we let go

1 probably four or five different folks that we refer to  
2 as territory folks. They were in the marketplace  
3 helping with the brand. When we lost distribution, we  
4 really let those folks go. But an example would be we  
5 had three still national sales guys or gals. And their  
6 workload was probably, you know, about 80 to 85 until we  
7 had acquired another brand, developed another brand of  
8 some source.

9           So we went out and subcontracted some of these  
10 other brands through Rumble that we could go out and  
11 sell. And we were paid for that on a monthly basis,  
12 kind of contract work.

13           Q.     What investment offerings did Shadow Beverages  
14 make other than the PPM you mentioned?

15           A.     You know, the investment office, there is  
16 probably three PPMs that went out in the early round of  
17 family and friends when there was a valuation of, you  
18 know, a million dollars and there was a concept idea.  
19 Family and friends invested. When we had our first  
20 product built, which was Ironclad Energy & Hydration, it  
21 jumped up to 5 million. And we had another PPM done.  
22 And then we made some adjustments to that PPM kind of  
23 early 2011 until we sold all those shares that were  
24 outstanding. And that would have been the last of any  
25 of the PPMs that we did.

1 Q. What were the time frames of those three PPMs?

2 A. I think the last one ended all the way into the  
3 first quarter of 2013. So it would have been '9 to '13  
4 is when, you know, we were actually selling shares,  
5 membership shares, units.

6 Q. Do you remember approximately when in that time  
7 frame the second and third PPMs were issued?

8 A. I don't right off the top of -- I mean it was  
9 sequential to the work that was going on. First family  
10 and friends, we got our first product out with GNC. And  
11 then -- I am sorry, with Ironclad, and then when we  
12 secured the license for GNC with, again, somewhat  
13 sequential. The valuation of the company went from  
14 a million bucks, everybody was diluted. We brought, you  
15 know, Ironclad in and we brought some more money in, and  
16 everybody was diluted. And then we brought the Spyglass  
17 people in for GNC, and everybody was diluted again  
18 equally across all members to allow those folks to come  
19 in. But the valuation kept going up. So the value of  
20 each unit that every member held continued to improve in  
21 total.

22 And that last one would have been, again, 2013.  
23 But it was, it is sequential to each one of those events  
24 that had happened. It kind of helped raise the value of  
25 the company and, you know, how people were being

1 diluted.

2 MR. KITCHIN: Let's take a break for about five  
3 minutes.

4 (An off-the-record discussion ensued.)

5 BY MR. KITCHIN:

6 Q. In that case, how did the company search for  
7 investors for the LLC units?

8 A. You know, we tried a couple different options,  
9 you know, at first, you know, family and friends. And  
10 then, you know, when we went to the GNC option. We did  
11 a couple different things. One, we worked with CKS in  
12 Scottsdale. And that's kind of how we got to know Bob  
13 Korte and Dennis there in Scottsdale. So we were under  
14 an engagement letter for them to go out and raise some  
15 capital for us under their process.

16 And at that time, they didn't have the right  
17 reach within the beverage industry. So that's kind of  
18 why Bob was kind of going through some things, I think  
19 both professionally and personally with the health, and  
20 he left CKS and came to join Shadow. And at that time  
21 then, we hired a company out of New York. It is Marks,  
22 Carl Marks investment, a company out of New York. We  
23 hired them.

24 They flew in Peter Shafer, who was a guy that  
25 had done a lot of work with the beverage industry and

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1 start-up companies and brands. And, again, we were  
2 raising capital on account of the GNC product. So we  
3 had hired Carl Marks. They came and did all the due  
4 diligence. They put together the, you know, sales  
5 presentation or the PPM to go out and market it against  
6 everybody, or to everybody. That lasted about three  
7 months. We did that work with those guys and really got  
8 nothing in return.

9 At the time there was three key principals  
10 there. Peter was the lead beverage guy. And Peter  
11 ended up leaving the firm of Carl Marks, a New York  
12 based company. Again, they were leading the work until  
13 Peter left. And that basically diluted their beverage  
14 contacts to zero, to nobody that they really knew. And  
15 what you really need in the industry is you need folks  
16 that understand beverage builds and distribution and  
17 multiples and how that works. And with all those guys  
18 gone, we cancelled that agreement with Carl Marks.

19 So, you know, we used those companies,  
20 specifically had an arrangement with Carl Marks and CKS  
21 in Scottsdale.

22 Q. For the friends and family investors that you  
23 mentioned, for how many of those did the company know  
24 what their financial status was in terms of net worth  
25 and income?

1           A.     I don't know specifically if we knew what  
2 everybody's net worth or income was, but based on the  
3 PPM and the investor questionnaire, they were required  
4 to sign that they were qualified investors. And they  
5 signed those documents. I don't think we did any other  
6 research to say give us proof of qualified investors.  
7 They knew what they were signing and they had to sign  
8 that line, that they were a qualified investor and  
9 understood the risk. And that was just part of the PPM  
10 and the process. But I don't think we knew, you know,  
11 everybody's financial status or position at the time.

12           Q.     And for the friends and family investors, for  
13 how many did the company know their level of investment  
14 experience before they were given a PPM?

15           A.     I don't know if I could answer that  
16 specifically thinking through all the different ones  
17 that either I spoke to or Sam spoke to. I don't know if  
18 I could answer their level of sophistication around  
19 investments.

20           Q.     Was it not known at the time or do you just not  
21 remember for now?

22           A.     To the best of my knowledge I don't know if we  
23 asked those questions. And I wasn't the one that did  
24 every single one of those investments. Again, we had  
25 Sam Jones, Ryan -- I am sorry, not Ryan. Joe Dunnigan

1 had a couple folks that he was talking to that we showed  
2 our business model to. We showed them what we were  
3 trying to do. We showed them the GNC brand.

4 Quite frankly, the GNC brand itself and that  
5 project was probably the catalyst. I mean, you know,  
6 anybody that kind of follows beverages or health and  
7 wellness walks into a GNC store, man, if you can just  
8 get a bottle that says GNC and we could own a part of  
9 that, that's a great opportunity. And it truly was, you  
10 know.

11 As anything else, it was built to be a very big  
12 opportunity until the GNC, the GNC business, not the GNC  
13 beverage business, their business started to struggle on  
14 the retail side. And then we, as anything else, we lost  
15 our, I guess, our coach and supporter within the GNC  
16 brand when Tom Dowd ended up exiting the company.

17 Q. And besides you and Mr. Jones and  
18 Mr. Dunnigan -- is that the name?

19 A. Dunnigan.

20 Q. Dunnigan? Besides the three of you, did anyone  
21 else at Shadow introduce the LLC units to friends and  
22 family investors?

23 A. Yeah. I would say Richard Scherer did. You  
24 know, give you an example of how that worked. Richard  
25 Scherer knows a group of guys in Palm Springs. They

1 were all members of the Hideaway Country Club. Richard  
2 and I were there one weekend reviewing some business.  
3 We went out and played. It was a country club  
4 atmosphere, five or six of us around the table: What do  
5 you do, what are you working on? We tell them. How do  
6 I get in? We said we actually have this many shares  
7 left to sell.

8 Richard new these guys from his country club  
9 experience. They were all new to me. And those would  
10 be people like Al Fleenor, Tom Grifferty, guys that were  
11 all at the country club that said I would like to be a  
12 part of this. We said we could forward you the investor  
13 questionnaire and the PPMs and we can forward you all  
14 the information on the company.

15 We sent them, you know, company presentations,  
16 brand presentations, what we are trying to do with GNC.  
17 And we probably had, and I am guessing a little bit,  
18 using round numbers again, probably four or five guys  
19 from that group in California, you know, in the range of  
20 half a million dollars, 700,000 that they, over one  
21 weekend, get in that atmosphere. We were all playing  
22 golf. And they were always looking for investments.  
23 And they all opted to put in, from one guy gave 25 grand  
24 in, one member maybe 200.

25 Q. And to --

1 A. So Richard, to answer your question  
2 specifically, so Richard was also one that kind of  
3 assisted because those were his investment buddies.  
4 They all had other investments together.

5 Q. Anyone else besides Mr. Scherer?

6 A. Not to the best of my knowledge at this time  
7 thinking back on how that kind of all happened when you  
8 are talking about shares and investments.

9 The company then kind of shifted a little bit  
10 to, you know, kind of exiting what we were selling as  
11 shares. We started to look at debt options. And at  
12 that point, we ran into another ex-PepsiCo executive.  
13 And his name is Rick Peterson. And he was brought to us  
14 by -- it was kind of a funny world. I don't necessarily  
15 remember the name of the investment company, but it is a  
16 family office in north Scottsdale that Bob Korte had  
17 introduced the investment opportunity to. And I would  
18 have to research his name. I think it is Barry. He had  
19 a great interest in Shadow. And he shows up to the  
20 office with his beverage consultant. And his beverage  
21 consultant was Rick Peterson. And Rick didn't know that  
22 it was myself, Richard Amrozowicz, who at one time was  
23 kind of our COO, Richard and him used to work in the  
24 same office together in Dallas. That was kind of an  
25 interesting -- he walked in as a consultant to the

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1 investor and knew all of us.

2 So at the time Rick was going through some  
3 family issues, dad struggling through life. Rick lived  
4 in Dallas. His dad was living here in Phoenix. He  
5 wanted to make a move. He came in and said, you know, I  
6 can maybe help with this capital side.

7 He had left the beverage industry and then  
8 moved over to the financial capital investment world and  
9 taken some classes. And he had been just doing that  
10 kind of work for the last three or four years. He had  
11 financed a vodka company that he showed us how he went  
12 and got that money from a vodka company, that he was a  
13 part of what they were doing there.

14 The investor that he came in with initially  
15 opted not to participate because he thought it was an  
16 amount that was too much. It was in the \$3 million  
17 range, and his family office didn't want to make  
18 investments that size.

19 So Rick then came back, again, because of this,  
20 he knew, he knew the other three guys at Shadow better  
21 than he knew me. I was -- I knew who he was when we  
22 both worked at Pepsi. And then Rick decided to come.  
23 He had no employment opportunities at the time. He was  
24 still working his capital business and his vodka  
25 company. But he needed to move to Phoenix for his

1 family issues. So we basically made a deal, if you can  
2 help us, we will give you an office space. He needed an  
3 office space to conduct kind of his vodka company. And  
4 so we brought him along as kind of a capital advisor.

5 And he was out not only talking to people about  
6 Shadow but about the vodka company and probably two or  
7 other deals that he had pending. And he ended up  
8 bringing, again, without going through the math, he  
9 probably did \$1.2 million that he brought in under kind  
10 of loan agreements and warrants, not necessarily equity  
11 shares. So we -- because we were not doing a PPM at  
12 that time. So he wasn't out pitching a PPM. He was out  
13 pitching an investment that could convert into equity  
14 and different components on how anybody who wanted to  
15 put an investment into the company -- more from a loan  
16 standpoint versus buying membership shares.

17 So that's how Rick then came into the company  
18 as an executive, worked along the side of us. Rick  
19 never really worked on brand strategy or brand  
20 development. That was our work.

21 You know, I was, again, running the operating  
22 side of the salespeople. Richard Amrozowicz and Sam  
23 were running the development work around packaging,  
24 flavor house, ingredients. And Rick was working  
25 specifically on, you know, finding capital to help us,

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1 you know, produce products.

2 We were off trying to close an agreement with  
3 Sysco Foods, as an example. And Rick was trying to find  
4 the capital for us to produce that product to go to  
5 Sysco Foods. And Rick was part of the four or five  
6 members that were not, you know, four or five executives  
7 that were not drawing paychecks. We did literally  
8 everything we could to be sure everybody could be  
9 reimbursed for expenses at the time. And Rick was  
10 compensated with shares. So every quarter he was  
11 getting shares of the company.

12 And because Sam and I agreed all board members  
13 and Rick, as kind of a consultant at the time, not  
14 necessarily employee, those we did, we did help him with  
15 a, with health insurance. Then we were giving him  
16 shares. And the shares we were not diluting from the  
17 rest of the membership. Sam and I were diluting  
18 ourselves every year for board members and we would kind  
19 of define as consultants. So we had another gentleman,  
20 Bob Shafer, an ex-PepsiCo guy that kind of helped. He  
21 came over and did consulting work. All those shares to  
22 those folks were just given to them under an agreement  
23 out of our shares of the company. So other members, my  
24 point is, other members were not diluted for consulting  
25 work or board members. That all came from George and

1 Sam.

2 Q. Backing up to the LLC units, who drafted the  
3 three PPMs for those that you mentioned?

4 A. The first one was probably drafted here in  
5 town. And it was, that kind of work was led by Joe  
6 Dunnigan. I would have to go back and get the  
7 attorney's name here in town. I want to say it was  
8 Brian, but I am not sure it was. And then really, after  
9 about a year, we hired Richard Walters out of  
10 Springfield, Missouri. And Richard Walters was one of  
11 our members, attorney, guy that he knew. We met him.  
12 And Richard was kind of in the M&A work and had done  
13 this work for clients before. And he was with -- God, I  
14 don't know. My mind went blank on these attorneys'  
15 firms. He was with a large firm and then recently, then  
16 about two years later moved over to a different firm.  
17 And I can get you all that information on what firms he  
18 was with. But Richard Walters was the guy that drafted  
19 all that work for us and did that and became our kind of  
20 attorney.

21 And it was all based on everybody in Phoenix  
22 was \$450 an hour, and Richard was, Springfield,  
23 Missouri, he was 325, \$325 an hour. And we were like,  
24 we were going to take the guy on that side of the fence  
25 because it is just the kind of company -- we weren't

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1 paying people. You know, expenses were tight. We were  
2 really trying to build revenue and investing all of our  
3 money into field people and marketing components to  
4 support the company.

5 Q. Were commissions ever offered for sale of the  
6 LLC units?

7 A. Were commissions for the sale of the LLC units.  
8 No, I mean nobody that ever sold the LLC units ever  
9 received commissions or cash or shares for doing that  
10 work. Nobody ever did that.

11 Q. Were there any agreements that anyone was  
12 supposed to receive commissions for that but didn't  
13 ultimately?

14 A. Again, the answer to your question  
15 specifically, you are referring to shares, and the  
16 answer would be no.

17 When we are talking about bringing in some  
18 capital and loans, and we did do that with Rick, we made  
19 those agreements under a little bit of the pretense that  
20 he was a licensed broker, because he was in the capital  
21 world way before he came to us and that's where he had  
22 been spending that work. So we agreed that, as kind of  
23 a licensed broker and going out and raising capital for  
24 the company, that he was entitled to either, three  
25 components of either shares, warrants, or compensation

1 when the company got up and running, but we were not,  
2 and, also, you know, kind of that we were not taking an  
3 investor's money. If an investor gave us ten bucks, we  
4 weren't taking ten of it, putting it into the business,  
5 and giving him two. The commission would be based,  
6 would be once the company started to be profitable and  
7 there was, there was money to pay those kind of things.

8 And then we sooner -- later found out that Rick  
9 was never a licensed broker. So we couldn't even adhere  
10 to what we kind of agreed because he didn't have a  
11 license to do that.

12 Q. Has he told you that he had a license to do  
13 that?

14 A. Yes, in the early stages when he was there  
15 with, and again the advisor role that he had, that he  
16 was a licensed advisor. So that's how we understood  
17 that.

18 Q. And what specific licensing did he say that he  
19 had?

20 A. I think it was just that general, is a licensed  
21 advisor. And I don't think we asked for a copy of his  
22 license or broker agreements. Again, maybe we made some  
23 bad assumption when he walked in with a fairly large  
24 family office in Scottsdale and he introduced them as  
25 his consultant and advisor in the beverage category, in

1 the beverage space. So that's kind of what we kind of  
2 took at face value.

3 Q. And when did you determine that he didn't  
4 actually have such a license?

5 A. We determined that, it would have been, you  
6 know, kind of late last year when Rick became  
7 disgruntled, not happy with the situation, said, you  
8 know, I am going, I am going to have to sue you for my  
9 commissions. And the first thing our attorney said is  
10 you are going to have to ask him to show you his broker  
11 license and advisor license if he is going to sue us.  
12 And that's when we asked him for his license. And he  
13 said I don't have one. It was like, well, how are you  
14 going to go about this then.

15 And then we just let his attorney push through  
16 that work, and we were just like, you know, not much we  
17 were going to do then, we will let the court decide what  
18 is owed to him based on what the legal law allows us to  
19 do with him or what he could claim.

20 But when we asked -- when he threatened, I  
21 don't know threatened is the right word, but when he  
22 advised us that he would be getting legal counsel to sue  
23 us, that's when we asked him for the copy. Our attorney  
24 said you need to ask him for a copy of his license,  
25 validate that he does have that. Right? And he

1 couldn't produce that. So he didn't. And so that  
2 doesn't necessarily even mean today that I am aware if  
3 he is or isn't. I am aware that he could not produce  
4 them. So I don't know and haven't done that research.  
5 I am not aware.

6 Q. For the LLC units, approximately how much in  
7 total was raised for the sale of the LLC units to the  
8 friends and family investors?

9 A. To friends and family investors. And I know  
10 you have a copy of the balance sheet. So you can go  
11 down to retained earnings, and, again, I am giving you  
12 rough numbers, but that number is probably in that  
13 4.8 million. Friends and families, round, would have  
14 been maybe a million, in that neighborhood. Again, I am  
15 giving you round numbers. I don't have -- I can pull up  
16 spreadsheets and give you every investor, all the  
17 documents or all the percentages and at what level they  
18 came in at. But that is my rough kind of recollection  
19 of those breakouts.

20 Q. Do you have access to such spreadsheets?

21 A. Absolutely. The last kind of primary document  
22 that we used, and I don't know if it was submitted, but  
23 your requested documents was that one that we really  
24 have used with Mix 1. In our kind of settlement of our  
25 transaction of selling this brand for 12.2 million, we

1 have all shares, money, and everything into every  
2 investor and creditor allocated to where that money  
3 goes. And, again, I will say money. We are referencing  
4 our currency as stock as well. So we have a spreadsheet  
5 where all that goes. That's the document that  
6 settlement agreements were being worked off of.

7           So, again, we worked to get the document  
8 completed as a whole so we knew that everybody got the  
9 money back. In that document, I represented 12, and I  
10 am again rough numbers, 12 and a half percent equity of  
11 the company. Sam Jones is also kind of right there. We  
12 were probably, we are the two largest shareholders. And  
13 Sam was in the 11 to 12 range.

14           In our spreadsheet and as we neared, you know,  
15 this issue that we knew we were going to be faced with,  
16 and we did the transaction agreement, both Sam and I  
17 pulled our shares out of the pool of how to get people  
18 paid. And we basically agreed to, Sam not so much as I,  
19 and Sam is still fairly angry that he gets nothing, but  
20 we agreed to, no matter -- the transaction which you saw  
21 comes in three pieces.

22           There was one component of a loan transfer from  
23 Spyglass to Mix 1. There was one \$1.5 million in what  
24 we refer to as No Fear payables, which those were -- a  
25 lot of the notes payable meant anything that we used for

1 production in No Fear. Any employee that worked on No  
2 Fear, those were No Fear payables. We could not use  
3 that money to go pay off a GNC debt, so to speak.  
4 Right? That's why it was defined that with Mix 1. And  
5 the rest of it was then in the 1.2 million shares.

6 Out of all those three components, we divvied  
7 that up against our payables and our investors. And in  
8 order to be sure that we got everybody paid off the, use  
9 round numbers, 23 percent of the company that Sam and I  
10 owned jointly, we pulled our percentages off the table  
11 and said priority is we are going to pay these people  
12 first because we took their money and we put -- and,  
13 again, you can see all, some of the documents where we  
14 put some of our own cash in, couple hundred thousand  
15 each, and five years of sweat equity. But we were  
16 willing to let that go to the garbage can, if you will,  
17 so to speak so we could take care of all of the early  
18 obligations to investors and creditors.

19 And that's on the spreadsheet. And I don't  
20 know if that was submitted as one of your documents but  
21 it could be submitted easily. That's a working,  
22 breathing document that we are using today.

23 Q. Is that a Shadow Beverages document or a Mix 1  
24 Life document or both?

25 A. It is a Shadow document, because they are our  
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1 obligations. But it was absolutely shared with Mix 1.  
2 That's how we agreed to how we could get to the selling  
3 price of 12.2 million.

4 MR. KITCHIN: Is now a good time to take a  
5 break?

6 THE WITNESS: Yeah, now would be great if you  
7 guys are okay with that.

8 (A recess ensued from 10:30 a.m. to 11:26 a.m.)

9 BY MR. KITCHIN:

10 Q. Let's go back on the record.

11 For Shadow Beverages' promissory notes, how did  
12 the company search for investors for those notes?

13 A. There wasn't a process of -- it was all  
14 internal folks that we knew of or somebody that knew of  
15 somebody that wanted to.

16 You know, so the work, I mentioned earlier, a  
17 gentleman named Peterson, that he started -- and, quite  
18 frankly, it was a little bit of our network of, you  
19 know, corporate America folks, a lot of people that we  
20 had worked with at Pepsi. If you kind of followed the  
21 Pepsi career path, you were normally there 15 to 20  
22 years. And then you are in another fairly good sized  
23 job and you have done well and you understand the  
24 business. And you understand, you know, some big bets.

25 Everybody has always heard the stories of, we

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1 were all around the day, you know, SoBe sold for, you  
2 know, whatever that crazy number was, you know, 800,000,  
3 and VitaminWater for 4.2 billion. And we all worked on  
4 those brands early. And who made all that money? So  
5 the corporations, the companies did.

6           So everybody knew that, I would say we used the  
7 analogy that, you know, you have to pop 100 balloons to  
8 get the prize. And in beverage, this development  
9 process of what Shadow was around, incubator and  
10 accelerator brands, that it was a little bit of popping  
11 the right balloons. And when we landed the GNC, we kind  
12 of felt, wow, we popped three balloons and the prize  
13 just fell out. It is GNC, the biggest brand name in  
14 health and wellness and better for you that you can  
15 apply to a beverage. If we could only get the formulas  
16 right and get distribution right, we could get marketing  
17 at a low cost because we had a marketing partner that we  
18 were doing revenue share with, meaning we were paying  
19 royalties.

20           So that's just a bit of the process of the  
21 investment group or community, where it wasn't  
22 advertising; it was I know somebody looking for an  
23 investment, I heard about you, I am drinking No Fear  
24 Energy, I tried the GNC product.

25           When we started doing some other work like with

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1 Mix 1 on the contract side, Mix 1 was a contract  
2 agreement. And Rumble was the advisors. They built  
3 the -- Mix 1 was a shell company, public company. A  
4 group of small investors bought the formula and the  
5 research from Hershey Foods, who, you know, the same  
6 story happened there.

7 In 2012, one day new management at Hershey's  
8 said our confectionery business is absolutely, you know,  
9 declining, no one is eating chocolate and sugar products  
10 anymore, we have got to focus on that, and we don't want  
11 to get a new business, which they already put in  
12 25 million into this brand called Mix 1. They purchased  
13 it. Then they invested and built the team of 124  
14 people. They had an investment of about 25 million.  
15 And one day at a boardroom, they decided count that out,  
16 we have got to spend money somewhere else. They can do  
17 that. That's rounding errors for those guys.

18 And this group put it in a public shell with no  
19 beverage experience. They just knew they had an asset,  
20 that they felt it was an asset that hedge funds and  
21 other brokerage houses are looking to invest in that  
22 sector of health and wellness. Everybody says I need  
23 3 percent of my fund in health and wellness. So that's  
24 why Mix 1 felt they could really accelerate the process.  
25 But they had no beverage experience.

1           So through Rumble as the kind of consulting  
2 group, Rumble built a full executionable plan, which is  
3 what you have to go do, here is the people you need,  
4 here is the money, here is how you spend it, and then  
5 hired Shadow to start that process, which we were the  
6 ones out selling, we were the ones delivering it here in  
7 Phoenix. We had a meeting with Kroger to get it into  
8 Fry's. You have seen it in Fry's. And that's how we  
9 started that process.

10           So it was never any advertisement for funds.  
11 It was just through the people we knew or through -- you  
12 know, Rick Peterson was probably, again, leading that  
13 group. So outside of that circle, there were a lot of  
14 folks I didn't know that he would bring to the table and  
15 said this guy wants to hear about the business. We  
16 would show him our business, this is what we would like  
17 to do. That's how we kind of moved forward with each  
18 one of them.

19           Q.     Did the company provide note investors with any  
20 offering documents?

21           A.     No. I would say if you were to look at the  
22 documents, you would see there is probably not, for lack  
23 of a better word, consistency, because everybody would  
24 come to the table with kind of their own I will lend you  
25 money but here is what I like to use, here is my own

1 promissory document, here is my own note agreement. So  
2 while we had one we would use, we would say this is how  
3 we -- no, no, we want to bring our own or my accountant  
4 will send you those. So you would see in the files of  
5 creditors, you see that there is different looking  
6 documents because everybody wanted, you know, their own  
7 and kind of felt if it was my money and I want to do a  
8 deal with you, I want my document I felt comfortable  
9 with or maybe I have used in the past, legal counsel may  
10 have given that direction. I don't know that.

11 Q. What kind of documents about the company were  
12 note investors given?

13 A. Were investors given? You know, it was really  
14 what we called an executive summary. So it was an  
15 executive summary that gave them a little bit about the  
16 industry update, so talking about what beverage  
17 categories were growing.

18 We had bios of who we were and why we felt that  
19 we had a team of folks to be able to provide, as we  
20 described it, functional expertise. We didn't have a  
21 sales guy trying to be an accountant. We didn't have a  
22 manufacturing guy trying to be a legal guy. We had  
23 everybody kind of in the right place. So we shared that  
24 with them.

25 We shared brands that we had in place and where

1 our distribution agreements were, with primarily with  
2 the Spyglass or Pepsi guys that were also our  
3 distribution partners, and products that we were working  
4 on.

5 And then we would either provide, you know, a  
6 pro forma of some forecast that this is where we think  
7 we can go if we can go do this -- forecasts primarily in  
8 that scenario included our agreement with Sysco, because  
9 we had an agreement with Sysco to put product in  
10 17 warehouses, to get 30 percent of their 285,000  
11 accounts that they sell to on a weekly basis, that they  
12 service on a weekly basis that carry energy products,  
13 that they would be carrying our products.

14 And, again, the, for lack of better words, the  
15 demise was their merger with US Foods, them halting the  
16 centralization of procurement into Houston. And, again,  
17 I use the example of three of those other companies have  
18 completely gone under and two are still alive. And  
19 Boylan has completely changed their model. And we are,  
20 we were in the process of changing ours before we went  
21 to Mix 1.

22 Q. Who drafted the executive summaries that you  
23 mentioned?

24 A. That would have been the compilation of kind of  
25 all of us. Kathy Reiser, director of administration,

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1 kind of had bios and industry research done that she  
2 did. And that was through industry research being  
3 through organizations that we were part of, BevNET,  
4 Beverage & Food Magazine, the network of folks that we  
5 had where she would compile that data on business  
6 trends, what categories are growing, what categories are  
7 declining, where consumers are moving. Bios are kind of  
8 clip and paste from what we had done. The brand work  
9 and distribution work would be, brand work would be a  
10 little bit by Richard and/or Sam. Distribution would be  
11 me. I was kind of the key guy and president of  
12 distribution work.

13 And then Sam was a part of this for quite a few  
14 years. And then it would have been in 2013, I believe,  
15 and we could look this up, but Sam lives in Newtown,  
16 Connecticut, and he was here in Phoenix that day of the  
17 Newtown shootings. He was in the office. And he had  
18 two kids in that school. So you can imagine what that  
19 day was like. And his wife is a senior vice president  
20 of HR for Hubbell corporation.

21 And he went home that day. And I think, you  
22 know, of course as the story goes, that month him and  
23 his wife and family went to eight funerals for eight  
24 kids that had been to his house for birthday parties.  
25 And it absolutely just changed his perspective on life.

1 And we gave him probably four or five months of a break  
2 and said, you know, you just got to worry about the  
3 family and kids and your wife.

4 And they made the decision at that time that  
5 they weren't going to raise their family that way.  
6 Because Andrea was in Virginia on a private plane to  
7 Hubbell. Sam was in Phoenix at the office. And a nanny  
8 was in charge of the kids. And then when they went to  
9 try to get the kids, they wouldn't release them to the  
10 nanny. There needed to be a parent present. So through  
11 all that they decided and Sam decided I am out, I cannot  
12 keep doing this, I am not going to travel, I am going to  
13 be Mr. Mom. And his life changed.

14 And it had quite an impact on our business, of  
15 course, because he was a founding partner. He led a lot  
16 of the development work with the flavor houses and the  
17 GNC. He actually was the one, I would say,  
18 quarterbacking, you know, the project at American  
19 Outdoorsman that went south, and a lot of it because he  
20 had a personal situation that I think all of us together  
21 would say he did the right thing. He had two little  
22 boys and they are being raised now by their dad instead  
23 of a nanny. And I think it is the right reason.

24 Q. Who prepared the financial projections that  
25 were given to investors?

1           A.       I would say that would have been a combination  
2 between Josephine, our controller, Richard, who was our  
3 manufacturing guy.

4                        So Richard had to have forecasts to be able to  
5 meet demand. So we typically had every Tuesday a  
6 meeting. It was the controller, it was three  
7 salespeople from outside the country, or outside the  
8 state, the one key salesperson that managed our Sysco  
9 business and broker system, and myself. And we would  
10 put together forecasts to determine what are we going to  
11 have manufactured.

12                      That would be the basis on what it would take  
13 to build forecasts to show people that here is what we  
14 are selling, here is what we are told we are going to  
15 sell based on distribution, here is what we call  
16 throughputs. That's what is being sold consistently to  
17 a bottler in Eugene, Oregon on a monthly basis. He is  
18 buying 18 pallets a month, so next month should buy  
19 another 18 pallets. Or if there was a promotional  
20 program, we would allow \$2 off a case so they can take  
21 it out to the marketplace for two for three pricing,  
22 then we would do that.

23                      But it was a compilation of everybody's input  
24 on the forecast where the business was going based on  
25 those business metrics.

1 Q. What were the funds from the promissory notes  
2 supposed to be used for?

3 A. It was 100 percent all operating business, I  
4 mean from manufacturing to making payroll to paying rent  
5 to paying transport to buying cans. They were all  
6 100 percent operating. And everybody knew the operating  
7 costs primarily were driven by we had to produce more  
8 product, especially in that window of time where we had  
9 the Sysco agreement. And we pushed product to, you  
10 know, 17,000 -- or 17 warehouses, freight bill alone was  
11 \$80,000 to push product to those, and then produce the  
12 product and have the salespeople ready to go.

13 And then we -- when I say operating, it also  
14 means, you know, marketing pieces, from table tents to  
15 barrels, that we had to provide the salespeople to be  
16 able to go out and sell to a convenience store in New  
17 Jersey. They carry No Fear Energy and they needed POS  
18 and signage. And we produced probably a couple hundred  
19 thousand dollars of that product to suppliers and then  
20 ship it out to Sysco facilities so salespeople would  
21 have it.

22 And, quite frankly, it was all that that I  
23 would say enticed, or is what Mix 1 saw the value in  
24 what we had. And that's how they came to an agreement  
25 as a public company going the value is \$12.2 million of

1 what you have: the operating company, it is the  
2 distribution agreements, it is the No Fear brand because  
3 that's the only thing we really sold them from the brand  
4 perspective, and it is your industry knowledge, or we  
5 refer to as industry access. You can call the Pepsi guy  
6 and say, hey, we want to extend this agreement next  
7 year. That's what Mix 1 looked at and said, hey, you  
8 have got 12.1 million.

9 And we started, again, in that range, again, we  
10 started in the range of valuing the No Fear brand of  
11 around \$18 million. And that was our first kind of  
12 offer. And then we negotiated. And 12.2 was really in  
13 their range of what they could offer without doing  
14 something else. If it was over the 20 percent threshold  
15 of the market cap, then they would have to go out get a  
16 membership vote. And they had the authority to be able  
17 to acquire an asset under that 20 percent, or however  
18 that works.

19 Again, I am not by any means a securities  
20 expert. They were the buyer. I was the seller, and  
21 working with them kind of hand in hand. And when we  
22 kind of got to that point, we felt we had a deal done at  
23 \$12.2 million and that was going to satisfy everybody  
24 that we had, which we have settlement agreements as  
25 early as June to even creditors today that have pushed

1 us, you know, to voluntary.

2 And, you know, it is not like we hide from  
3 those. I speak to Jim Mueller and those folks fairly  
4 often. I don't blame you. Right? We sold an asset  
5 April 1. It is public. You filed an 8-K. Everybody  
6 did the work. It is now 160 days later and I don't have  
7 that money yet to pay you, to pay everybody. So if I  
8 was a creditor, I would be a little upset. You sold  
9 something, and you don't have that money yet.

10 And that's a little bit of what tomorrow -- and  
11 I mentioned to you, this is not a secret. You know, we  
12 responded -- well, if you follow the track record, a  
13 petition was filed I think three times, because the  
14 first two times we were never served, because we were  
15 still negotiating with them on a settlement agreement.  
16 And Mix 1 was doing some things that they had to get  
17 done to be able to get the funds completed. We had  
18 settlement agreements.

19 So even those creditors, you know, said, well,  
20 you know, we filed a petition, they didn't serve it so  
21 the petition expired after 10 to 12 days. I am not sure  
22 how that works, but whatever that time frame was. And  
23 then we would have another discussion. And they were  
24 like the stock price is still diving, we are still going  
25 to file. They filed again. And it expired.

1           And the third time we basically called them.  
2 We said let's don't do this third time, you want to  
3 file, we want to consent, so let's just agree you served  
4 us. So we literally did it that way. It was not  
5 anything we were hiding from or running from. And we  
6 did file to -- you know, we kind of -- to consent to  
7 move to Chapter 11 and to expedite.

8           Those were kind of our three responses that we  
9 filed back -- that we thought were important for us so  
10 that we could go back to 11, so that we not  
11 necessarily -- that we have an operating business that  
12 we are running today. We are not necessarily running or  
13 collecting every revenue. We have no employees. Today  
14 Shadow is a shell. But we have receivables on our  
15 balance sheet, you know, of, you know, the remainder,  
16 the \$1.5 million to pay off creditors and people that we  
17 used money to produce product with. We have stock in  
18 the neighborhood, in that, what we collected of  
19 \$8 million in stock that, in today's world of what has  
20 happened, is, that dollar amount is probably \$2 million.  
21 And we have sat down with Mix 1 and said this has to be  
22 corrected, we did a deal.

23           You know, there is some discussions on  
24 rescinding. And that's why we are going to the court  
25 tomorrow and we are asking for another 90 days to

Coash & Coash, Inc.           602-258-1440

1 restructure, not necessarily the company, but to  
2 restructure our receivables so back to Mix 1 and say I  
3 have 1.2 million shares and today that value is X and it  
4 needs to be Y because that's what we agreed to, so  
5 either you give us more shares or more cash.

6 And even though -- I mentioned earlier that I  
7 resigned August 12th because of this conflict that had  
8 become very obvious I am on the Shadow side and, also,  
9 trying to run their business. And that conflict didn't  
10 work anymore. I had plenty of discussions with Mix 1  
11 folks. They know what is coming. They know Shadow is  
12 going to demand that they improve the value of what  
13 there is today versus what we agreed to and/or  
14 potentially a rescindment deal.

15 And they are working diligently on completing  
16 their financing and their funding so they can get that  
17 done through a group of Northland Securities, who I also  
18 went and met with and pitched them the business based on  
19 the executive summary that we have, we use that's very  
20 identical, except it has Mix 1. And Mix 1 strategy work  
21 was all done by Rumble. So that's what is in -- filed  
22 publicly.

23 And we have to be able to correct the situation  
24 at Mix 1, and that could be a little bit of an issue for  
25 us. We are somewhat concerned that it could get a

1 little nasty how far we press them. But we had an asset  
2 worth \$12.2 million and that met all of our obligations  
3 to everybody we made, or to everybody we have. But with  
4 this issue of them not having that value there right  
5 now, that is an issue for us. And we have to get that  
6 corrected so that we can meet the obligations.

7 So tomorrow we are asking the judge to give us  
8 another 90 days to move to 12 or to 11 so we can  
9 restructure. And it is a restructure of our  
10 receivables, nothing more than that. And it also allows  
11 us to do this the right way. Right?

12 You know, Tom Salerno, who is an expert in this  
13 field, knows what he is doing. He knows -- you know,  
14 has the best interest of the creditors and debtors, and  
15 that's important to us. The call that I had today was  
16 when that money is coming so we get Tom on board and he  
17 is going to be representing us and go get that work  
18 done. And hopefully the judge, who knows Tom and has  
19 been in and out of her courtroom, says, you know, I  
20 trust you are going to do what is right for all of these  
21 people represented here today, the creditors and  
22 debtors. And that's the work we are going to go do.

23 And that has caused, you know -- my own kind of  
24 personal situation is my wife has a job; we live off of  
25 her income. We live in Chandler, Arizona. Our kids are

1 older so it is now payback. They support Dad and Mom.  
2 They got to buy dinner every now and then. And I am --  
3 my main goal is to work through this in the next 90  
4 days. I have had a couple job offers. I have refused  
5 to do that because I am not going to leave until we  
6 finish what we started, what we got to get done to the  
7 people that trusted us with their money and the people  
8 that, you know, we made commitments to to go deliver on  
9 that and knowing that, you know, like everything else,  
10 there was some sort of risk. But the majority of these  
11 people are people I know. They are my family members.  
12 They are business people that I will also do business  
13 with down the road. And we are going to do everything  
14 we can to ensure that Mix 1 pays the value of what we  
15 sold them, because we built that off of our sweat and  
16 off of people's investments. We built something worth  
17 \$12.2 million. We just need to collect it now.

18 And that's, again, that's a little bit of our  
19 issue. We would have hoped in June when Mix 1 had an  
20 application and was -- and part of what drove us to  
21 accepting the Mix 1 transaction, knowing that they  
22 needed financing, was they presented to us a document  
23 that was from NASDAQ, that NASDAQ did approving their  
24 uplisting. And I don't know if it was a supervisor or  
25 their approval committee had been reviewing the

1 application for the NASDAQ uplisting since November.  
2 And I had been part of getting that approval committee  
3 information on Mix 1, the brand, what we were going to  
4 do, all those things.

5           The committee came back with an approval stamp,  
6 said you are approved to be uplisted in NASDAQ in the  
7 May or June timing. And then it got to the supervisor  
8 and the head of NASDAQ who then came back and spoke with  
9 the Mix 1 group and myself. I was on one part of that  
10 conference call when he asked a question that he was not  
11 happy with.

12           And the question was simply on your application  
13 it asked if you have ever been investigated by FINRA at  
14 Mix 1, and we checked no. There was never an  
15 investigation. In the file itself, there was a FINRA  
16 review from six months later that FINRA did a review.  
17 And when the supervisor and the head of NASDAQ asked  
18 that question, our attorney at that time, Lou Zofles  
19 from San Diego, responded in a very unprofessional way  
20 and said you must not understand the English language;  
21 one says investigation and one says review, two  
22 different things, so let me help you understand the  
23 English language. And that right there, the supervisor  
24 at NASDAQ just said you guys can go pound sand, I don't  
25 need people like you on my board.

1           And the result was -- FINRA does random audits  
2 of 75, or whatever the numbers of company, and we were  
3 chosen as one. And that started early February. And we  
4 complied with all of their review requirements. They  
5 sent a report that said there was no issues. We felt we  
6 were all good to go. But, again, the supervisor said  
7 you checked the box no and in the back of the file I see  
8 a review, those things don't match. I go, well, they  
9 weren't supposed to match, you asked if an investigation  
10 ever has been done. But there was a review. We were  
11 randomly reviewed.

12           And I think our attorney, that's someone I am  
13 not really favorable of. He just, he took, I think he  
14 took all of us down by just a response. There is no  
15 need to ask the guy if he understands the English  
16 language and just a need to explain it.

17           And today Mix 1 is on the pending list to be  
18 uplisted. They are still pending. He is the boss. He  
19 gets to tell us I want three more months of actuals, I  
20 want another quarter of performance and I want this  
21 before I put you on the board, where the approval  
22 committee had already gone through the performance  
23 approval. We met our projections. We had done  
24 everything and we were ready to be approved.

25           That's when the demise on their financing

1 company. They had secured with the McQueary Group out  
2 of New York that we were working with. They had come in  
3 and sat down and done all the due diligence with them.  
4 And then McQueary said you are not being uplisted, and  
5 that's what we have been selling because we had the  
6 approval from the committee, so we are going to go a  
7 different direction. And Northland Security now stepped  
8 in to do a security deal on the stock.

9 And we had, again, in June and July, we  
10 probably had two term sheets ready to go. Again, they  
11 were buying stock at \$3. It was trading at 5.50. They  
12 have the retail and the broker side. They were going to  
13 play the Mix 1 stock into their portfolio, and we were  
14 going to -- it was going to raise between 12 to  
15 \$15 million before the end of the year. And it was  
16 going to satisfy, again, their transaction to Shadow and  
17 we were going to be good.

18 And then the stock issue happened. And of  
19 course Northland wasn't going to buy stock when it was  
20 declining 20 percent a week. And then it got to 3.50  
21 and they had a term sheet for 3 bucks. They would never  
22 do a deal. And then we redid a term sheet to \$2, and  
23 then two weeks later the stock was at 80 cents. And  
24 that just never worked that way.

25 Q. The FINRA review was of Mix 1?

1 A. Yes, it was Mix 1. And I apologize if I am  
2 overlapping the two companies because I know we are here  
3 to discuss Shadow. But the overlap into how Shadow  
4 became part of Mix 1 and that transaction is very key to  
5 understanding where we stand today and why tomorrow's  
6 hearing is pretty critical.

7 Q. Were any commissions offered or paid to anyone  
8 other than Rick Peterson for the sale of Shadow  
9 Beverages' note?

10 A. Not to my knowledge, not that I am -- I don't  
11 know who we would have done anything like that with.

12 Q. About how many note investors were there?

13 A. How many?

14 Q. Note investors that you know of.

15 A. Note investors.

16 Q. Promissory notes.

17 A. Promissory notes? I am going to have to say  
18 there is probably eight to ten, but I would have to go  
19 look and pull all that information up. And I can supply  
20 that with you. Again, there is one page that I  
21 mentioned that everybody is listed. I can pull that up.  
22 We track that on a monthly basis. And I think it was  
23 part of our balance sheet, investor things that we  
24 submitted. But they are completely there. But it is in  
25 that range.

1 Q. Who is Rick Peterson's boss?

2 A. Who was his boss?

3 Q. Yes.

4 A. It was me directly. He reported to me. We had  
5 listed on that work chart as business development. And  
6 under that org chart he reported directly to me.

7 But, again, he was, I don't know, he wasn't a  
8 contract employee. He was part of the organization but  
9 it was probably 40 percent of his time was working with  
10 us.

11 Part of the deal, we were going to give him an  
12 office space. We paid rent. He didn't pay rent. He,  
13 again, had this vodka business he was running, and he  
14 had three or four other clients that he was helping on  
15 the capital side. And we allowed him to do that. We  
16 said you can do that and we will give you office space  
17 because we can't pay you, the only way we can pay you is  
18 we can pay you with shares, membership units of Shadow.  
19 And that would come from me directly.

20 And if you go through our cap table, year after  
21 year you can see that '13 there was no other shares sold  
22 because the cap table remained the same, other than  
23 myself and Sam, where our shares were reduced for two  
24 consultants, which at that time were identified as Rick  
25 and Bob, and then the three board members that were

1 given shares. And that was out of our allotment versus  
2 diluting everybody. That happened in '13 and '14 where  
3 there were no other units sold. And then Rick's  
4 compensation was share units.

5 Q. While Peterson was looking for investors for  
6 Shadow, how much did he know about the condition of  
7 Shadow's business?

8 A. I think he knew, he was well aware. He sat in  
9 the office right next to -- everybody was there. He  
10 knew at times that we struggled to make payroll and that  
11 we couldn't make payroll on the 15th. And we informed  
12 everybody in the company that we had to make payroll on  
13 the 16th, or, you know, heck, it might have been a  
14 couple times we had to inform everybody that their  
15 paychecks would be ready on the 18th. So he was very  
16 well aware that -- he was part of all those discussions  
17 on when we could pay people. There was nothing to tell  
18 him that the company was any different, that we were  
19 struggling month to month to meet cash, operating cash  
20 to keep the company going. He knew that none of the  
21 executives, him, myself, Richard, Sam, he knew that none  
22 of us were taking paychecks.

23 And through the course of five years, for the  
24 record, there might have been three to four months, when  
25 we first took the capital in from Spyglass and we had

1 GNC ready to go and we started distributing and our P&L  
2 was looking like we could support everything that we  
3 had, all the executives, we agreed that the max an  
4 executive could make at Shadow was 80 grand. So for, it  
5 might be, again, you have payroll records, but there  
6 might have been four or five months where we had kind of  
7 the engine running a little bit, that the executives  
8 took pay. And it was at that rate of we were never  
9 going to, nobody could ever make 80 grand.

10 So we did get some paychecks for a little  
11 while. And then when we heard the news of GNC,  
12 executives stopped getting paid. Nobody could get paid,  
13 only employees. And that's kind of where Rick fell,  
14 Rick was always in that group of executives.

15 Q. How was Peterson instructed to find potential  
16 investors for Shadow?

17 A. I don't -- he didn't have necessarily  
18 instructions, other than, you know, what we were all  
19 doing is using our networks. So we weren't instructing  
20 him to put ads out or go to Linked In. It was just  
21 through your networks of folks.

22 And Rick was a real bulldog kind of sales guy.  
23 That's how he has always been. And he would talk to a  
24 guy and the guy would say I am not in a position to make  
25 an investment right now, things are different. Rick's

1 next question was do you know anybody who was. They go  
2 yeah, I was talking to Jerry two days ago and he is  
3 looking for something. Can I call Jerry? Yep.

4 So Rick would always have two or three, you  
5 know, maybe arm's lengths away kind of relationships  
6 that he would be talking to, but never instructed by me  
7 or anybody else. Again, he would sit down and bring in,  
8 you know, kind of on a biweekly basis here is my list of  
9 folks I am talking to. And we would review it. Again,  
10 I had a list of folks that I was working with. Richard  
11 had a list of folks. We were all working on kind of the  
12 same thing.

13 Q. Did you ever give Peterson any limits on how he  
14 was allowed to seek investors for Shadow?

15 A. I am not sure what that question means. Could  
16 you be more specific? Limits on the structure of the  
17 deal, the amounts of the deal, how do you find a deal?

18 Q. For where to find people. Were there any  
19 constraints on how he could find investors that you gave  
20 him?

21 A. None, no constraints on how he could find an  
22 investor, no.

23 Q. What did you tell Peterson about Shadow?

24 A. Personally or part of the executive meetings?

25 Q. Personally, which may include you talking at

1 one of the meetings.

2 A. Well, one of the things that we did was every  
3 Friday we had a conference call with all members of  
4 Shadow. So Rick was always part of those calls. There  
5 were people from across the country and there could have  
6 been 18, sometimes 25 folks.

7 And my job was to give everybody a status of  
8 where the company was. And sometimes towards the end  
9 there was a lot of times it was bad news: payroll is on  
10 Monday, you are not going to get paid until Thursday,  
11 that's what we are dealing with right now. We have  
12 inventory X we need to sell, and the sales guys get that  
13 in. The accounting people would say our receivables are  
14 coming in on Wednesday of next week, we should be able  
15 to clear payroll, or we factored a large order with  
16 Pepsi at First Community, we will get that money on  
17 Tuesday.

18 You know, so everybody, everybody in the  
19 company knew that we were working towards finding --  
20 once we lost GNC, our bet, you know.

21 If you step back what we did over five years,  
22 we built the company to place, and lack of better words,  
23 and again some of this is just my terminology, a bet  
24 that the license would be secured with GNC was going to  
25 be something that could really grow fast. And we had to

1 all work hard.

2           You could look, anybody on our payroll, you  
3 look at the payroll records, everybody that worked for  
4 Shadow was probably paid at 80 percent of the industry  
5 standard. Anybody could have, our sales guy in  
6 San Diego or in Charlotte, any one of those folks could  
7 have gone and earned 20 percent more at another company  
8 for doing the same thing, for selling beverages into  
9 their network or retail world. But they were all with  
10 Shadow for a reason, because they all believed what they  
11 were doing, that some day we could hit with either this  
12 GNC, the distribution agreement with Sysco, there was  
13 going to be returns for somebody, for all of us.

14           Rick knew exactly that. It was open discussion  
15 in the office. Again, I had, I won't say a corner  
16 office, but I had a small office towards the back. Rick  
17 was in the main office space where we refer to it as the  
18 sales bullpen, where the sales guys would come in at  
19 night. And there was two executive offices off the side  
20 of it. And Rick was there. Rick had full access to  
21 everybody we knew. He knew exactly what was going on  
22 with the company.

23           Personally did I have any discussion with him  
24 that was different than any discussion I had at a  
25 meeting? Not to my knowledge that I would have made any

1 statement other than what we were already talking about,  
2 where the risk points are with the company. I think you  
3 can see the board notes from board calls that we had  
4 that we outlined in the agenda, and you see some of  
5 those board meetings very clear. The company is at  
6 risk. We need to have funding. If we don't get the  
7 funding, you know, we are going to have to make some  
8 other very drastic decisions. Again, that's all on the  
9 board notes.

10 Minutes were taken. Kathy Reiser, director of  
11 administration, was part of every board meeting taking  
12 notes. A lot of those are recorded. I don't know  
13 exactly which ones but the minutes themselves speak for  
14 what we discussed and what the agendas were. Rick was  
15 not on the board so he didn't participate in the board  
16 meetings.

17 But I wouldn't say there is anything different  
18 that Rick knew that everybody else didn't know. We all  
19 knew that we were working, that our lifeline was -- we  
20 would have exposed it -- our lifeline was getting short.  
21 And Mix 1, that's kind of why we agreed -- we had  
22 another group, Tommy Middleton, ex-No Fear. They were  
23 interested in buying the brand.

24 We knew we had to either get financing in or  
25 exit the brand because we were getting to the tipping

1 point where assets and liabilities were getting too far  
2 off base that we couldn't do it. And Rick knew that, I  
3 mean to the point of that's why Rick, at one point for  
4 production purposes, he made an investment. That's why  
5 I did. That's why, you know, Sam did. That's why we  
6 all did. We were putting our money in even knowing we  
7 weren't getting paid. And we were putting money either  
8 to production or to pay our own people, the sales staff,  
9 the office staff.

10 MR. KITCHIN: Is now a good time to break for  
11 lunch? I know we broke recently, but I don't want to  
12 run anyone past when they would naturally be hungry  
13 necessarily.

14 THE WITNESS: I don't look like I need a lot of  
15 lunch. Trust me, I am okay. But I am open to whatever  
16 the group wants to do.

17 (An off-the-record discussion ensued.)

18 MR. KITCHIN: Let's maybe aim for 12:30,  
19 another 25 minutes.

20 THE WITNESS: Yes.

21 BY MR. KITCHIN:

22 Q. Did you authorize Peterson to offer  
23 investors -- let me start that over.

24 What terms did you authorize Peterson to offer  
25 to investors for the notes?

1           A.       Well, our standard terms were, you know,  
2   12 percent interest rates. Rick came back with a couple  
3   people that -- you know, there is, as always, you know,  
4   risk versus return comes into play. And Rick would come  
5   back and say I got a guy that might be interested but he  
6   wants 20 percent, that's the only way he wants to get  
7   in, he doesn't do anything over 20, or I got a guy that  
8   he wants doubles and he wants warrants. And I spoke to,  
9   and once Rick had somebody that wanted to talk, I would  
10  go talk to them.

11                   And there was, I could name a couple folks here  
12  in town that are referred to in the world as hard money  
13  lenders that say I will give you 50 and, you know, chop  
14  your leg off on Thursday if you don't give me 100. But  
15  we had all kinds of those discussions.

16                   So Rick knew that our basic offering was  
17  12 percent. And if somebody wanted something different,  
18  we had to go talk to them, and they could tell us why,  
19  and they understood the risk point, and they were trying  
20  to accomplish something with their portfolio that was  
21  different than our need, we would see if we could come  
22  together. There was plenty of times that we could  
23  never, we could never agree. Somebody said I want  
24  25 percent, I have to be fiscally responsible to the  
25  company and we can't afford 25 percent return, we have

1 got to figure something else out.

2           And some of it was, there was, you know, in  
3 desperation mode days when we knew payroll was due, and  
4 payroll taxes and health insurance at \$32,000, on  
5 Thursday, and, you know, a guy willing to say I will  
6 give you 100 grand for six months but it is going to  
7 cost this, we would say can't do it. It is just, just  
8 didn't work.

9           So the answer to your question specifically, we  
10 had a template and kind of a range, but we were also  
11 flexible if Rick came back, this is what I need, and  
12 kind of measuring the situation at the time.

13         Q.     Was Peterson authorized to offer warrants?

14         A.     He was authorized to offer warrants if needed,  
15 yes. There was a warrant opportunity if somebody needed  
16 warrants to go with it. Because we weren't doing  
17 equity. If somebody believed and said I want a bigger  
18 return and I want this warrant, so yes, there was a  
19 warrant component that he could offer.

20         Q.     Was Peterson authorized to offer LLC units,  
21 shares?

22         A.     Huh-uh. There was none available.

23         Q.     Was he, was Peterson authorized to offer  
24 royalties of any kind?

25         A.     No. We didn't -- royalties were all to  
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1 licensing companies. So there could be no royalties.

2 Q. Was Peterson authorized to offer a personal  
3 guarantee by you or Sam Jones?

4 A. Yeah, well, he wasn't authorized to do that,  
5 but when I would speak to somebody, if that was a  
6 component needed and Sam and I elected that that met and  
7 stayed within the confines of what we were  
8 collateralizing that with, so, you know, guys that  
9 either had a UCC filed and that included, you know,  
10 inventory, receivables, and raw goods, and kind of the  
11 value of the company, then we would say yes. We would  
12 talk about that. But there is plenty of times we said  
13 no and times we said yes. But it was always measured in  
14 the fact of, you know, what collateral do we have to  
15 make that.

16 And, again, the three, I am sorry, the four  
17 components were always what we had in receivables, so we  
18 would pull out a balance sheet; what we had in raw  
19 materials, we call them raws because it would be  
20 ingredients and cans scattered across the country; what  
21 we had in full goods, what was produced and ready to go;  
22 and what we had in value of the company, which was value  
23 of that license. And on that comparison we always used  
24 that license, if we had to ever fire sale the license,  
25 that it was worth \$5 million. And that's just how we

1 looked at how we were going to collateralize a  
2 commitment to somebody.

3 Q. And for any investor who was given a personal  
4 guarantee from you or Sam Jones, does that mean that  
5 you, that whomever had given the guarantee had discussed  
6 that with the investor before they invested?

7 A. Yeah. Nobody invested any money without  
8 talking to me or Sam, or I would say me and Sam.  
9 Because nobody would just give Rick a check and he would  
10 bring to the office. We would never do that.

11 If it was an investor, somebody going to make a  
12 commitment, they would come into the office. We sat  
13 down, talked to them, showed them what they were doing.  
14 They took product with them. They tried it. We went  
15 through all of that. But never did anybody just make an  
16 investment by just giving us a check based off a  
17 discussion with Rick.

18 Q. Did you or the company give Peterson any limits  
19 about what he was allowed to tell potential investors  
20 about the company?

21 A. No. There was never any limits of what he  
22 could share. Again, he had all the information just  
23 like employees did. He had the executive summary, the  
24 same thing we were using to talk to people about the  
25 opportunities. I don't recall any limits on what he

1 could say.

2 I mean he was one of us. It was kind of he was  
3 in the trenches with us. He was doing everything we  
4 were doing. We were all doing it together.

5 Q. What documents was Peterson allowed to give to  
6 potential investors?

7 A. It all started with the executive summary,  
8 because that's kind of what was the meat and potatoes.  
9 If an investor came and said I want to see a current  
10 balance sheet, the accountant, Josephine, would ask for  
11 permission to show a balance sheet. I would give an  
12 okay.

13 I am not a QuickBooks accounting person. So I  
14 couldn't, I don't even know, sad to say, but I don't  
15 have the ability even yet today to be able to go to  
16 QuickBooks and print, because I don't know how to use  
17 that software.

18 But if an investor came and said I want to see  
19 a cap table, Josephine was able to show them a cap  
20 table. If I want to see, I don't know what other  
21 document an investor would have wanted from a balance  
22 sheet, notes, balance sheet, they said I want to see  
23 this more detailed on notes payable, she had a notes  
24 payable sheet that she could share.

25 Again, it wasn't just an open book; it required

1 my approval. I would have to verify that it is a true  
2 investor. It is somebody that's really needing just  
3 some information to make a decision, then I would say  
4 absolutely. But it was always the same stuff, because I  
5 wasn't the gatekeeper of the information. The  
6 accountant had that stuff. It is in QuickBooks.

7 Q. Did you ever tell Peterson when you thought  
8 Shadow would be profitable?

9 A. Absolutely, kind of in the sense of, you know,  
10 there is probably four or five different forecasts and  
11 pro formas that we use that measured, you know,  
12 breakeven, cash flow positive, profitability based on  
13 the different situations.

14 We had, when we were hand in hand and just off  
15 the top of my head, the pro forma that we built for the  
16 Spyglass investment. And based on kind of we looked at  
17 worst case revenue, you know, 2013, we were supposed to  
18 make \$3 million. And we have the distribution. We have  
19 the revenue. We were on track to head in that direction  
20 until we got the stop from GNC. And that didn't go  
21 well. So then the following year, Rick probably saw  
22 projection on that one, too. That's all changed.

23 I forget. We made a big production to IBML as  
24 another key investor and buyer of the No Fear brand.  
25 IBML owned the trademark of No Fear. And they licensed

1 that trademark out to apparel companies, skateboard  
2 stickers. And then beverage we have the rights to or  
3 owned. So we made a lot of projections and business  
4 assumptions to No Fear, or IBML, which included other  
5 countries, taking the brand international to Mexico,  
6 Canada.

7 So, you know, did I tell him, did he see? He  
8 saw all kinds of different projections. It was very  
9 fluid, very moving. We were working on a deal, if IBML  
10 takes this, we can go to these five countries and this  
11 is what we project.

12 Q. Apart from projections that he saw, did you  
13 ever yourself ever discuss projected profitability with  
14 him?

15 A. I would say I probably discussed the P&Ls with  
16 him so that he was, or the pro formas, so that he was  
17 versed on how to have those discussions. So did I  
18 discuss those with him? I probably did. Again, I don't  
19 recall a very specific situation of him and I looking at  
20 a pro forma. But he needed company data to go out and  
21 have a discussion with people. And they all started  
22 with executive summary and, then again, any other  
23 documentation that an investor came -- if he came and  
24 said I need to see your three-year pro forma, we could  
25 show him that; I want to see a five-year pro forma, we

1 would show that; I want to see a current balance sheet,  
2 we will show you that. But it wasn't in a packet of  
3 stuff that we just take to everybody or mailings looking  
4 for investors. It was kind of, it was a relationship  
5 working, see what people want to know about our  
6 business.

7 Q. Was Peterson authorized to give potential  
8 investors your personal financial statement?

9 A. He wasn't authorized to give anybody my  
10 personal financial statement. But I did use it with a  
11 couple of folks that he brought to the table, so... And  
12 I do not recall him ever having it in his hands or on  
13 e-mail. I don't recall that happening. It would be no  
14 need for him to see it personally. But I have always  
15 had a financial statement built that was part of, you  
16 know, discussions if people wanted to know, well, what I  
17 was doing, where I had been, you know, a little bit of  
18 the gap in my career. It never got to that point.

19 I left PepsiCo in 2006. I told you I did a  
20 little consulting work that we started in 2008. And in  
21 2006, as I mentioned earlier, I lost a child, 26 years  
22 old. And I lost a mother. So I actually was born and  
23 raised in Wyoming. I was in Wyoming for six months or  
24 so when my family was here. I was dealing with those  
25 things for that little bit of a gap. So there were

1 times when people would go, like any, you know, resumé  
2 or employment, and people trying to invest with you or  
3 seeing where you were going, what did you do here, did  
4 you fall off the face of the earth. That was always  
5 part of my discussion. Rick knew that.

6 Q. Which Shadow Beverages' personnel invested in  
7 notes themselves during 2014?

8 A. Shadow Beverages personnel themselves. It  
9 would have been, right off the top of my head, and again  
10 I have to go through the notes, Richard Amrozowicz,  
11 George Martinez. It would be Rick Peterson. And I  
12 don't know if Sam was right in that timeline or not. I  
13 think Sam might have been before that.

14 Q. Do you know approximately when Sam Jones was?

15 A. Well, Sam would have probably been in 2012,  
16 could have been early '13. I am trying to remember when  
17 the Newtown shootings happened. I think that was  
18 April time frame of '13. So it was just prior to that.

19 Q. And approximately when did you and Richard  
20 Amrozowicz invest in Shadow Beverages notes?

21 A. In that time frame or --

22 Q. Yes. In 2004, when approximately in 2004, I am  
23 sorry, 2014?

24 A. Well, 2014 specifically Richard would have been  
25 in the third and fourth quarter. And it was for

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1 freight. So we were moving product around to all these  
2 Sysco warehouses. I mean, again, I don't know what that  
3 number was.

4 In '14 mine probably would have been in earlier  
5 April on the production side. And I put in 50 and then  
6 another 25 maybe in the middle of the summer. And then  
7 Richard's would kind of be in that fall. And Rick's was  
8 also in that fall.

9 Q. And did any company personnel invest in Shadow  
10 Beverages --

11 A. Oh, I am sorry. Kathy Reiser, our director of  
12 administration, she also invested at that, in that time  
13 frame.

14 Q. And did any personnel invest in Shadow  
15 Beverages' notes in 2013?

16 A. Personnel. '13 would have been potentially Sam  
17 Jones and myself. Richard was in, Richard's initial  
18 150,000 was in 2012. So it wouldn't have been in '13.  
19 So other than Sam and myself, I don't think there was  
20 any other direct personnel, because Rick didn't in 2013,  
21 as I recall, he didn't make an investment until the end,  
22 which was always a little bit of a --

23 He was -- everybody else at Shadow as an  
24 executive all had money in. And Rick came in, and he  
25 was, again, our EVP of business development. But he had

1 no investment into Shadow for the first year and a half  
2 that he was there. And then he made his last investment  
3 in the fall. So he was the only executive without a  
4 cash investment. And I say only executive. There were  
5 a couple other folks, like I mentioned, Kathy Reiser  
6 who, as a director, also invested early in the company  
7 and then made another investment in '14, personal  
8 investments. But she was a little bit different because  
9 she was getting paid. She was on payroll. She was not  
10 classified as an executive.

11 Q. Did you or Sam Jones ever personally make any  
12 payments on any the notes that you had personally  
13 guaranteed?

14 A. Did I personally or Sam Jones? I would say not  
15 that I recall on anything. That I took my own money or  
16 Shadow pays a portion of? I am not sure.

17 Q. Any, any personal payment from you or Jones  
18 based on one of your personal guarantees?

19 A. No.

20 Q. What is Greentech Mining, Incorporated?

21 A. What is or who is it?

22 Q. What and who?

23 A. What and who. Greentech Mining is a, it is a  
24 company that started, I believe, in 2012. It was an  
25 ex-BLM person out of San Francisco that, when he

1 retired, he knew where there was some open mining rights  
2 across the country.

3           And there was a mine specifically in Utah,  
4 surface mining for gold. And he put together a group of  
5 folks to invest in that mine. That same group of folks  
6 were probably -- I mentioned earlier this group from  
7 Hideaway, the golf club guys that all invested. There  
8 was probably five or six of them that all invested into  
9 Greentech Mining. They probably made an investment, I  
10 don't know, this is strictly guesstimates because I am  
11 not that close to it, but they probably raised about  
12 four and a half million dollars. They had investments,  
13 kind of pieces of \$100,000 each.

14           A group of guys invested in that and they went  
15 and started mining operations, surface mining. They  
16 really wanted to see if the gold was there. The  
17 operation was probably about ten months to a year in  
18 process. And what they were able to find and pull the  
19 gold out of the ground was validated that there was ten  
20 X the gold in the mine.

21           And that's all that the investment was for, it  
22 was to go in and validate that the gold was there to do  
23 surface mining. So it was never to build a gold mining  
24 operation. That would have cost hundreds of millions of  
25 dollars. But it was to validate that the money was

1 there.

2 A group of us all invested in it. And, again,  
3 so Richard Scherer, Kevin Senn, myself, Sam Jones,  
4 Richard Amrozowicz, you know, Allen Fleenor, I could  
5 probably go on, there is probably about eight of us that  
6 put some money into Greentech. And Greentech validated.

7 And then they started the process of trying to  
8 sell the mine. And some of it was collateralized, the  
9 mine, and, again, not a road that I know of. But it was  
10 MTN transactions where they were collateralizing what  
11 was supposedly being \$6 billion worth of gold, if you  
12 could get to it that was there.

13 And over the course of time, because the group  
14 of us had both investments -- Greentech had a couple  
15 deals on the table that we all thought were going to  
16 close and get secured, that it was going to bring  
17 everybody back, you know, in the range of eight, ten  
18 times. It was kind of a high risk, very high reward.

19 And Greentech, again because investors on both  
20 sides, had agreed that they were going to bring capital  
21 in, get investors paid off, they were going to keep some  
22 capital to continue to go out and research some other  
23 mines that they, this guy that, again, a federal land  
24 bureau guy knew where some open mining rights were, that  
25 we would go investigate that, and they were going to

1 invest another portion of that money into other  
2 companies. So it was trying to be an investment group,  
3 continue to build and work.

4 Of course, they, we all knew that Shadow needed  
5 some operating cash to keep moving forward. So  
6 Greentech a couple times made a couple commitments. We  
7 were funding the end of August. And at the end of  
8 August we are going to invest, the numbers varied  
9 depending on what the deal size was, 3 to \$5 million  
10 into Shadow, if we get our funding, that's what we are  
11 going to do. And that meant they would sell the mine  
12 for, again I am using rough numbers, \$20 million. Five  
13 of it could stay in the company for other development, 3  
14 to 5 would be invested into other companies, and  
15 10 million would be paid back to investors.

16 That's what Greentech was. I wasn't, I am not  
17 a managing member. It was all ran by a couple other  
18 guys. I was a five arm's lengths away investor. But as  
19 we worked to secure financing, they were always an  
20 option. If they were able to get this done, they were  
21 going to help us finance the company that they also were  
22 invested in.

23 Q. When did GSRC first make its investment in  
24 Greentech Mining?

25 A. That would have been, I would say, 2013 when  
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1 they first started. And that was just a couple of us  
2 knowing that they had to, you know, they were only  
3 taking units of 100,000. None of us having 100,000,  
4 four of us that all liked the group that invested with  
5 us, we said, you know, we can do smaller increments.  
6 That way you have to do that under all one umbrella.  
7 And we formed GSRC, George, Sam, Richard, and Corey.  
8 That's all it is, three of us -- four of us.

9 Q. Who is Corey?

10 A. Corey Waterburg is a neighbor friend, no other  
11 investments into Shadow or anything else to do with it.

12 Q. Do you remember approximately when in 2013  
13 GSRC's investment in Greentech Mining was?

14 A. I don't have that off the top of my head. I  
15 can pull those documents and get those to you, but I  
16 don't have that exact month or date off the top of my  
17 head.

18 Q. Did GSRC receive its returns and its principal  
19 back on the Greentech Mining investment?

20 A. No.

21 Q. When were you supposed to have been paid?

22 A. At GRC, from Greentech?

23 Q. Yes.

24 A. It has probably happened the CEO probably put  
25 out five or six different documents stating dates that

1 investments will be paid once this sale or transaction  
2 has happened. And as of today, there has not been one  
3 transaction happened at Greentech of any revenue or  
4 income at all. And all of us are still left with our  
5 investment in Greentech and wondering if that is ever  
6 going to pan out.

7 An announcement came out two weeks ago that  
8 they had a buyer and working through trying to get a  
9 deal sold by the end of October. It was different than  
10 what they had been working on. And, again, I don't know  
11 the right terminology. I call it papering. And they  
12 were collateralizing the mine against a loan or funds so  
13 somebody else could use that money. And that has just  
14 gone on and on cyclical with never anything ever being  
15 accomplished.

16 So now they are looking at selling those  
17 mineral rights that Greentech has. I believe it is the  
18 20-year mineral agreement with the federal land bureau.  
19 So now they are looking at selling it. We are all still  
20 in hope that that investment return will some day pay to  
21 everybody.

22 Q. What was the first date by which Greentech was  
23 supposed to have paid back the investment?

24 A. I would have said the fall of 2013, the fall of  
25 2013, because we -- at the time we made the investment,

1 there was kind of two tranches of investments made, the  
2 lease of equipment and they were up and running. And  
3 again, it is in Utah. It is surface mining. Snow fell.  
4 That's kind of pretty hard to mine for gold when, you  
5 know, you get too much ice and too much snow. So it  
6 stopped, operations stopped, but they hadn't really  
7 validated. The smolder that they were using to collect  
8 the nuggets and put together had to be funded. So they  
9 thought they had it done in 2013. And it had to be  
10 extended into '14 because of snowfall. And we didn't  
11 have all the proper documents of what the value of gold  
12 was inside.

13 And, again, my, my association with all the  
14 documents and what I am telling you is very five arm's  
15 lengths away. I don't have all those documents. I was  
16 just on conference calls as an investor. And, again,  
17 we, the GSRC, we were the smallest group there. There  
18 is, you know, all the other guys were tranches of half  
19 a million to \$2 million in the people that are involved  
20 there.

21 MR. KITCHIN: Let's take that lunch break now,  
22 come back at 1:30.

23 THE WITNESS: Okay.

24 MR. KITCHIN: Does that work?

25 THE WITNESS: Yeah.

1 (A recess ensued from 12:33 p.m. to 1:38 p.m.)

2 MR. KITCHIN: Do you want to launch right in?

3 MR. MILLECAM: If you don't mind, because I am  
4 going to be pulled to something else. I am probably  
5 going to ask a few questions, 15, 20 minutes, and then  
6 they have got other things they need me to answer for.

7 THE WITNESS: And I think, I apologize, we were  
8 also going to reschedule because we are not sure we can  
9 get through all of it today. So if I miss something, we  
10 can do that at a later date.

11 MR. MILLECAM: Okay. Are we back on the  
12 record?

13

14

EXAMINATION

15 BY MR. MILLECAM:

16 Q. I am Ryan Millecam with the Corporation  
17 Commission. I am going to ask a few questions.

18 I am going to hand you what looks like we have  
19 marked as Exhibit 1, Mr. Martinez. Would you go ahead  
20 and take a look at that and see if you recognize that.

21 A. Yes, I do.

22 Q. Okay. Can you just describe briefly what it is  
23 for the record.

24 A. It is our amended operating agreement.

25 Q. Okay. Go ahead and look at the first page.

1 And I will tell you the first page of the actual  
2 document, the second page, see down at the bottom, see  
3 SHADOW 5739? Do you see that?

4 A. Okay, yes.

5 Q. And up at the top it says that this Amended  
6 Restated Operating Agreement of Shadow Beverages and  
7 Snacks, LLC is made and entered into this 17th day of  
8 August 2011. And that's defined as the effective date,  
9 is that correct?

10 A. Correct.

11 Q. Okay. Was there an operating agreement in  
12 place before this was executed?

13 A. Yes.

14 Q. So this one is one that is governed since the  
15 effective date, the August 17th date, is that correct?

16 A. Yes. I would submit that there were two  
17 previous operating agreements when we started the  
18 company in the basic form. And then the second was an  
19 amended operating agreement where we had another  
20 investor. Allen Hall came in and we amended the  
21 operating agreement for his inclusion. And then this  
22 amended and restated one was for the inclusion of  
23 Spyglass.

24 Q. Okay. So from what you just said, as far as  
25 you know, this is the third iteration of the operating

1 agreement?

2 A. That is correct.

3 Q. Okay. And the previous one was amended to add  
4 an investor? Am I reading this right, that this  
5 amendment was also brought about because you were adding  
6 an investor, looks like Spyglass Capital Partners, is  
7 that correct?

8 A. Uh-huh.

9 Q. Okay. I am going to ask you just a few  
10 questions about this document. If you could, go ahead  
11 and flip several pages in. Actually it is page 12 of  
12 the document. And the Bates No. on this is  
13 SHADOW005750. Do you have that in front of you?

14 A. Correct.

15 Q. Okay. The article I want to look at is this  
16 Article V, says Management. Section 5.1 says:

17 Management. The business and affairs of the  
18 company shall be managed by a Board of Managers which  
19 initially shall consist of five managers.

20 Do you see that section?

21 A. Yes.

22 Q. Okay. The next section says Election of Board  
23 of Managers. And then it names five persons, George  
24 Martinez, Samuel Jones, Richard Amrozowicz, Bill  
25 Robinson, and Brian Charneski. Is that correct?

1 A. Correct.

2 Q. First let's go back to 5.1. It says it  
3 originally consists of five managers. Has that ever  
4 changed to be more or less than five?

5 A. It did change to become four in 2000 -- end of  
6 2013.

7 Q. Okay. How did that amendment come about?

8 A. Brian Charneski at the end of 2013 resigned his  
9 position because he was in a conflict with the bank that  
10 his family owns in Washington. And they asked him that  
11 he could not be a part of -- the bank was financing the  
12 production facility with Pepsi that we were using. And  
13 they told him that was a conflict of interest for him to  
14 be on our board and represent the financing for the, our  
15 bottling company.

16 So Brian left, resigned his position. So there  
17 were four of us. And based on kind of the calendar year  
18 of voting in new members, because these members were not  
19 the current ones of 2004, as we voted in new members,  
20 which you can see in the minutes --

21 Q. I think you mean to say 2014, correct?

22 A. '14, I am sorry, yeah, 2014. I apologize.

23 Q. No problem.

24 A. We elected to keep the four until there was a  
25 new vote to come out. And then in early '14, early '15,

1 I am sorry, then we elected to sell the brand. So there  
2 was no need for a board of five again.

3 Q. Does that mean from the time that this was  
4 signed until Charneski resigned there were four  
5 managers? Is that correct?

6 A. That means that there was five.

7 Q. Five, okay. And who replaced Mr. Charneski, I  
8 guess? First -- well, maybe I should back up.

9 We have this initial list. George Martinez,  
10 that's you, correct?

11 A. Uh-huh.

12 Q. Samuel Jones, Richard, Bill, Brian.

13 A. Yep.

14 Q. Maybe you can just describe how --

15 A. So then we did, in 2014, I am sorry, '13, we  
16 did a vote of election of new board members to the  
17 membership group. And elected new to the board were  
18 Eric Reinhard, Kevin Senn, and Doug Iannarino.

19 Q. You said Kevin Senn. Is that S-E-N-N?

20 A. Uh-huh.

21 Q. Okay. Now, when you say there was a vote, who  
22 voted for this board of managers when it changed?

23 A. The membership.

24 Q. Everyone that owned an LLC membership?

25 A. Uh-huh.

1 Q. Was it all members? Do you recall how many  
2 members voted, what was the percentage?

3 A. I, if I recall, to the best of my knowledge  
4 right now, we were in the 95 percent range of people  
5 that submitted their vote back and the new members were  
6 elected.

7 Q. Was this at a meeting of the members?

8 A. It was on a membership call. So we sent out  
9 the voting process prior to the membership, annual call.  
10 And everybody voted. And then the call happened. And  
11 we announced the results of the ballots.

12 Q. While we are on that topic, can you flip to  
13 page 17. I want you to look at section 5.18, Meetings  
14 of Members; Place of Meetings. This section says that  
15 there will be an annual meeting of members, first  
16 Tuesday in April of each year. Did those meetings  
17 occur?

18 A. Yes. And they were primarily conference calls  
19 with a conference room and meeting area set up for those  
20 that wanted to attend. But all documents were and the  
21 agenda was sent out via e-mail to all members. And  
22 members could either get on the conference call or  
23 attend.

24 I would say there are very few attendees other  
25 than the, you know, folks there at the office that were

1 a part of the membership, because, again, we had a lot  
2 of the executives and folks working in the company that  
3 were also members. So they attend the -- we probably  
4 had two or three outsiders, outside of employees,  
5 members that would come and sit in the meeting, but  
6 primarily it was all driven off the conference call.

7 Q. Okay. So those people that you were  
8 describing, they would be people that own shares but  
9 weren't executives or employees?

10 A. Correct.

11 Q. And your recollection is typically there were  
12 only two or three of those?

13 A. Correct.

14 Q. Did they participate in the meetings? Do you  
15 have any recollection of that?

16 A. Yeah, they were participants and listened,  
17 maybe asked questions. Again, the agenda was sent out  
18 for the meetings. Everybody had a copy of it. It  
19 finished with the Q and A and the status update, where  
20 the company was going and what the priorities were, what  
21 we were trying to accomplish.

22 Q. Let me go ahead and have you flip back to  
23 page 14. Page 14 of the document, section 5.11, says  
24 Designation of Officers. It says that there will be  
25 two, spells out that there will be two or more, Chief

1 Executive Officer, President, and it also says COO. And  
2 then it lists three, Richard Amrozowicz, George  
3 Martinez, and Samuel Jones. Do you see that section?

4 A. Correct.

5 Q. Okay. Can you just confirm that this was  
6 accurate, that these three persons were elected as  
7 officers?

8 A. Confirmed.

9 Q. Okay. How long did each person serve in the  
10 position designated?

11 A. It was, I would say, a minimum of two years for  
12 each one of those, for all of us. And then Richard is  
13 the only one that kind of stepped away after two years,  
14 stepped away as the CEO. And we brought in another CEO.  
15 I remained president until Sam had his personal  
16 situation and then I became president, chief operating  
17 officer.

18 Q. What were the, let's start with the CEO, what  
19 were the duties of the CEO?

20 A. You know, I think it is fairly consistent to  
21 duties of any CEO. He wasn't in the day-to-day  
22 business. That was me, the president. He was kind of  
23 overseeing the strategy and our partnerships with  
24 distributors and our partnerships with our licensing  
25 brands and, also, looking for new business, kind of the

1 role of promoting our operating structure to where new  
2 business might come in.

3 Q. And you can talk about presidents; that was  
4 you. How was that different? You just said day-to-day  
5 stuff.

6 A. That was the day-to-day, you know, managing the  
7 sales guys, managing the operations folks, kind of  
8 overseeing the, or director of administration, Kathy,  
9 who handled kind of the finance side or HR side our  
10 employee benefits, insurance, those kinds of things.

11 Q. And then maybe just talk briefly, COO, what did  
12 that do?

13 A. Yeah. So Sam in the chief operating officer  
14 role was more -- the title wasn't as specific. He was  
15 more on the development side or business development.  
16 But so he spent most of his time on form letter  
17 development, working with all our formulators, Wild, and  
18 all the national companies that are formulators, and  
19 working with the packaging companies, making the  
20 determination if we were going into a can or bottle and  
21 what the label might look. So from that standpoint,  
22 that's what he was operating, kind of the product lines.

23 Q. If you flip the page, page 15, take a look at  
24 section 5.14. It says Salaries and Compensation. It  
25 says here that the Board of Managers shall establish a

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1 compensation and bonus structure for all elected  
2 officers to the company. Skipping to the next section  
3 says: The Board of Managers shall engage an independent  
4 compensation consultant with experience in developing  
5 executive compensation programs to identify applicable  
6 industry standards.

7 Can you talk about whether the provisions,  
8 whether the instructions in this provision were ever put  
9 into effect?

10 A. They were never put into effect. We at one  
11 time started working towards putting a bonus structure  
12 together. And it started a little bit with the, what we  
13 referred to as the field people first, and then moving  
14 up the ladder to the executives. And we never got to  
15 the point of instituting getting that work.

16 We had one time on the agenda to vote in a  
17 committee, a board compensation committee to do that  
18 work. So it wasn't the entire board. But we never got  
19 to the point of establishing any guidelines or paying  
20 any compensation bonus structures to anyone.

21 Q. So you never received any compensation as  
22 president or an officer, is that correct?

23 A. No, that's not correct. You missed the earlier  
24 conversation that we had.

25 Q. Okay. I am sorry about that. Okay. So this

1 wasn't put in place, but you did eventually receive some  
2 compensation. And can you just -- I am sorry if this is  
3 duplicative. Maybe explain to me what it was based on.

4 A. Yes. If you want me to repeat that, I will.

5 When business was moving forward with the GNC  
6 brand and we were going, we had voted in that all  
7 officers of the company, executives could only make a  
8 maximum of \$80,000. That was the threshold. So we were  
9 not about paying executive salaries of -- you know, the  
10 salaries we left at PepsiCo were in the 3- to 400 range.  
11 And we knew that that's not what this company was about.  
12 So we elected 80,000 was the number.

13 There was a period of time that's documented  
14 within the payroll records that it might have been, and  
15 again to the best of my knowledge, I am guessing a  
16 little bit, it is in the records, but four to six months  
17 that executives were receiving compensation at that  
18 rate. And then we had this situation with GNC and went  
19 in a different direction. So we cancelled all  
20 compensation for executives.

21 So during the time frame at Shadow there had  
22 been, you know, a total, you know, less than 12 months,  
23 I would say, where any executives got any monthly  
24 compensation. And it was never higher than 80,000 a  
25 year. The rest of the time there was no compensation or

1 bonus structure for anybody.

2 Q. Okay. Let's go ahead and take a look at the  
3 next section there. 5.15 talks about appointing a  
4 strategic advisor. Looks like, if you look at section  
5 (b) of that, the advisor is going to consult with the  
6 CEO. Did that ever happen?

7 A. Yes.

8 Q. Okay. Who was that strategic advisor?

9 A. Strategic, the strategic advisor from Spyglass  
10 was Eric Reinhard. So he started exactly when this  
11 became effective in 2011. And he was our advisor  
12 working with the different bottlers and Richard  
13 Amrozowicz at the time.

14 Q. Okay. I will have you just flip to what is  
15 going to be the second to last page of that exhibit. It  
16 is the signature page.

17 A. Second to last.

18 Q. There should be a second to last. I think you  
19 are printed on both sides. But it would be SHADOW 5777.

20 A. Okay. Got it.

21 Q. I just want to confirm, it says accepted,  
22 Shadow Beverages and Snack, is that your signature  
23 there?

24 A. It is.

25 Q. Go ahead. I am going to take that exhibit from

1 you. We are done with that for now.

2 As president you were involved with some hiring  
3 and firing, is that correct?

4 A. In some, yes.

5 Q. Some, okay. Let me hand you what I have marked  
6 as, what we have here marked as Exhibit 2. Feel free to  
7 take a look at that, see if you recognize that.

8 A. So what is your question?

9 Q. I haven't asked you yet. I was going to give  
10 you a chance to look at it. If you are done...

11 A. Okay.

12 Q. First off, do you recognize this?

13 A. Uh-huh. It has been a long time since I have  
14 seen this but it is 2012, yeah.

15 Q. Up at the top, Letter of Resignation; date,  
16 June 14th, 2012. Down at the bottom it is printed Bob  
17 Korte.

18 A. Correct.

19 Q. And I believe you said earlier that he was your  
20 CFO for awhile?

21 A. Uh-huh.

22 Q. And he says that in this letter, is that  
23 correct? Let me go ahead and let's look at the second  
24 paragraph of this. It says:

25 Nine months have elapsed since I joined the

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1 Shadow team. When I joined Shadow I did not expect that  
2 its financial stresses would increase to the extent they  
3 have, or continue for as long as they have. I consider  
4 Shadow a financially distressed company, with negative  
5 equity, negative working capital, and ongoing cash burn,  
6 and I did not join Shadow to be the CFO of a financially  
7 distressed company.

8 Now, this is obviously what he is saying in  
9 this letter. Do you know why he would say these things  
10 about Shadow?

11 A. Yeah. He was our CFO, so he knew at the time  
12 that our GNC business had issues with their agreement to  
13 support the marketing. So it was just shortly after a  
14 review of kind of a new forecast that we showed him.  
15 And the board was in town. And it showed that we had  
16 issues because we were not going to get the revenue  
17 base.

18 And we were working towards debt sourcing,  
19 which he comments here: I leave the debt sourcing in  
20 the competent hands of Carl Marks Advisory. That's  
21 where he came from.

22 So we had recruited Carl Marks. And, again,  
23 this is a little repeat when you weren't here earlier  
24 this morning. As we were looking for capital, Carl  
25 Marks was one of our capital companies. And Bob was

1 there with them. And we were just getting the rollout  
2 of the GNC brand positioned. And Bob saw a huge  
3 opportunity, thought the company would also have a huge  
4 opportunity. And he joined Shadow, again, kind of as  
5 our CFO and executive with kind of no pay, no  
6 compensation but some shares that were given to him.

7 And then when Shadow and GNC business didn't  
8 completely turn out to be the way we thought it was  
9 going to be and we hadn't found a solution yet, this is  
10 his opinion based on how he feels a company should look.  
11 So he wrote his opinion why he was leaving, which really  
12 is kind of highlighted that Bob was just a real uptight  
13 kind of guy, and the stress without having the answers,  
14 you know, in a start-up company was something he hadn't  
15 done before. And we knew that. We knew that was a  
16 risk.

17 I mean there are -- start-up companies have a  
18 different approach than a corporate company and a CFO  
19 role. And that stress of where we are going to do this,  
20 how are we going to do, we had not solved that yet. And  
21 it was causing his health, you know, to deteriorate. He  
22 was spending hours and hours at the office. And we all  
23 felt that this was the very best for him.

24 And he makes a comment even there in the third  
25 or fifth paragraph that says him and I spoke, and I told

1 him you need to watch your health, everybody in this  
2 company is replaceable, myself, anybody. We had a  
3 business model. That's all we were doing. We were  
4 following the opportunities. And, you know, I don't  
5 know, it kind of reads like he maybe took that negative.  
6 But he said you are right, I am replaceable, you can go  
7 find another CFO, I will leave the financial statements.

8           And, again, we discussed this earlier. Bob  
9 hired these accountants and controller, put them in  
10 place. So he thought the business was in very good  
11 hands. He mentions clarification on the expense of  
12 promotional cost to GNC, which is our issue -- that's  
13 what GNC was walking away from -- and the promotional  
14 marketing aspect, again which we referred to a couple  
15 different times in our opening discussions.

16           Q.     Okay. At the top it says this is to George,  
17 Sam, and Richard. Do you know if George, Sam, and  
18 Richard received this letter of resignation?

19           A.     I wouldn't --

20           Q.     If you don't know, you don't know.

21           A.     Yeah, I don't know. I mean...

22           Q.     Do you know if anyone else received this letter  
23 of resignation?

24           A.     I would say that it was, to the best of my  
25 knowledge, it had to have been discussed at the board,

1 at a board call.

2 Q. That was going to be my next question. With  
3 whom did you discuss the concerns raised in this letter,  
4 if anyone?

5 A. Primarily Spyglass, Eric Reinhard, who was kind  
6 of the biggest, again, investor. And that is why it is  
7 kind of through this, and again not having it solved  
8 yet, why there was another investment made by Spyglass  
9 Capital II. If you go through the records, there is  
10 Spyglass and Spyglass Capital II to bring more of  
11 exactly what he was talking about, the debt sourcing to  
12 the company.

13 Carl Marks Advisory, Carl Marks was having no  
14 success. Spyglass reviewed the finances and everything  
15 that we were doing. And Spyglass said when they made  
16 their first kind of equity fund, an investment group --  
17 it was called Spyglass. When Eric Reinhard, who was our  
18 advisor, went back to Spyglass and says, look, this GNC  
19 issue is causing financial stress and we are going to  
20 have to have another source of financing, a part of the  
21 group, the original Spyglass group, said let's all just  
22 ante up some more, put some more money into Shadow. And  
23 there was a portion of the group that said, you know, I  
24 only committed to X, I wanted to participate but that's  
25 all I am going to commit to. So they formed Spyglass

1 Capital II, which a group of the same members came over  
2 and said we are going to put in another investment to  
3 kind of address a little bit what Bob was speaking to in  
4 this letter. So that's how that was handled.

5 So without speaking to the specifics of who all  
6 knew and the discussions, you know, from three years  
7 ago, it was addressed, because Spyglass Capital II was  
8 formed and they made another investment.

9 Q. Okay. Were Mr. -- were Bob's concerns shared  
10 with any investors that lent money to the company, to  
11 Shadow Beverages?

12 A. Yeah. I think, you know, the negative working  
13 capital and cash burn were always a concern, what we  
14 were investing, the cash burn, into the marketing side  
15 of GNC when they walked away from us. That was a  
16 concern. Everybody knew that. That's literally why the  
17 brand was discontinued and we got out of it, because  
18 that cash burn couldn't go on.

19 The negative equity was always a little bit of  
20 a debate between the group, because there is this bucket  
21 of intangible assets that CFOs of all sorts, of all  
22 walks of life would give you different ways to quantify  
23 what intangible assets are. And, you know, that's  
24 validated by you can go online to public companies and  
25 one public company has intangible assets of 20 million,

1 the other has the same assets, which is customer list  
2 and distribution and, you know, a patent or a formula or  
3 a bottle type or a bottle mold, and their, you know,  
4 intangible listing might be 5 million bucks.

5 So when we discussed this with Bob, and quite  
6 frankly for the first, during 2012, it was the debate  
7 going on with Henry & Horne, our accounting and tax  
8 guys, on how, what to quantify as intangible assets on  
9 our balance sheet. And you see in our balance sheet at  
10 that point we didn't even have intangible assets. But  
11 the intangibles were the bottle molds, the licenses that  
12 we held, the distribution agreements that we had with  
13 Spyglass Bottlers. There were assets there. Bob never  
14 really kind of believed that. So it was a negative  
15 equity position for him.

16 So sorry to go on and on.

17 Q. It is okay.

18 A. Just trying to give you the full perspective.

19 Q. No problem. Take that from you and hand you  
20 what we have marked as Exhibit 4. Take a look at that,  
21 see if you recognize that. And there are two sides on  
22 that.

23 A. Yes.

24 Q. Do you recognize Exhibit 4?

25 A. Yeah, I recognize it as a balance sheet from

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1 Shadow Beverages.

2 Q. Okay. Do you know who would have prepared that  
3 balance sheet for 2013?

4 A. Our controller.

5 Q. And who was that again?

6 A. Josephine.

7 Q. Okay. I believe earlier you said that these  
8 were not audited, they were reviewed, is that correct?

9 A. Yes. In 2013 they were reviewed.

10 Q. But you said this one would have been prepared  
11 by your controller. So is this more an internal  
12 document at that point?

13 A. Yes, I would say internal document, absolutely.

14 Q. Okay. The second page of that talks about  
15 retained earnings and net income. It shows a net income  
16 of negative 3.3 million, is that correct?

17 A. That's what it shows.

18 Q. Okay. Do you have a sense whether that was  
19 accurate?

20 A. Based on my knowledge as of today, I would  
21 believe that is accurate. This is what we submitted to.  
22 This would be accurate. And it was printed on 6/11 so  
23 that would have been in the system, yep.

24 Q. Was this, were these statements, this balance  
25 sheet, was it ever shared with any investors in Shadow

1 Beverages?

2 A. It would be shared with the membership group,  
3 yep.

4 Q. Membership group. What about persons that  
5 weren't members that lent money to Shadow Beverages?

6 A. As we discussed earlier when you weren't here,  
7 that there were a couple of investors that asked for a  
8 balance sheet or different documents. So we never had a  
9 packet of, you know, information we were out pitching to  
10 everybody. We had an executive summary, which spoke  
11 really about to the strategy, the brands, the industry,  
12 what we were doing and potentially a pro forma.

13 It depended which one you were looking at. If  
14 an investor came back to us and said, you know, I would  
15 like to see a balance sheet, a cap table, whatever else  
16 it might have been that they wanted to see, we would  
17 produce those documents as needed.

18 Q. Okay. We will hand you Exhibit 3. You can  
19 just go on to it. Similar questions, do you recognize  
20 what is marked as Exhibit 3? At the top it says Shadow  
21 Beverages and Snacks balance sheet as of December 31st,  
22 2014.

23 A. Uh-huh.

24 Q. And down at the bottom of the page is SHADOW  
25 5483. Go ahead and look at the second page of that.

1 Again, sort of looking at retained earnings and net, in  
2 this case it shows a net in this case negative  
3 4.9 million. Again, I'm wondering if this net income,  
4 this negative income was disclosed to investors of  
5 Shadow Beverages.

6 A. Again, it would be, to the best of my  
7 knowledge, anybody that asked for one, they were given  
8 one, but it wasn't necessarily a document that we had in  
9 a packet to speak to investors.

10 Q. Okay. So it is fair to say it wasn't  
11 volunteered to people that lent money or invested in  
12 Shadow?

13 A. No, it was not part of the packet.

14 Q. Only if they asked and requested it?

15 A. Yeah, yeah.

16 Q. So there could have been people that invested  
17 or lent money Shadow that didn't know about this balance  
18 statement? Sorry, this balance sheet. I misspoke.

19 A. I don't believe that anybody would have lent  
20 money without knowing the prior year history, so  
21 depending when they might have invested money.

22 But everybody knew that Shadow was not at a  
23 breakeven and that we were still at a cash burn and that  
24 we were either looking for money or financing to build  
25 onto the projects or to the distribution agreements we

1 just signed. But there would be nobody that lent money  
2 that thought differently that Shadow was a profitable  
3 company. Everybody knew that we were start-up, that we  
4 were not cash flow positive yet, that we had lost money  
5 the previous three years.

6 Did they get this exact document? Some  
7 probably didn't and some did. But the statement would  
8 be fair to say that everybody knew we were a start-up  
9 company and that we were not cash flow positive.  
10 Everybody knew that.

11 Q. That was disclosed to them?

12 A. Yes.

13 MR. MILLECAM: Let me go ahead and take those  
14 exhibits from you. I have no further questions.

15

16 EXAMINATION CONTINUED

17 BY MR. KITCHIN:

18 Q. Who were the -- what functions did the board  
19 perform at Shadow Beverages?

20 A. What functions did the board perform?

21 Q. What did the board do?

22 A. Well, we had, you know, quarterly calls and  
23 calls, you know, monthly if a decision needed to be  
24 made. Pretty much everybody was an active board member  
25 or kind of a working member, even Brian Charneski, not

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1 an executive of Shadow but he was a distributor. So he  
2 owns a bottling company that buys product from Shadow.

3 The only one that probably was not, you know,  
4 kind of active was in those last ones, was Doug  
5 Iannarino. And Doug was a VP of finance from PepsiCo  
6 that retired that would assist us and Josephine on  
7 accounting principles, the balance sheet. We have  
8 this -- he was investigating intangible assets for us.  
9 He was doing those kind of things.

10 So we would open up a board call, just similar  
11 to board meetings. And the agenda was prepared. We  
12 talked about current business. We talked about, and  
13 again, documents, you have seen the board agendas,  
14 fairly, you know, open-ended talking about where we were  
15 going to go, who was doing what, where the risks were.  
16 Votes happened as needed if we were going to bring a new  
17 member on, or look at a new project. We were always  
18 looking at new brands to bring in to leverage against  
19 the operating system we had. So there was always lots  
20 of discussion around new brands. Does this make sense?  
21 What does the P&L look like, you know, how was it  
22 accretive to what we were doing, what is the risk point  
23 to what we brought in.

24 Q. How was the board involved in the fundraising  
25 process?

1 A. In the fundraising process, I would say of  
2 course they knew, the board approved kind of what we  
3 were going after. Right? So up to this last equity  
4 tranche from Spyglass, we knew we were selling equity.  
5 That's what we had. The board approved that. We  
6 brought in Spyglass. Everybody was diluted as such.

7 Moving forward, the board knew that the equity  
8 position was going to be very difficult. And the folks  
9 like Carl Marks and CKS advisory gave us direction to go  
10 secure debt versus equity. So the board knew that's  
11 what we were doing. They knew a gentleman, Rick  
12 Peterson, was doing that work for us, because, again, he  
13 came into the company as a consultant and advisor for an  
14 equity firm, a family office up in Scottsdale. So we  
15 had his expertise around trying to help us find the  
16 debt.

17 Q. And did the board approve the debt, including  
18 promissory notes, to individual investors as opposed to  
19 just institutional investors?

20 A. Yes.

21 Q. How did the board monitor fundraising progress?

22 A. I think, again, if you go through the minutes,  
23 you can go through -- fundraising was always part of  
24 the, or financing for the company was always part of the  
25 discussion. They had listed who we were talking to, in

1 what form, either institutional or private lenders.

2 Q. Did the board set any guidelines for what the  
3 company could and couldn't do in terms of finding  
4 investors?

5 A. Not to the best of my knowledge. Guidelines, I  
6 would say no.

7 Q. For example, any guidelines about what kind of  
8 networking was allowed to find investors?

9 A. There was no guidelines on networking. Again,  
10 the principal folks looking for investors was Rick  
11 Peterson; myself; Kevin, a board member; Eric Reinhard,  
12 who was representing Spyglass and how he funded Spyglass  
13 II. So there was no guidelines around the network.

14 Q. For Rick Peterson, did you tell him at any  
15 point that you were an officer of Greentech Mining?

16 A. No. I was never an officer. I would have  
17 never made that comment.

18 Q. Next I am going to hand you --

19 A. Rick Peterson spoke to a couple of the officers  
20 so he would have known. I mean directly the CFO Matt  
21 Neher, he knew who the officers were. He spoke to them  
22 personally.

23 Q. Next I am going to hand you what has been  
24 marked as Exhibit 76, which is a, looks like a table,  
25 No. SHADOW 7186. What is that?

1 A. This is a combined investor equity holder  
2 investment sheet and contact information.

3 Q. Do you know up to what point this is, was  
4 current information?

5 A. I mean it had to have been pretty current.  
6 Looking at kind of the last list of investors, it has to  
7 be current, end of or fourth quarter 2014, fourth  
8 quarter thereof, somewhere around there.

9 Q. Do you know approximately when this would have  
10 been prepared?

11 A. It wasn't necessarily prepared. It was kind of  
12 an ongoing document. If you go to the very front of it,  
13 it is investments made by the initial group back in 2008  
14 when we formed the company. And you can take the list  
15 down. It almost looks to be sequential. I don't know  
16 if it was sorted that way, but anytime money came into  
17 the company, it was logged in this kind of format.

18 Q. And as far as you know, is this a comprehensive  
19 list of every investor in the company?

20 A. To the best of my knowledge, it would have to  
21 be everybody. But I don't believe that it would be  
22 anything different that would match the balance sheet.  
23 So it would have to match the balance sheet, unless  
24 there was somebody missing. But on this kind of a list,  
25 I have no knowledge if there is one missing or if it is

1 100 percent accurate. But it looks to be.

2 Q. Next I am going to hand you what has been  
3 marked as Exhibit 77, Shadow Beverages and Snacks  
4 Offering Summary, SHADOW 7582. What is that?

5 A. This would have been at the very early stages  
6 in 2009, or 2008 and '9, was one of the first offerings  
7 we did. I think this was the offering for Allen Hall  
8 where units were being sold at 70 cents -- at a dollar  
9 and then we made an adjustment to this offering and they  
10 were being sold at 76 cents, because we added more, we  
11 added additional shares. So the document was one used  
12 in the early offerings of the company.

13 Q. The 76 cent shares, would that have been a  
14 second PPM or just an amended version of this?

15 A. It is an amended version of this.

16 Q. And was this ever fully subscribed for the  
17 500,000 units?

18 A. Yes.

19 Q. How did the subsequent PPMs differ from this  
20 one?

21 A. Well, you have a document of the one for  
22 Spyglass. We just reviewed -- no, we didn't review  
23 that. We just looked at the operating agreement that  
24 included that. So it is very similar but more specific  
25 to what we were trying to accomplish. So the units and

1 price would have changed dramatically and they became  
2 more comprehensive.

3 You can see this was a, when we started, a  
4 smaller version. And you look at the Spyglass amended  
5 or final amended operating agreement, and the offering  
6 that they -- that we presented to them is a lot more  
7 detailed than this.

8 Q. When you mentioned the three PPMs, was one of  
9 those three the one you are mentioning that's specific  
10 to Spyglass?

11 A. Yes.

12 Q. I see. So for other investors beyond Spyglass,  
13 there were only two PPMs over the time?

14 A. Correct.

15 Q. Next --

16 A. To the best of my knowledge. There was two,  
17 but there might have been an amendment, but the point is  
18 correct.

19 Q. Next I am going to hand you what has been  
20 marked as Exhibit 78, an employment agreement,  
21 SHADOW 4555. And this is Rick Peterson's employment  
22 agreement, correct?

23 A. It looks to be, correct, yes.

24 Q. On the first page, under the section Duties, it  
25 says the employee shall serve as the EVP of business

1 development. What were his duties and responsibilities  
2 as the EVP of business development?

3 A. Well, Rick's background, as I mentioned earlier  
4 to you, was he was a PepsiCo employee and then went to  
5 Sara Lee with a couple of the other executives of  
6 PepsiCo. He primarily worked in the convenience and gas  
7 channel. That's what he did for Pepsi and that's what  
8 he did with Sara Lee. So he had a vast network of  
9 relationships in the convenience and gas channel, you  
10 know, 7-Eleven, Mobils, those kinds of customers. His  
11 role was to help us develop business within that context  
12 of the channel that we refer to as convenience and gas  
13 and the context of his network.

14 Q. Go ahead, sir.

15 A. As we listed here and spoke earlier, Rick also  
16 had at least two other businesses that we know of that,  
17 you know, were openly spoke about, which was the vodka  
18 company that I think he sold, he had kind of a real  
19 estate venture group that he was working with, and then  
20 he was raising capital for other companies as well. And  
21 we listed that in there, he may devote a portion of his  
22 energies to other businesses and interests.

23 Q. Next I am going to hand you what has been  
24 marked as Exhibit 79, a finder's fee agreement,  
25 ACC 438.026. Do you know what that is?

1           A.       Yeah. This is what is again earlier, in our  
2 earlier discussion, where we got Rick from, or how he  
3 entered into our office as a financial advisor. We  
4 interpreted that he was a licensed broker. And we  
5 agreed, as a licensed broker, like we would with other  
6 licensed brokers, Carl Marks or anybody else, that there  
7 would be a finder's fee for bringing in capital. That's  
8 pretty normal if you are a licensed broker.

9                   He brought this and said to me, and said, hey,  
10 you know, we never talked about my fee agreement, we  
11 need to get this signed. And I am a little surprised it  
12 is not -- yeah, it is dated 7/12 when he first came on.  
13 So he introduced him -- and I apologize. I forget the  
14 name of the family office in Scottsdale, but he came in  
15 as their financial advisor. So we believed that he was  
16 a broker. And we never asked for a license. I didn't  
17 ask for a license. I didn't ask for documentation. But  
18 as any, again, as any other broker, we would agree there  
19 would be a finder's fee as a part of it.

20                   When he then asked, more recently, when he  
21 pressed for I haven't got paid and I should get paid  
22 this amount, we said, okay, in order to do that, you  
23 need to bring us your license, your broker license so  
24 that we can be sure we are on top of it. And that was  
25 brought to our attention, I believe, during a board

1 meeting and one board member that said, you know,  
2 we need his license to be filed with any commission that  
3 we are going to pay him. And at that point we were  
4 notified by Rick that he didn't have a license and he  
5 was not a licensed broker to take those fees. And  
6 that's when we agreed if you are not licensed it is  
7 illegal for us to pay you.

8 Q. Turning back to Exhibit 78 for a moment, the  
9 first line of that says that the employment agreement is  
10 dated July 1st, 2012, which is the same date as the  
11 finder's fee agreement.

12 Why would they -- why are these separate  
13 documents if they were executed on the same dates? Why  
14 isn't the finder's fee agreement part of the employment  
15 agreement?

16 A. Well, this employment agreement, as you can  
17 tell, has Shadow's logo on this. This was our document  
18 that we sit down to discuss. He brought this document  
19 to us. This is not a Shadow document of any sort, which  
20 would be probably normal in the context of a broker is  
21 going to bring his own agreement to you. We don't  
22 supply broker agreements in the file and say here, use  
23 this one. So he brought this broker agreement to us.

24 Q. Was it Peterson who initially requested that he  
25 be eligible for commissions?

1 A. To the best of my knowledge, that's how the  
2 conversation went, yeah. He wanted additional payment  
3 because, again, you know, we had a, at this time, a very  
4 low base pay for anybody working there.

5 Q. And just to clarify, the commissions weren't  
6 something that the company offered on its own initiative  
7 but something that he requested?

8 A. Uh-huh.

9 Q. Next I am going to hand you what has been  
10 marked as Exhibit 80, finder's fee agreement, No.  
11 SHADOW 6405. Do you know what that is?

12 A. Yeah. This would be -- I mean Troy is a broker  
13 that Rick brought to us and somebody that he knows in  
14 his broker agreements that was -- again, this was all  
15 under Rick's umbrella that, work that he was doing. He  
16 went out and said I have a guy that Troy -- I probably  
17 met Troy two or three times. He came to the office. We  
18 presented our business model, executive summary. He is,  
19 at least represented himself as, a financial advisor to  
20 a high wealth or high net worth individuals that were  
21 looking to place investments, and that he would do a  
22 broker agreement between him and Shadow. So typical  
23 broker agreement, and we agreed to it.

24 Q. Do you know if he ever sought out any  
25 investors?

1 A. He did. He did make a couple presentations on  
2 our behalf. He did bring a couple guys to the office  
3 that we presented to.

4 I went to his office to present to a couple  
5 folks that he had that were in the natural gas business  
6 for vehicles. And they were trying to get our  
7 distribution network of Pepsi bottlers to convert.

8 So what they really wanted from us, they would  
9 make an investment in Shadow if we got all their  
10 bottlers to convert to their natural gas truck  
11 investment. And we couldn't make a deal there because  
12 we don't, I mean they are investors of ours but we don't  
13 invest -- we don't go tell them what to do with their  
14 businesses. So we couldn't do that.

15 But Troy is an individual around town that has  
16 a huge network of folks that he is in the investment  
17 world.

18 Q. Do you know if he offered or brought the  
19 investment to people beyond his own circle of clients?

20 A. I wouldn't know that. I don't know what his  
21 list of clients looked like. He wouldn't share that  
22 with me for obvious broker reasons. He wouldn't want us  
23 to go direct. So I have no idea who he would have  
24 presented to.

25 Q. Did the company impose any requirements on him

1 that he limit his presentation to his own clients?

2 A. No.

3 MR. MILLECAM: I am going to step out here.

4 BY MR. KITCHIN:

5 Q. Next I am going to hand you -- we will skip  
6 that. I am going to hand you what has been marked as  
7 Exhibit 82, a General Nutrition Corporation versus  
8 Shadow Beverages and Snacks judgment, ACC 464. What is  
9 that?

10 A. This is when Tom Dowd, you know, our partner at  
11 GNC, left his position. They agreed they couldn't  
12 support the marketing side of it anymore. And it even  
13 got to the point they weren't going to carry the product  
14 in their stores.

15 We cancelled. We owed them roughly through  
16 that quarter, and then extending on to product we had in  
17 the marketplace, probably a bill somewhere, whatever the  
18 balance sheet is, \$200,000, and I am using rough numbers  
19 again, not specifics, to pay off. And they wanted the  
20 claim, similar to American Outdoorsman and some of these  
21 licensing agreements, that they wanted the full  
22 royalties of the license for the time period we had. So  
23 we had seven years. They wanted all seven years royalty  
24 payments made.

25 We filed against them again through court of  
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1 Pennsylvania that they took away the license, the  
2 agreement was cancelled, we owed them the money that we  
3 owed them and we weren't going to pay the 1.4, which  
4 would have been the remaining seven years of the  
5 agreement. And we got into, you know, legal attorneys  
6 back and forth, back and forth.

7           And this was very similar to American  
8 Outdoorsman, where the judge didn't like having this in  
9 her court and she placed, I don't know the right term,  
10 a -- it is not a default judgment, but a something  
11 against us. And this is one, another one that in  
12 June we had a settlement agreement with GNC and their  
13 legal counsel for \$200,000.

14           Q.     June of 2015?

15           A.     Uh-huh.

16           Q.     Does this appear to be an accurate copy of the  
17 judgment from this case? I am not sure if you have seen  
18 it before.

19           A.     I wouldn't know. I mean I know the document we  
20 have. I don't know if this is an accurate copy. It  
21 looks to be accurate but I don't know that for sure.

22           Q.     The \$1.4 million sum, is that consistent with  
23 what was involved in the case?

24           A.     That was their seven-year royalty earnings if  
25 the program would have stayed in place, correct.

1 Q. And the second half of the first line, well, I  
2 guess the whole line says: Defendant Shadow Beverages  
3 and Snacks, LLC, having failed to plead or otherwise  
4 defend in this action...

5 Why didn't the company defend the action or  
6 file any pleadings in this case?

7 A. It was all a matter of funds. We didn't have  
8 the attorney funds. And our attorney, even listed on  
9 our balance sheet today, we still owe professional fees  
10 of attorneys. And we didn't have the cash flow or the  
11 resources to be able to go to Pennsylvania court and  
12 hire an attorney in Pennsylvania court to go fight this  
13 for us.

14 Q. Next I am going to hand you what has been  
15 marked as Exhibit 83, a Shadow Beverages and Snacks  
16 Business Model Opportunity Assessment, ACC 47. Do you  
17 know what that is?

18 A. Yeah. It would be, you know, an exhibit that  
19 we highlighted our strategy and what we were trying to  
20 accomplish at Shadow.

21 Q. Is this an example of what you described as an  
22 executive summary earlier?

23 A. Uh-huh.

24 Q. This is what -- this is the form that an  
25 executive summary would take?

1 A. Our executive summary did, yes.

2 Q. And --

3 A. This form.

4 Q. And browsing through it, does this appear to be  
5 a legitimate Shadow Beverages document?

6 A. Yeah, I mean Shadow headlines, highlights what  
7 we were doing with the brands. Our brands of GNC, No  
8 Fear, WheyUP, and Mor, those are our brands. Hungry  
9 McGee and Faveo, at the time we had agreements with  
10 every one of those as stated, joint venture agreement,  
11 joint venture agreement, a JV, acquired trademark, a  
12 ten-year licensing agreement, and then currently under  
13 discussion with GNC continued agreement. So that would  
14 be accurate, all those listed there are accurate  
15 comments on those brands.

16 Q. So this is, the cover page is dated March 2014.  
17 And then on page 3, which is ACC 50, the first, under  
18 GNC Beverages, the first bullet point says: Currently  
19 under discussion with GNC to continue agreement.

20 Was there, was GNC entertaining or discussing  
21 continuing the agreement even after they had sued you at  
22 this point?

23 A. Yes. They actually were discussing with us,  
24 and a couple different reasons. One, the bottle mold  
25 that you see there, which is a, it is kind of like the

1 Cadillac of bottles. It is not a regular bottle that  
2 you would see in a marketplace. And what you don't see  
3 there, it has GNC embossed in it. And it is a mold that  
4 we have, we had. So we were in discussions with GNC,  
5 still even after the judgment, of them taking that  
6 bottle mold from us, us helping them fill it with  
7 different product.

8 So we had some assets still that we felt from  
9 GNC that, one, we could agree to and their counsel was  
10 very agreeable. He was like, look, you guys aren't  
11 defending this, we filed, you owe us 250,000, let's  
12 figure out how we are going to make this work. We were  
13 like you can have the bottle mold, we will give you  
14 200,000 as late as, again, this year in June.

15 We had a settlement agreement with their legal  
16 counsel that says, you know, 1.7. Where are you going  
17 to get 1.7 or 1.4? We will agree to X and we can give  
18 you the bottle mold and they can try and figure out if  
19 they are still going to move forward with it.

20 So there is, there has been ongoing  
21 discussions, current discussions. It was happening in  
22 June of 2015.

23 Q. The discussion you mentioned at the time was  
24 basically a settlement agreement, but which they would  
25 buy back the mold. Were they still entertaining a

1 licensing agreement?

2 A. Yeah, I would say. Keep in mind at GNC there  
3 was always, there were two groups that we were always  
4 discussing with. One was business content with business  
5 folks on how to continue to build their brand name and  
6 offer different beverages and products. And the other  
7 group was the legal counsel, right, those guys that said  
8 you owe, and they -- so we were having discussions on  
9 both sides of the fence, on the business side how could  
10 we continue to help them.

11 They had a couple other product formulations  
12 that they wanted to put in the marketplace. They  
13 absolutely loved the GNC proprietary bottle mold. So we  
14 were having discussions on do we help them with that.  
15 Meanwhile, on the legal side, we are having discussions  
16 on you know what, will you settle for how about if we  
17 give you the bottle mold, if the business group, you  
18 know, decides that they want that, and what is the value  
19 of that, and then how can we help you with development  
20 or contract manufacturing.

21 So discussions were happening on both sides,  
22 with the legal side -- it started to end on the business  
23 side, again, when GNC continued to say we are not going  
24 to do beverages, we are going to focus on our retail  
25 business and getting that right. And then it started to

1 move more towards just the legal group, and those  
2 discussions being as simple as, look, here is what we  
3 have, we will give you 100,000 in cash and we will give  
4 you 2 -- or 100,000 in stock. And those guys go, okay,  
5 we will settle for that, what else are we going to do.  
6 Those were the discussions being had at that time.

7 Q. And can you turn to ACC 55, which is the eighth  
8 page but doesn't have an 8 on it.

9 A. Yeah.

10 Q. And under the management team summaries, under  
11 Finance and Administration Team, it says Rick Peterson,  
12 slash, SVP Capital Acquisition. Does that mean senior  
13 vice president and capital acquisition?

14 A. Uh-huh.

15 Q. Why would he, why would he have that title as  
16 opposed to the Executive VP of Business Development  
17 title from before?

18 A. It was a title that he actually had requested  
19 and was balancing. Because when he went to talk to his  
20 network of this convenience group of guys, his business  
21 card needed to say he was a business development guy.  
22 When he went to talk to a finance group, he didn't want  
23 to show that, you know, business development because  
24 Rick did have that multidimensional: I was in beverages  
25 for, whatever the number is, 25 years, and I moved into

1 the finance room for the past three years, and I have  
2 raised capital and I know what I am doing in the capital  
3 world. So he actually wanted his title to be capital,  
4 have something to do with capital or finance. And that  
5 was kind of the title we came up with.

6 Q. Next I am going to hand you what has been  
7 marked as Exhibit 84, another Shadow Beverages and  
8 Snacks Business Model Opportunity Assessment,  
9 SHADOW 5150. Can you turn to the last page, which is  
10 page 10, SHADOW 5160.

11 A. Okay.

12 Q. And then, so this one is, from the first page,  
13 December 2014. Can you also then pull out the  
14 March 2014 version on the final page, page 9.

15 A. Okay.

16 Q. So there is a table of three-year financial  
17 projections. And the revenue and net profit figures  
18 historical for 2013 are different between the two  
19 different versions of this document and 2014. Why would  
20 those have changed?

21 A. They would have changed, you see COGS were the  
22 same, expense was the same, and our revenue was  
23 different.

24 Q. Right. It appears to be 4,923 versus 5,923.

25 A. So the reason those changed is, we had a little

1 bit, through our discussions with Henry & Horne and then  
2 our accountant that did the review, in our accounting  
3 system, in our invoice system, it is very typical to  
4 what Pepsi and Coke do. Because we know that we have a  
5 wholesale price and then we have either a discount price  
6 dependent on what tier group you are. And then you had  
7 either promotional spending or whatever marketing funds.  
8 And then you got to kind of a gross revenue number. All  
9 right? And what we were doing in our system, we were  
10 only putting in our gross revenue. So we were not  
11 putting in wholesale revenue.

12 So when we started to look at the business and  
13 through this accounting, and some of it was, quite  
14 frankly, again, driven by Bob Korte not coming from the  
15 beverage business, we were from the beverage business,  
16 our bottlers looked at what is your wholesale price and  
17 what is your net revenue. That's how we get to -- and  
18 what is your gross revenue. And wholesale always had  
19 this gap between what tier you were at because it  
20 accounted for some of the intangible marketing expenses  
21 or how to get product to market that we were always --  
22 so we kind of had two gross. And that's why only the  
23 revenue number is different.

24 Our cost of goods, that wouldn't have changed.  
25 Right? That's fixed. And then our expenses, that was

1 fixed. There was never anything different. So what we  
2 were projecting in this three-year projection on  
3 whatever document you gave me, the second one, was our  
4 gross revenues. We went back and did some research and  
5 we looked at PepsiCo, we looked at Monster, we looked at  
6 Rock Star, and we looked at new companies like Kona Red,  
7 which was a start-up company. And everybody else was  
8 using the metric of gross revenue or wholesale, and we  
9 were not. We were using a number below it.

10 So at that point we opted that, in order to be  
11 consistent with what everybody else is seeing, we should  
12 be using a wholesale price.

13 If you were to go back and look at some of the  
14 documents in 2009 and '10, we had wholesale pricing  
15 there. And that was really predicated to -- I required  
16 that, because my experience, again, with PepsiCo and  
17 leading businesses like Costco or a general manager of  
18 one of the facilities, we were always based off of  
19 wholesale pricing. That's what our revenue was designed  
20 around. And then the discounts and allowance fed off  
21 that. So this was absolutely just a change in how we  
22 were going to account for gross revenue.

23 Q. And the change in accounting would have raised  
24 or lowered the apparent revenue figure?

25 A. It would have raised the revenue figure because

1 we were going back to wholesale.

2 Q. But comparing these, it looks like the  
3 March 2014 version has the higher revenue figure and it  
4 is the December one that has the lower figure.

5 A. Yeah. So that's where we were battling between  
6 those two at this point in time, of what we were going  
7 to account for. And we hadn't really gotten a ruling.  
8 Because there is implications on that, too, the ruling  
9 from Henry & Horne, our accountant and tax position, on  
10 what we were going to be recording. So we kind of had  
11 two different revenue projections. One was gross. And,  
12 you know, we tried to speak to that whenever anybody  
13 said exactly what is your revenue number. But everybody  
14 kind of focused on what is your net profit and where  
15 were you going with this profit and what are you  
16 forecasting. And we were saying here is what business  
17 we have projected, here is our pro forma.

18 This is right in the middle of the Sysco  
19 debacle that we talked about, 2014. And we launched,  
20 produced, and did all those things. And that's why the  
21 numbers changed dramatically from we thought we were  
22 going to lose 1.5 and we ended up losing 2.5.

23 Q. Why is it that the change in the figures is  
24 exactly 1 million? It is still, you know, 923 in the  
25 hundreds place.

1 A. What is your question again?

2 Q. Between 5,923,000 and 4,923,000, it is weird  
3 that the difference is exactly 1 million. Why would  
4 that be? Is that just a strange coincidence?

5 A. I am not sure. I am not sure what that means,  
6 why that would be that way, if it is a strange  
7 coincidence or if something was affecting it.

8 You know, it -- clearly we were speaking to  
9 this as financial projections. We were not claiming  
10 that they were actuals or, you know. In this, it was a  
11 discussion point of where we were going. Producing  
12 balance sheets and financial statements would have been  
13 the next step. If somebody said I like this, I see  
14 these trends, I want to see the detail, we would provide  
15 it.

16 Q. But in these cases, these are the 2013 figures.  
17 These are actually historical, not projections, correct?

18 A. Well, in March I believe it was still a  
19 projection because we hadn't finalized and closed the  
20 books and filed taxes yet. So it was still a  
21 projection.

22 MR. KITCHIN: All right. Well, let's go off  
23 the record.

24 (The examination under oath was recessed at  
25 2:48 p.m.)

1 STATE OF ARIZONA )  
COUNTY OF MARICOPA )

2

3 BE IT KNOWN that the foregoing proceedings were  
4 taken before me; that the witness before testifying was  
5 duly sworn by me to testify to the whole truth; that the  
6 foregoing pages are a full, true, and accurate record of  
7 the proceedings all done to the best of my skill and  
8 ability; that the proceedings were taken down by me in  
9 shorthand and thereafter reduced to print under my  
10 direction.

7

8 I CERTIFY that I am in no way related to any of  
9 the parties hereto nor am I in any way interested in the  
10 outcome hereof.

9

- 10  Review and signature was requested.
- 11  Review and signature was waived.
- 12  Review and signature was not required.

11

12 I CERTIFY that I have complied with the ethical  
13 obligations set forth in ACJA 7-206(F)(3) and ACJA 7-206  
14 (J)(1)(g)(1) and (2). Dated at Phoenix, Arizona,  
15 this 20th day of October, 2015.

14



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16

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Colette E. Ross  
Certified Reporter  
Arizona CR No. 50658

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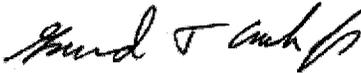
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BEFORE THE  
ARIZONA CORPORATION COMMISSION  
SECURITIES DIVISION

IN THE MATTER OF THE INVESTIGATION)  
OF: ) FILE NO. 8507  
)  
SHADOW BEVERAGES AND SNACKS, LLC. )  
\_\_\_\_\_ )

EXAMINATION UNDER OATH OF LUCIO GEORGE MARTINEZ  
VOLUME II  
(Pages 151 through 252, inclusive.)

Phoenix, Arizona  
November 24, 2015

COASH & COASH, INC.  
Court Reporting, Video & Videoconferencing  
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Prepared By:  
Colette E. Ross, CR  
Certified Reporter #50658

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Phoenix, AZ



## 1 INDEX TO EXAMINATIONS

2	WITNESS	PAGE
3	LUCIO GEORGE MARTINEZ	
4	Examination by Mr. Kitchin Continued	158

5

6

## 7 INDEX TO EXHIBITS

8	NO.	DESCRIPTION	MARKED	IDENTIFIED
9	Exhibit 5	Promissory Note to George Karas, Bates Nos. SHADOW006873, 6874	5	160
10	Exhibit 6	Amendment to Promissory Note, Bates Nos. SHADOW006872	5	162
11	Exhibit 7	Payment Record, Bates Nos. SHADOW006870, 6871	5	163
12	Exhibit 8	Senior Secured Promissory Note, Matthew Murphy, Bates Nos. SHADOW006976-6978	5	164
13	Exhibit 9	First Amendment to Loan Documents, Bates Nos. SHADOW006988-6992	5	167
14	Exhibit 10	Payment Record, Bates No. SHADOW006974, 6975	5	168
15	Exhibit 11	Promissory Note to Brent Tunnell, Bates Nos. SHADOW007280-7285	5	170
16	Exhibit 12	Martinez Guaranty to Brent Tunnell, Bates Nos. ACC000337-341	5	177
17	Exhibit 13	Jones Guaranty to Brent Tunnell, Bates, No. ACC000342-346	5	179

25

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## INDEX TO EXHIBITS

NO.	DESCRIPTION	MARKED	IDENTIFIED
Exhibit 14	Promissory Note to Brent Tunnell, Bates Nos. SHADOW007294-7296	5	180
Exhibit 15	Term Loan Agreement with Brent Tunnell, Bates Nos. SHADOW007306-7316	5	181
Exhibit 16	Judgment, Bates Nos. ACC000320-322	5	182
Exhibit 17	Covenant Not to Execute, Bates Nos. SHADOW007299-7302	5	183
Exhibit 18	Notice of Wire Transfer, Bates No. SHADOW007317	5	185
Exhibit 19	Promissory Note to Joe Joyce, Bates Nos. SHADOW006829-6831	5	185
Exhibit 20	Promissory Note to Jarus Family Trust, Bates Nos. SHADOW006755-6758	5	187
Exhibit 21	Payment and Performance Guaranty to Jarus Family Trust, Bates Nos. SHADO006771-6779	5	191
Exhibit 22	Payment Record, Bates No. SHADOW006754	5	192
Exhibit 23	Promissory Note to Ashford, Bates Nos. SHADOW006605-6608	5	193
Exhibit 24	Payment and Performance Guaranty to Ashford Insurance, Bates Nos. SHADOW006620-6628	5	197
Exhibit 25	Promissory Note to Ronald Barrett, Bates Nos. SHADOW006374-6376	5	197

1	INDEX TO EXHIBITS			
2	NO.	DESCRIPTION	MARKED	IDENTIFIED
3	Exhibit 26	Promissory Note to Stacey	5	199
4		Gervasi, Bates Nos.		
5		SHADOW006340-6342		
6	Exhibit 27	Maricopa Superior Court	5	202
7		Default Judgment, Bates		
8		No. ACC000439		
9	Exhibit 28	Promissory Note to	5	203
10		Spyglass, Bates Nos.		
11		SHADOW007642-7648		
12	Exhibit 29	Loan Agreement with	5	205
13		Spyglass Capital Partners,		
14		Bates Nos. SHADOW007635-7641		
15	Exhibit 30	Trademark Collateral	5	207
16		Assignment and Security		
17		Agreement, Bates Nos.		
18		SHADOW007650-7656		
19	Exhibit 31	Convertible Promissory Note	5	209
20		to Bradie James Bates Nos.		
21		SHADOW007632-7637		
22	Exhibit 32	Limited Security Agreement	5	216
23		with Bradie James, Bates Nos.		
24		SHADOW006724-6727		
25	Exhibit 33	Promissory Note to Pelican	5	217
26		Group, Bates No.		
27		SHADOW007508		
28	Exhibit 34	Promissory Note to	5	219
29		Pelican Group, Bates		
30		Nos. SHADOW007506, 7507		
31	Exhibit 35	UCC Financing Statement,	5	220
32		Bates Nos. ACC001079, 1080		
33	Exhibit 36	Factoring Agreement, Bates	5	222
34		Nos. ACC000834-850		
35				

1  
2  
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4  
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8  
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## INDEX TO EXHIBITS

NO.	DESCRIPTION	MARKED	IDENTIFIED
Exhibit 37	Promissory Note to Canis Major Development, Bates No. SHADOW007360-7361	5	223
Exhibit 38	Limited Security Agreement with Canis Major Development, Bates Nos. SHADOW007362-7365	5	226
Exhibit 39	Payment and Performance Guaranty to Canis Major Development, Bates Nos. SHADOW007353-7359	5	226
Exhibit 40	Settlement Agreement with Dave Kelly, Bates Nos. SHADOW007344-7347	5	227
Exhibit 41	Promissory Note to Rick Andersen, Bates Nos. SHADOW006358, 6359	5	232
Exhibit 42	Limited Security Agreement with Rick Andersen, Bates Nos. SHADOW006360-6363	5	234
Exhibit 43	Maricopa County Superior Court Default Judgment, Bates Nos. ACC000456, 457	5	235
Exhibit 44	Promissory Note to Bradley Fagan, Bates Nos. SHADOW006568, 6569	5	235
Exhibit 45	Limited Security Agreement with Bradley Fagan, Bates Nos. SHADOW006583-6586	5	238
Exhibit 46	Promissory Note to Bradley Fagan, Bates Nos. SHADOW006574, 6575	5	239
Exhibit 47	Settlement Agreement with Bradley Fagan, Bates Nos. SHADOW006564-6567	5	239

1	INDEX TO EXHIBITS			
2	NO.	DESCRIPTION	MARKED IDENTIFIED	
3	Exhibit 48	Maricopa Superior Court Final Judgment, Bates Nos. ACC000448, 449	5	240
4				
5	Exhibit 49	Loan Agreement with Brown Bottling Group, Bates Nos. SHADOW007338, 7339	5	242
6				
7	Exhibit 50	(Not Utilized)	5	--
8	Exhibit 51	Loan Agreement with Walton Beverage Company, Bates Nos. SHADOW007895, 7896	5	245
9				
10	Exhibit 52	(Not Utilized)	5	--
11	Exhibit 53	Loan Agreement with Catherine Leyen, Don Johnson, Bates Nos. SHADOW006897, 6898	5	246
12				
13				
14				
15				
16				
17				
18				
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1 EXAMINATION UNDER OATH OF LUCIO GEORGE MARTINEZ  
2 was taken on November 24, 2015, commencing at 9:00 a.m.,  
3 at the Arizona Corporation Commission, Securities  
4 Division, 1300 West Washington Street, Phoenix, Arizona,  
5 before COLETTE E. ROSS, Certified Reporter No. 50658 in  
6 and for the County of Maricopa, State of Arizona.

7

8 APPEARANCES:

9

For the Securities Division:

10

Mr. Paul Kitchin  
Enforcement Attorney  
1300 West Washington Street, Third Floor  
Phoenix, Arizona 85007

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ALSO PRESENT:

16

Mr. Mike Brokaw, Special Investigator, Securities  
Division

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1 LUCIO GEORGE MARTINEZ,  
2 called as a witness herein, having been first duly sworn  
3 by the Certified Reporter to speak the truth and nothing  
4 but the truth, was further examined and testified as  
5 follows:

6

7

EXAMINATION CONTINUED

8 BY MR. KITCHIN:

9 Q. This is part of an inquiry by the Securities  
10 Division of the Arizona Corporation Commission in the  
11 matter of Shadow Beverages and Snacks, LLC and Lucio  
12 George Martinez to determine if there has been full  
13 compliance with the Securities Act of the State of  
14 Arizona. The information obtained today may reveal  
15 violations of statutes outside the Securities Act.

16 Mr. Martinez, you have the right to refuse to  
17 answer any questions if you think the answer may tend to  
18 incriminate you. You have the right to refuse to produce  
19 private papers you feel may incriminate you. You do not  
20 have the right to refuse to produce corporate papers based  
21 on any claim of self-incrimination.

22 Do you understand you still have a right to be  
23 represented by counsel?

24 A. I do.

25 Q. And you would like to go forward without an

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1 attorney for now?

2 A. I do.

3 Q. We will assume for now that you are waiving your  
4 right to counsel. If at any time you feel you need legal  
5 counsel, tell me immediately and we will stop and allow  
6 you to get counsel.

7 A. Okay.

8 Q. The reporter will go off the record at my  
9 direction. If you would like to go off the record, tell  
10 me, and I will try to accommodate you.

11 Since your testimony is being recorded by a  
12 reporter, please respond verbally as opposed to nodding or  
13 shaking your head. Also please let me finish asking a  
14 question before you answer so there will not be two people  
15 speaking at once. If you don't hear a question or don't  
16 understand the question, say so, and the reporter will  
17 repeat it or I will explain the question further.

18 And you are under oath, so any false statements  
19 you make may be criminally prosecuted as perjury.

20 Do you understand what I have explained so far?

21 A. I do.

22 Q. Do you have today any medication or physical  
23 condition that would prevent you from hearing or  
24 understanding my questions?

25 A. I do not.

1 Q. First I am going to hand you what has been  
2 previously marked as Exhibit 5, a promissory note to  
3 George Karas, SHADOW -- Bates No. SHADOW 6873. Do you  
4 know what this is?

5 A. Yeah, yeah.

6 Q. And on the second page, this is a note that you  
7 signed, correct?

8 A. Correct. That's my signature.

9 Q. Who communicated with Mr. Karas about this  
10 promissory note?

11 A. That would have been me.

12 Q. Anyone else?

13 A. Yeah. That would have been other members of the  
14 board or directors at the time. This is back in 2009  
15 and prior to George Karas passing away.

16 Q. Do you recall in particular who would have spoken  
17 with him?

18 A. At the time I don't recall exactly who was at  
19 the table when George came in to discuss the matter.

20 Q. But there was a meeting with multiple people?

21 A. Yes.

22 Q. Were any Shadow documents given to Mr. Karas?

23 A. I don't recall exactly which documents, business  
24 documents of what we were doing or what the business  
25 model was, but George absolutely knew what we were doing

1 from a business standpoint -- this was the early stages  
2 of Shadow, 2009 -- of a couple different plans that we  
3 were developing.

4 And at the time, George Karas was employed by  
5 Pelican Communications, or the Pelican Group. And the  
6 Pelican Group represents a group of, you would call  
7 them, third-party operators across the country. So  
8 Pelican Group contracts national vending accounts. And  
9 George Karas was a regional director of those national  
10 accounts. And Shadow Beverages was producing products  
11 like Ironclad and No Fear and we were contracting those  
12 beverages with national accounts.

13 So I will give you an example, would be Costco.  
14 Pelican had the contract for Costco vending and the  
15 class would have been vending accounts. And Ironclad  
16 was one of those products that Shadow developed that  
17 belonged in every one of the Costco vending accounts.  
18 George was the regional director that managed all of  
19 those third-party operators that then were required to  
20 follow the sets, the schematics as he referred to them,  
21 to carry Ironclad and sell Ironclad in all those  
22 accounts. So George was very well familiar with the  
23 business model, because he was part of the business and  
24 the everyday business model.

25 So what documents, to answer your question

1 specifically, I don't know exactly what documents he  
2 received regarding Shadow but George was intimately  
3 involved in Shadow because he was kind of a business  
4 partner representing the Pelican Group.

5 Q. Next I am going to hand you what has been marked  
6 as Exhibit 6, an amendment to a promissory note, dated  
7 March 19th, 2012, Bates No. SHADOW 6872. Do you know what  
8 this is?

9 A. Yeah. It looks like -- I don't have the dates  
10 exactly, I am not sure when George passed away. So it  
11 was signed by the estate of George. So George did pass  
12 while he was an employee battling cancer. So he did  
13 pass. And we extended the note through his estate  
14 group, which is his children, Stacey and a couple sons.  
15 But it was just an extension of his agreement.

16 Q. And under Recital No. 3, it says no principal has  
17 been paid on the note and the entire 50,000 remains  
18 outstanding. Was that correct at the time?

19 A. Uh-huh.

20 Q. And this is your signature on the amendment?

21 A. It is.

22 Q. What were the full names of his surviving  
23 children?

24 A. Well, Stacey is the daughter that lived here in  
25 Arizona. And he had two sons that lived in Colorado.

1 And I don't remember, I would have to look at their  
2 names. I don't remember their names.

3 Q. Do you know if you have any of the contact  
4 information for any of them?

5 A. Oh, yeah, we definitely have the contact  
6 information in all the records, yeah. I attended the  
7 funeral, so I know the children. I just don't recall  
8 right off the top of my head.

9 Q. Next I am going to hand you what has been marked  
10 as Exhibit 7, a payment record, Bates No. SHADOW 6870. Do  
11 you know what this is?

12 A. Yeah. It looks like that was in March, and then  
13 this looks like that would have been in August. We made  
14 the payment to that, of that promissory note to help  
15 them close their estate that they were trying to close  
16 for the kids.

17 Q. And does the August 15th date of the payment  
18 sound correct?

19 A. To the best of my knowledge. I don't have that.  
20 But I know we worked hard because the kids came to us  
21 and said they were trying to close the estate and divide  
22 up what they had left of George's estate and property.  
23 And this was a key component of their -- what they were  
24 trying to close. So we did everything possible to help  
25 them close that estate.

1 Q. One of the sums is \$4,583.33. Do you know if  
2 that represented a full amount of the interest that was  
3 due at this time?

4 A. Yeah, I would imagine. To the best of my  
5 knowledge that looks like that was the entirety of the  
6 agreement that we had with those guys.

7 Q. Next I am going to hand you what has been marked  
8 as Exhibit 8, senior secured promissory note, Matthew J.  
9 Murphy, Bates No. SHADOW 6976. Do you know what this is?

10 A. Yeah. Matt Murphy is a lender out of Buckeye.  
11 Looks like it was signed by Sam Jones and I. Sam is a  
12 CEO and partner.

13 Q. And on the first page, the fifth paragraph, the  
14 second line says that \$50,000 will be used for purchasing  
15 raw materials necessary to produce Ironclad beverage  
16 products. What does that refer to?

17 A. What does that refer to? We were borrowing the  
18 money for production purposes of the -- Ironclad was an  
19 energy hydration product. So Ironclad is a brand. But  
20 it is just a beverage. We were borrowing money to  
21 produce product, for production needs.

22 Q. And then two paragraphs further, in the second  
23 line it says customer purchase orders will materialize  
24 into approximately 80,000 of cash revenue within the next  
25 60 days. Do you know if that happened as planned?

1 A. This is 2010. I would -- I don't have -- I  
2 would imagine it did but I would have to go back to the  
3 records and pull the purchase orders for those days, for  
4 that time frame. But I would imagine it did. I mean we  
5 were really only producing product for orders that we  
6 had coming in. And this kind of time frame coincides  
7 with the dates of when we had the agreement with  
8 third-party operators to produce product to ship to  
9 distributors. And these third-party operators were the  
10 Costco program that we had in place.

11 Q. Who communicated with Mr. Murphy about this note?

12 A. Well, it looks like both Sam and I were present.  
13 We both signed. So we sat down with, both, Matt for the  
14 purposes of this agreement.

15 Q. And do you know if anyone else talked with him  
16 about the note as well?

17 A. Not specifically. This, you know, would have  
18 probably been another kind of -- we didn't personally  
19 know Matt Murphy. Ron Barrett, who was a kind of  
20 friend, local guy here that knows Matt Murphy, and Matt  
21 is Ron Barrett's financial advisor, Ron brought Matt to  
22 us and said he was looking at investing some money and  
23 putting some money to work. So Matt came to us, sat  
24 down and listened to what we were doing, made the  
25 decision.

1 We didn't know Matt from anybody any  
2 differently, no relationship with Matt personally or  
3 professionally.

4 Q. Do you know what documents, what Shadow documents  
5 were sent to Mr. Murphy before he received the note?

6 A. I don't off the top of my head. It would have  
7 been some of the documents that you were forwarded that  
8 would have been, you know, the descriptors of what  
9 Shadow was all about and who was participating in  
10 Shadow, what the backgrounds were, what our business  
11 strategy was all about, producing, developing new  
12 products, taking them out into the marketplace and the  
13 strategy to exit those plans. It was all pretty simple.  
14 It modified over time when we carried different brands,  
15 but the strategy of the company was always the same.  
16 But the brand names kind of changed as they came and  
17 went. That was always the strategy, incubate and build  
18 new brands.

19 Q. Was Mr. Murphy told whether Shadow had defaulted  
20 on any previous notes?

21 A. I don't recollect if that discussion happened or  
22 not. I don't know if the question came up or if -- I  
23 don't recollect at the time.

24 Q. Do you know if there are any documents that would  
25 help you remember that one way or the other?

1 A. I don't recall that right now. If there are any  
2 documents at this time that we discussed?

3 Q. Or do you know if there is anything that would be  
4 able to jog your memory about whether or not he was told  
5 about any previous Shadow note defaults?

6 A. I do not know that right now at this time.

7 Q. Was Mr. Murphy told about any judgments against  
8 Shadow?

9 A. Yeah, I believe he was aware of that. Because  
10 at the time we had a situation going on with a gentleman  
11 that had put some money in, I don't quite remember his  
12 name, that we ended up settling with. And he was the  
13 guy that owned the TicketStub company here in town. He  
14 was brought to us by Joe Dunnigan. And Matt knew about  
15 that guy because he brought that to our attention  
16 because it was on the file. You could look that up and  
17 see that he had filed against us.

18 Q. Do you know if there were any other judgments  
19 that he was told about?

20 A. I don't recall. I don't think there was any  
21 other judgments at the time or any other legal action  
22 against the company at the time.

23 Q. Next I am going to hand you what has been marked  
24 as Exhibit 9, first amendment to loan documents, Bates No.  
25 SHADOW 6988. Do you know what this is?

1 A. It is an amendment to Matt Murphy.

2 Q. And under the second recital, it says whereas the  
3 principal amount of the senior secured loan is unpaid. Do  
4 you know if that was correct at the time?

5 A. Under what section?

6 Q. Under recitals, on the first page, the second,  
7 the second recital.

8 A. That would have been correct at the time.

9 Q. And on the fifth page, were those yours and  
10 Mr. Jones' signatures?

11 A. Yep. It looks like we both all initial each  
12 page. And this appears to be a document that Matt  
13 Murphy brought to us. Again, Matt Murphy is a financial  
14 advisor. So if this is the document that he brought to  
15 us, those are our signatures, correct.

16 Q. And have you seen Mr. Jones' signature frequently  
17 in the past?

18 A. Correct.

19 Q. So you would be likely to recognize it?

20 A. Correct.

21 Q. Next I am going to hand you what has been marked  
22 as Exhibit 10, a payment record, Bates No. SHADOW 6974.  
23 Do you know what this is?

24 A. Well, it looks like we made a payment to Matt  
25 early in that year for the short-term loan without the

1 interest.

2 Q. Do you know why the interest wasn't paid at the  
3 time?

4 A. Without going through the records, he might have  
5 agreed to carry the interest over into shares of the  
6 company. There is a conversion option. Yeah, there is  
7 a conversion option within the agreement.

8 Q. And turning back to Exhibit 9 for a second, on  
9 the first page under the heading agreement and the  
10 paragraph maturity date, on the second and third lines, it  
11 says that the maturity date is extended until June 28th,  
12 2010. But on Exhibit 10, the payment to Mr. Murphy is in  
13 January of 2011. Do you know why it was paid late?

14 A. Yeah. We actually, when we were -- we had the  
15 agreement completed, but it was, if you go back through  
16 the records, you see that in August of 2011 is when the  
17 largest capital raise through Spyglass, the largest  
18 investment which came into, which was a group of Pepsi  
19 bottlers, that was when that came in, which was through  
20 August. And it took us a couple, 60 days or so to get  
21 all the documents in place and ensure that Spyglass was  
22 comfortable with what notes we were paying off and who  
23 we were paying off and who was getting equity converted  
24 and what loans were being paid off.

25 So we just agreed with Matt that it was going to

1 be the first of the year and he agreed to that. So we  
2 had the money and he knew the loan was being paid off  
3 and he knew what we were doing.

4 Q. On the second page of Exhibit 10, which is SHADOW  
5 6975, there is a payment record to Murphy Capital Advisors  
6 for \$500 for finder's fee. Do you know what that refers  
7 to?

8 A. Yeah. That was his charge. He is a, again, a  
9 capital advisor. He brought two other investors, equity  
10 investors into the company. And he is a broker and  
11 licensed to charge that. So he brought two other folks  
12 in at \$25,000 each. And that was his fee that he  
13 charged for that.

14 Q. Do you recall which two investors those were?

15 A. Burnsy. I would have to get a cap sheet. But  
16 it is Burnsy. They are his, they are his current  
17 clients. He is the advisor. And his clients, David  
18 Burnsy and Richard, I can't quite remember his last  
19 name, but two of his clients, both from Chicago, he  
20 advises their capital for. And then he is, he, again,  
21 he is the advisor. So he brought those two guys in and  
22 they both invested 25,000 into Shadow.

23 Q. Next I am going to hand you what has been marked  
24 as Exhibit 11, a production line promissory note to Brent  
25 Tunnell, Bates No. SHADOW 7280. Do you know what this is?

1 A. Yeah. This is Brent. Brent was the guy that  
2 had the -- when you mentioned earlier about the lawsuit,  
3 at the time was with Brent. And this was part of it.  
4 Brent made a couple different loans to the company in  
5 early 2009 and '10. And they were all paid off.

6 Q. Who communicated with Mr. Tunnell about this  
7 promissory note?

8 A. This was primarily Joe Dunnigan. And Joe was an  
9 officer of the company at the time. I personally or Sam  
10 personally did not know Brent. Brent was a personal  
11 friend of Joe Dunnigan and a business partner.

12 I guess they had been in the, again, ticket  
13 business. He owned TicketStub or one of the ticket  
14 companies here in town. He had sold the ticket business  
15 fairly recently and had some money he was trying to  
16 invest, and, again, friends with Joe Dunnigan, who was  
17 an officer of the company at the time and, as you can  
18 see through the summary, he was one of the early  
19 officers of the company.

20 And Joe brought Brent to the company, who made a  
21 couple different loans. And then his sale to the  
22 company went south and he did not collect his money, and  
23 then he wanted his money back immediately. So that's  
24 what kind of caused a little bit of ruckus between us  
25 and Brent. He filed a lawsuit asking for his money

1 back. And then we were able to make that payment with  
2 the equity that we sold into Spyglass and all these  
3 notes were paid.

4 But Joe Dunnigan brought Brent Tunnell. Again,  
5 I don't even know Brent Tunnell personally.

6 Q. When you say the sale to the company went south,  
7 what does that refer to?

8 A. That is, that, again, that is a -- that is the  
9 ticket company that Brent Tunnell owned. He made a sale  
10 to the company that brought him some cash and there was  
11 another payment coming from the ticket company. And  
12 when that didn't come, he got the company back but then  
13 needed his cash back to get the company running again.

14 And, again, I personally don't know Brent, never  
15 did know Brent. He was a friend of Joe Dunnigan who was  
16 an officer of the company at the time.

17 Q. Do you know what documents were sent to  
18 Mr. Tunnell before he received this promissory note?

19 A. Documents of?

20 Q. About Shadow.

21 A. They again would have been, they would have been  
22 the early documents, would have been the executive  
23 summary and the PPM that was built from Joe Dunnigan and  
24 Ryan Weissmueller and myself and Sam. We were the four  
25 originating partners of the company. And we provided

1 those documents to Brent when we first started.

2           Again, I am sure I sat in the meetings. I was  
3 the beverage guy. Brent -- I am sorry. Joe and Ryan  
4 were not necessarily the beverage guys but they were  
5 kind of the operating guys that were helping us get  
6 started in Arizona. So I sat in on the meetings, I am  
7 sure, and we discussed the strategy with the company,  
8 with the executive summary that we built. And I am sure  
9 we presented them the PPM, which was kind of Ryan's  
10 official document, of bringing money into the company.

11       Q.     Did the company give Mr. Dunnigan any guidelines  
12 on what he was allowed to or required to tell Mr. Tunnell  
13 about Shadow before he received the promissory note?

14       A.     I think, as four officers of the company, we all  
15 discussed what we were accomplishing or, you know, out  
16 to accomplish. I don't recall that there was guidelines  
17 or principles set that he could speak to or of. Those  
18 were all kind of written on the documents that we were  
19 using. The executive summary was the primary document  
20 that we were speaking to, again, which gave the basic  
21 principles of who was involved, our experience, our  
22 contacts, and what we were trying to accomplish with the  
23 company.

24       Q.     Was Mr. Tunnell told about any of, any previous  
25 note defaults by Shadow before he received his note?

1 A. None that I recall. But based on my memory, I  
2 would believe that there were none, because Brent was  
3 one of the earliest kind of note guys that we had. We  
4 really didn't have the use or the need for notes or  
5 money up to that point. We had all kind of put our own  
6 money in. We put some of our own money in and we were  
7 just getting started at the time. Because Brent's money  
8 was for our first two brands, called Ripe and Ironclad.

9 Q. Was Mr. Tunnell told about any judgments against  
10 Shadow before he received this note?

11 A. None that I recall, but I do not believe --  
12 again, I would have to refer the records. There were no  
13 judgments against us. The only one I think we had was  
14 with Brent, if I recall.

15 Q. On the second page, paragraph --

16 A. Are you still on 11?

17 Q. Yes. Second page of 11, paragraph 8, entitled  
18 Issuance of Membership Interest, it says as partial  
19 consideration for the delivery of funds by holder to maker  
20 in connection with this note, maker hereby issues,  
21 transfers and conveys 52,610 of the outstanding membership  
22 interests of maker to holder.

23 Why were membership interests included as a part  
24 of the deal?

25 A. It was, it was just kind of the bonuses, if you

1 will. It was a way of providing warrants in a different  
2 fashion to a loan.

3 And, again, at this time, these documents were  
4 really driven by Joe and Ryan, who were -- we could go  
5 back and reference who the attorney was by this document  
6 number down below, who the attorney was that was  
7 handling this. This was not necessarily my personal  
8 documents. These were -- this reference down on the  
9 left-hand corner would tell us what attorney was  
10 handling this at the time.

11 Q. Including membership interests in the deal, do  
12 you know if that was a request by Mr. Tunnell or something  
13 that Shadow offered on its own initiative?

14 A. I would believe it was -- well, I am not sure if  
15 it was a request or a sweetener. So I am not quite  
16 sure. I couldn't answer that directly of which way it  
17 was. It was probably just a negotiation between the  
18 two.

19 Q. Did Mr. Tunnell ever have any management role in  
20 Shadow?

21 A. Did Mr. Tunnell? Absolutely not, no.

22 Q. On page 4, under the maker's signature, that's  
23 Sam Jones' signature, correct?

24 A. I believe so.

25 Q. Next I am going to hand you what has been marked

1 as Exhibit -- I am sorry.

2 A. I will state that, you know, there was -- Sam  
3 was an officer here. And, you know, he lived in  
4 Connecticut. Right? So he did have an electronic  
5 signature available at the office. And, actually, I  
6 take that back.

7 Back in 2006 or '7, whenever we started, I am  
8 not sure if electronic signatures were always available,  
9 but there was stamped signatures. So even by just  
10 looking at these two signatures I can tell that the  
11 bottom signature is actually one of his personal  
12 signatures, and the top looks like it might have been a  
13 stamped signature. And the stamped signature was always  
14 held by our director of administration, which was Kathy  
15 Reiser, who was the only one who had authorization to  
16 use his stamped signature. That was always held under  
17 lock and key.

18 So that was just kind of our protocol within the  
19 office. If a document, as the CEO, and the office being  
20 here, if she needed to use it, she could use it with his  
21 authorization. But those two signatures look a little  
22 bit different. And I would venture to guess that had  
23 something to do with a stamp or some form of electronic  
24 signature.

25 Q. When Mr. Jones eventually used an electronic

1 signature, do you know who had access to the electronic  
2 signature?

3 A. It would only have been Kathy and him.

4 Q. Next I am going to hand you what has been marked  
5 as Exhibit 12, a guaranty to Brent Tunnell, Bates No.  
6 ACC 337. Do you know what this is?

7 A. Well, this was part of Brent's total deal.  
8 Brent was getting his total money. And I don't recall  
9 his total investment or loan into Shadow. But he did it  
10 in a couple different installments as he was getting his  
11 money from the sale of his company and how he was moving  
12 it over into Shadow.

13 So this looks like another, you know, was a  
14 production loan. The other one looks like it was  
15 just -- well, they were both production lines of credit.  
16 I am not even quite sure why the documents would be  
17 different. They do not look the same.

18 Q. Do you know if this appears to be an accurate  
19 copy of the guaranty to Mr. Tunnell at the time?

20 A. I am sorry.

21 Q. Does this appear to be an accurate copy of the  
22 guaranty document to Mr. Tunnell at this time?

23 A. Yeah. I would -- it came from our files. We  
24 provided this to you. So it came from my office. So  
25 from Kathy's files, we provided this to you. So I

1 would -- seems it would be accurate, absolutely.

2 Q. In this case, this one might not have come from  
3 your files. I am not sure if it is directly from the  
4 company. Without assuming that it is from the company,  
5 does the document itself seem familiar as something you  
6 signed at the time?

7 A. Well, that is my signature. And it is the same  
8 date. And it is for the same purpose.

9 Q. And do you recall there being a personal guaranty  
10 to Mr. Tunnell at the time?

11 A. I do recall that we made the deal and then in  
12 kind of the 12th hour Mr. Tunnell came back and wanted a  
13 personal guaranty. And we agreed to that. And there is  
14 personal guarantees on both sides.

15 Q. And on the fifth page, the signature for Lisa Kay  
16 Martinez, that is her signature, correct?

17 A. Correct.

18 Q. And that's your wife?

19 A. That's my wife.

20 Q. Did you ever personally make any payment to  
21 Mr. Tunnell based on the guaranty?

22 A. I personally?

23 Q. Yes.

24 A. No.

25 Q. Next I am going to hand you what has been marked

1 as Exhibit 13, another guaranty to Mr. Tunnell, Bates No.  
2 ACC 342. Do you know what this is?

3 A. Well, it looks like the same document that is  
4 separated between Sam and Andrea and I and Lisa, versus  
5 the first one, that was combined.

6 Q. And do you recall Sam Jones signing a guaranty  
7 for Mr. Tunnell at this time?

8 A. That is his signature and would be Andrea's  
9 signature, his wife.

10 What does seem a little odd is the numbers down  
11 here below. I don't know where those come from. This  
12 would have been a number that would come from our files,  
13 our attorney files. These, this number, I am not sure  
14 what D804 and where those numbers came from. I would  
15 have to research that.

16 These numbers look like our attorney numbers and  
17 where they come from, and naturally listed that it came  
18 from the fax machine from Shadow. I know these are  
19 Shadow documents, this one. If they, if they asked us  
20 to split these up independently and they sent those over  
21 to us and we agreed to do it, because it looks like the  
22 same, we might have done that. But these numbers  
23 came -- I would have to go back to our files to see if  
24 that's where they came from.

25 Q. At the time when Mr. Tunnell requested the

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1 personal guaranties as you described, did he request a  
2 personal guaranty from Mr. Jones, too?

3 A. Uh-huh. He wanted them from the two of us,  
4 because we had the majority of the company.

5 Q. Next I am going to hand you what has been marked  
6 as Exhibit 14, a promissory note to Brent Tunnell, Bates  
7 No. SHADOW 7294. What is this?

8 A. Well, this would have been the rest of his note.  
9 And, again, there was -- you know, his note would have  
10 been 250,000, if I recall completely what the amount  
11 was, coming in different amounts based on how he was  
12 selling his business. The first amount was at a  
13 different rate because we needed it right away for  
14 production. And then it looks like he had the rest of  
15 it all come in, the other 200,000, in March. So he had  
16 a February amount come in and then in March he brought  
17 the other 200,000 in. And it looks like all the  
18 officers of the company signed for that note, and,  
19 again, guaranteed by Sam and George, who had the  
20 majority of the company.

21 Q. And the first page on the top right corner says  
22 March, blank, 2010. Do you happen to recall approximately  
23 when in March 2010 this was signed?

24 A. It would have been the early part of March,  
25 sometime between the 7th and the 11th based on the best

1 of my knowledge. But I don't have the exact date.

2 Q. Backing up to Exhibit 13 for a moment, the  
3 guaranty from Sam Jones to Brent Tunnell, do you know if  
4 Sam Jones ever made, personally made any payment to Brent  
5 Tunnell based on that guaranty?

6 A. I do not, but I would, I would guess that he did  
7 not. I would know if he did and I do not know that. So  
8 I would say no, unless he did it without me knowing, but  
9 the best of my knowledge, he did not.

10 Q. Next I am going to hand you what has been marked  
11 as Exhibit 15, a term loan agreement with Mr. Tunnell,  
12 dated, I am sorry, Bates No. SHADOW 7306. Do you know  
13 what this is?

14 A. Looks like it is a document of the same \$200,000  
15 that we borrowed in March.

16 Q. And on page 11, are those the signatures of all  
17 the Shadow officers?

18 A. At the time those were the five officers.

19 Q. And on the first page, the paragraph under the  
20 Agreements heading, paragraph 1.1, starting on the third  
21 line, the sentence the loan shall be used by borrower for  
22 the sole purpose of paying borrower's suppliers for  
23 production of Ironclad Energy Plus Hydration and/or Ripe  
24 Simply Natural Vitamin Enhanced Water, do you know if in  
25 fact these funds were used just for those purposes?

1 A. I would say Ryan was the CEO and had full  
2 control of the bank account. So I was not the guy  
3 signing checks or writing, you know, or paying bills.  
4 That wasn't my role. That was only Ryan. Ryan was the  
5 only one authorized at that time to sign paychecks or  
6 manage bank accounts.

7 So that was the plan. As an officer of the  
8 company, that's what we agreed to. To the extent if  
9 every dollar was used that way, I do not know that. But  
10 that's what we made the agreement for and that was  
11 Ryan's role. Ryan was the, again, the CEO at the time.

12 Q. Next I am going to hand you what has been marked  
13 as Exhibit 16, a Maricopa Superior Court judgment, Bates  
14 No. ACC 320. Do you know what this is?

15 A. Yep. This was the judgment from Brent.

16 Q. And do you know if this appears to be an accurate  
17 copy of that judgment?

18 A. Yeah, based on what it looks like, yes. I  
19 imagine it isn't -- yes, but I don't believe this is  
20 what we agreed upon settling, but yes.

21 Q. What do you mean by that you don't think this is  
22 what we agreed upon settling?

23 A. I don't agree. I think this is what he filed,  
24 the judgment, and then I believe we agreed to a  
25 different amount and we settled on a different amount.

1 He was claiming this 35 percent annual interest  
2 from August 1st. And I agree -- I believe we settled  
3 for something different. But I don't have that. I  
4 believe it was a different amount. I am not for  
5 certain, but that looks a little high.

6 Q. Next I am going to hand you what has been marked  
7 as Exhibit 17, a covenant not to execute, Bates No.  
8 SHADOW 7299. Do you know what this is?

9 A. Yeah. This is the settlement consideration,  
10 which I just said I thought 386 was a little high. So  
11 it looks like the settlement consideration, Tunnell  
12 agreed to accept 300,000 in settled funds as full and  
13 complete satisfaction of the judgment on all loans made.

14 So he loaned us 250,000 and we agreed to give  
15 him 300,000 in interest. And we gave him 10,000 upon  
16 execution of this agreement and 290 August 1st, 2011,  
17 the final payment.

18 Q. What was the reason for -- so this is --

19 A. And he agreed to also return all equity  
20 membership ownership rights to the company. It was all  
21 cancelled. He basically agreed that he wanted to go  
22 focus on his business and we were going to go focus on  
23 ours. So in that last paragraph on page 1, that's what  
24 he agreed to do.

25 Q. In the first paragraph, it gives a date of

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1 16 May, 2011. Do you know why the second part of the  
2 payment to him for 290,000 wasn't due until August 1st,  
3 2011?

4 A. Why? We had just made the agreement with  
5 Spyglass on their participation into Shadow for whatever  
6 the number was, 2 million bucks. And we sold them  
7 equity.

8 And we had just -- the main reason was we just  
9 acquired the No Fear brand, that licensing agreement,  
10 which was a brand that the bottlers were carrying, and  
11 the bottlers wanted that brand. So Spyglass was then  
12 formed by the Pepsi bottlers because they wanted to  
13 carry that brand. And they wanted to invest in that  
14 brand, invest in Shadow. So we were in the process of  
15 doing that.

16 They made a commitment that by July, whatever  
17 that was, 15th, they would have their equity, and I  
18 don't know whatever the dates were, but by that date,  
19 they would have their equity funded so we could make the  
20 agreement that we could fund and make the final payment  
21 by August 1st. So it was all based on what we just  
22 agreed to with the Spyglass folks.

23 And then we went back to Brent and said this is  
24 what we have completed, we can give you 10,000 and we  
25 will be able to do this on August 1st. And he agreed to

1 that. Because we also wanted his interest rights to be  
2 able to, or his ownership rights to be able to move over  
3 to Spyglass folks.

4 Q. Next I am going to hand you what has been marked  
5 as Exhibit 18, a notice of wire transfer, Bates No.  
6 SHADOW 7317. Is this, does this wire transfer reflect the  
7 payment to Brent Tunnell referenced in Exhibit 17?

8 A. I would imagine that is exactly it. It is  
9 8/11 -- or 8/1, to Morris Hecker, which would have been  
10 Stinson Morris Hecker, yes, Stinson Morris Hecker, their  
11 attorney, into their escrow account. So I guess that  
12 would be it. And it came from Shadow.

13 Q. Next I am going to hand you what has been marked  
14 as Exhibit 19, a promissory note to Joe Joyce, Bates No.  
15 SHADOW 6829. Do you know what this is?

16 A. Yep. It was a note that we -- Joe Joyce is  
17 another person that I do not know. It was -- Joe Joyce  
18 is an ex-Pepsi guy that, his son, Mike Joyce, was  
19 working for us, was working for Sam Jones on the  
20 marketing side.

21 Sam knew Joe and Mike and brought them to this  
22 discussion around looking to invest some money. And we  
23 did a promissory note with Joe. Again, Joe I have never  
24 met, do not know. He really was a person that Sam knew.  
25 And, again, his son was employed by us for about a year

1 and a half. He was a marketing person. Both Joe and  
2 Mike live in Connecticut. But it was a promissory note  
3 from Joe for the business.

4 Q. Did Mr. Joyce ever have any management role at  
5 Shadow?

6 A. None at all.

7 Q. Do you know what documents were sent to Mr. Joyce  
8 before he received this note?

9 A. No. Again, I never met with Joe. Like I said,  
10 potentially it could have been on a conference call with  
11 Joe. But it was mostly Mike. Again, he was not an  
12 officer, just an employee, a marketing guy. But  
13 primarily it would have been Sam Jones that spoke with  
14 Joe and what we were doing and, again, would have  
15 reviewed the same documents that everybody was looking  
16 at, our executive summary, what we were trying to  
17 accomplish and how we were building brands.

18 Q. Was Mr. Joyce told about any previous note  
19 defaults by Shadow before he received this note?

20 A. Again, that I do not know. Knowing that I did  
21 not meet with Joe personally, I do not know exactly what  
22 discussions happened with Joe.

23 Q. So who was it who had spoken with Joe? I forget  
24 the name.

25 A. Who? Sam.

1 Q. Sam. Do you know if the company gave Sam Jones  
2 any guidance about anything he was allowed or required to  
3 tell Mr. Joyce about Shadow Beverages?

4 A. Other than reviewing our executive summary, that  
5 would have been what we were all using to discuss what  
6 the company was about and direction we were going. I  
7 don't know if -- what other direction or parameters we  
8 would have set for any officer, especially our CEO at  
9 the time.

10 Q. Was Mr. Joyce told about any judgments against  
11 Shadow before he received this note?

12 A. I do not know if he was or was not.

13 Q. And on the third page, are those Mr. Jones' and  
14 your signatures?

15 A. Yes.

16 Q. Next I am going to hand you what has been marked  
17 as Exhibit 20, a promissory note to the Jarus Family  
18 Trust, Bates No. SHADOW 6755. Do you know what this is?

19 A. Yes.

20 Q. And what is it?

21 A. Scott Jarus was the CEO of a public company  
22 called -- I am sorry. Scott Jarus is the CFO, chief  
23 financial officer, of a public company called Ironclad  
24 Industrial Apparel. And we had a license agreement with  
25 Ironclad Industrial Apparel to produce the brand called

1 Ironclad Energy and Hydration.

2           So Scott was a business partner in that sense.  
3 We were licensing their name and producing product under  
4 that license. He was working to refinance the company.  
5 And, actually, at the time they were just in the process  
6 of a pipe. And he liked the business model and  
7 became -- he lives in California. He flew over one time  
8 to meet with us, looked at our business model. Sam and  
9 I actually took him through our executive summary, told  
10 him we were looking for some -- that our biggest issue  
11 was finding capital to run the company and for  
12 production purposes. And he had interest in making a  
13 personal investment. And it was out of his family  
14 trust.

15       Q.     When you said something about restructuring the  
16 company or something about the company, was that referring  
17 to Mr. Jarus doing something with Ironclad company?

18       A.     Yeah, Ironclad, the public company. They were  
19 just restructuring themselves and they were -- and,  
20 again, the terminology is, I am not a, you know,  
21 securities guy or, but they were in the process of a  
22 pipe. And he was, he is a CFO and had done -- he was  
23 fairly new to Ironclad and had come in to do that.

24           Ed Jaeger was the CEO and the guy we had worked  
25 with who came to us to license the brand Ironclad and

1 the guy that we were working with. And Scott Jarus came  
2 in to understand what we were doing with the license and  
3 how we were building the brand. And that's how we got  
4 to know Scott. I met Scott maybe twice, once here and  
5 once in LA. He lives in LA.

6 Q. Did Mr. Jarus ever have any management role at  
7 Shadow?

8 A. None at all.

9 Q. Page 4, are those your signatures and Mr. Jones'  
10 signature?

11 A. Correct, yes, they would be.

12 Q. What documents were sent to Mr. Jarus about  
13 Shadow before he received this note?

14 A. He, again, he was at the office and reviewed our  
15 executive summary and our plan for the license of  
16 Ironclad, which was the same kind of plan that we had  
17 reviewed in -- what was the same plan that they were a  
18 part of in building, you know, from the logo graphics,  
19 communication to consumers on what the trademarks meant,  
20 the brand meant, and where we were going to  
21 distribution. That was all the same business plan that  
22 Scott saw that his team, Ed Jaeger, who at the time was  
23 CEO, and he was the CFO, on what we were doing with the  
24 brand.

25 Q. Was Mr. Jarus told about any previous defaults by

1 Shadow on notes before Mr. Jarus received this note?

2 A. I do not know that. I don't know if that  
3 discussion happened at the time or not.

4 Q. Do you know who would know?

5 A. I don't know if Scott would recall that  
6 discussion happening at the time. I remember that it  
7 was Sam and I were in a meeting together. I don't know  
8 if Sam would recall if that discussion came up or not.  
9 He asked us if we were in default. He, as a CFO, he did  
10 review our balance sheet. So he did know the financial  
11 situation of Shadow. Again, he is the CFO of a  
12 financial company, so a balance sheet and an income  
13 statement were documents that he wanted to look at. He  
14 was not a -- you know, I mean he was a CFO of a public  
15 company. He wanted to see the financials. So he saw  
16 those and definitely knew where we stood.

17 Q. If anyone had told him about any previous note  
18 defaults by Shadow, would it have been you or Mr. Jones at  
19 that meeting you described?

20 A. It would have been, yeah. I would imagine it  
21 would have been one of us.

22 Q. Was Mr. Jarus told about any judgments against  
23 Shadow before he received this note?

24 A. I don't believe so, but I don't know if -- had  
25 the judgment been filed by then?

1 Q. I am not sure.

2 A. The judgment was filed on May 17, 2011. And his  
3 promissory note came in on 2010.

4 Q. Do you recall if there were any previous  
5 judgments before September 1st, 2010 that he would have  
6 been told about?

7 A. None that I recall. But I don't think the  
8 Tunnell judgment was even -- yeah, it wasn't even a  
9 default yet because the term of the agreement was the  
10 17th -- and his loan started the 1st. So the judgment  
11 wasn't -- the best of my knowledge that was the only  
12 judgment that Shadow had at the time.

13 Q. Before Mr. Jarus received this note, was he told  
14 about any personal guaranty that you or Sam Jones had not  
15 paid on in the past?

16 A. No, I don't believe that discussion happened.

17 Q. Next I am going to hand you what has been marked  
18 as Exhibit 21, a payment and performance guaranty to  
19 Mr. Jarus, or, rather, to the Jarus Family Trust, Bates  
20 No. SHADOW 6771. Do you know what this is?

21 A. Yeah. It looks like it coincides with his  
22 promissory note.

23 Q. On page 8, are those signatures of you and  
24 Mr. Jones?

25 A. Yes.

1 Q. Did you or Mr. Jones ever personally make any  
2 payment to Mr. Jarus or the Jarus Family Trust based on  
3 this guaranty?

4 A. I did not and I am not aware that Sam did. I  
5 would believe that Sam did not or I would have been  
6 notified.

7 Q. Next I am going to hand you what has been marked  
8 as Exhibit 22, a payment record, Bates No. SHADOW 6754.  
9 This reflects a payment to Scott Jarus of \$75,000 on  
10 August 23rd, 2011. Does that August 23rd, 2011 payment  
11 date sound correct to you?

12 A. Yep. That coincides when the equity that we  
13 sold of the company to the Spyglass folks had come in.  
14 And we were paying off the loans that we owed. So it  
15 coincided with when we made the payment to the Tunnell  
16 judgment and against other loans that we had  
17 outstanding.

18 Q. Was the Spyglass investment, were those funds  
19 needed to be able to make the payment to Jarus and to  
20 Mr. Tunnell at the time?

21 A. Yeah. I think, yeah. I think, you know, the  
22 strategy had been, you know, up to that point we knew we  
23 had to sell a piece of the company to meet our  
24 obligations. So I would say that it is very, in 2011,  
25 it is very similar to what we did in 2015 with our exit

1 of selling No Fear to the Mix 1 company. We got to a  
2 point where the obligations had to be met and we were  
3 past due. And we ended up selling the company to meet  
4 those obligations, or selling assets of the company.  
5 And at this time in 2011, the asset we sold was to the  
6 Spyglass group of investors that were also customers.

7 They were the Pepsi independent bottling group  
8 that liked what we were doing, saw our business model,  
9 that we had met before and wanted to own a piece of the  
10 company. So we sold them a piece of the company and we  
11 were in a position in 2011 to start repaying the debts  
12 that we had and the obligations we had. And as you can  
13 see by here, in August, when we -- whatever the exact  
14 date was of the payment for the equity, the investment  
15 that Shadow or that Spyglass made into Shadow, we  
16 started paying off the obligations that were outstanding  
17 from the company.

18 Q. Next I am going to hand you what has been marked  
19 as Exhibit 23, a promissory note to Ashford Insurance,  
20 Bates No. SHADOW 6605. Do you know what this is?

21 A. Yeah. The name Ashford Insurance didn't quite  
22 ring a bell, but yeah. It is Dr. Frank. Dr. Frank is  
23 a, is the father-in-law of Ed Jaeger, who is the CEO of  
24 Ironclad, and Scott Jarus' kind of business partner.  
25 That's -- Dr. Frank brought Scott Jarus, the CFO, into

1 Ironclad.

2 Dr. Frank owns a horse vitamin mineral company.  
3 You have probably seen them on TV. He does a lot of  
4 stuff like that. Ed Jaeger brought Dr. Frank. I have  
5 never met Dr. Frank.

6 Dr. Frank, actually, I just spoke to his wife,  
7 Judy, not too long ago. He is very ill and  
8 hospitalized. He probably won't make it another 30 to  
9 60 days. But he also had an insurance company that he  
10 lent the company some money during this time frame where  
11 the company was looking for operating capital. So  
12 that's who Dr. Frank is. He is -- and this is a  
13 document under kind of those same terms. We made an  
14 agreement with Dr. Frank. I, again, never met him.  
15 Sam, who had the relationship with Ed Jaeger, was out in  
16 LA, met Ed, and then went out and met Dr. Frank. And  
17 Dr. Frank put some money into the company under this  
18 agreement.

19 Q. Did Dr. Frank or Ashford Insurance ever have any  
20 management role in Shadow?

21 A. None at all.

22 Q. On the first page, the second paragraph refers to  
23 a maturity date of December 31st, 2010. Do you know if  
24 the note was fully paid by that date?

25 A. No, it would not have been.

1 Q. Do you know when it was fully paid or if it has  
2 been?

3 A. I would say the records would show that it has  
4 been paid, but it would have been paid back in '11 once  
5 we got caught up with this sale of equity to Spyglass.

6 Q. And on page 4, are those signatures of you and  
7 Mr. Jones?

8 A. That would be correct.

9 Q. What documents were sent to Dr. Frank before  
10 Ashford Insurance received this note?

11 A. Again, I never met Dr. Frank. So Sam and Ed  
12 would have met with Dr. Frank and spoke to our executive  
13 summary and what we were doing with Ironclad and the  
14 business strategy with Ironclad, helping the brand.  
15 Dr. Frank was a, I believe, a majority shareholder in  
16 Ironclad, the public company, and was a key investor in  
17 the pipe that was going on. And they were all investing  
18 in Ironclad to -- in Shadow to ensure that we were  
19 helping build that trademark through the beverage side.

20 So Ironclad, if you have seen Ironclad, they  
21 were an industrial glove company. You probably have  
22 seen their gloves at Costco or Home Depot. That's what  
23 they do. So we were kind of their secondary marketing  
24 side of the company, if you will, because we were taking  
25 trademark and putting it on beverages.

1 Q. And who was the second person you said along with  
2 Sam Jones who met with Dr. Frank?

3 A. Ed Jaeger.

4 Q. Ed Jaeger?

5 A. Who was the CFO of Ironclad, the public company.

6 Q. Did Shadow give Mr. Jones any guidelines on what  
7 he was allowed or required to tell Dr. Frank about Shadow?

8 A. None other than, you know, again, the executive  
9 summary and, you know, Sam was the CEO of running of the  
10 company at the time. So they reviewed our executive  
11 summary and our strategy around Ironclad, the brand  
12 itself. And Dr. Frank, being a big shareholder and  
13 investor in Ironclad, the brand, he saw what we were  
14 trying to support that brand with.

15 Q. Was Dr. Frank told about any previous note  
16 defaults by Shadow?

17 A. Not being present at the meeting, none that I am  
18 aware of.

19 Q. Do you know if he was told about any judgments  
20 against Shadow at the time?

21 A. Again, based on the date of the note, 2010, I  
22 don't believe there was any judgments at the time, but I  
23 do not know if those discussions were had because I was  
24 not there.

25 Q. Do you know if Dr. Frank was told about any

1 personal guaranty that you or Sam Jones had not paid on in  
2 the past?

3 A. I do not know that.

4 Q. Next I am going to hand you what has been marked  
5 as Exhibit 24, a payment and performance guaranty to  
6 Ashford Insurance, Bates No. SHADOW 6620.

7 Do you know if you or Sam Jones ever personally  
8 made any payments to Ashford Insurance or Dr. Frank based  
9 on this guaranty?

10 A. I know I did not. And I would imagine that Sam  
11 did not without my knowledge. And I have no knowledge  
12 that he did.

13 Q. Page 8, the signatures are of you and Mr. Jones,  
14 correct?

15 A. That is correct.

16 Q. Next I am going to hand you what has been marked  
17 as Exhibit 25, a promissory note to Ronald Barrett, Bates  
18 No. SHADOW 6374. On the third page, is that your  
19 signature?

20 A. That is correct.

21 Q. And Mr. Jones' signature line is blank. Do you  
22 know if he didn't ever sign it?

23 A. Yeah, there would be a final copy with  
24 everybody's signature on it that he did sign.

25 Q. And did Ronald Barrett ever have any management

1 role in Shadow Beverages?

2 A. None at all.

3 Q. And in the second paragraph it mentions a  
4 maturity date of March 1st, 2011. Do you know if the note  
5 was fully paid by that date?

6 A. No, it was not.

7 Q. Do you know when it was fully paid?

8 A. I believe this one was paid also in August,  
9 September based on, again, the investment that came in  
10 from Spyglass. We would have to research to see if this  
11 was paid off, but based on the dates, I believe we got  
12 to a point where all, by September, mid September of  
13 2011, all outstanding obligations were paid. But, yeah,  
14 this was another outstanding loan that was, promissory  
15 note that was made.

16 Q. And who is Ronald Barrett?

17 A. Ron Barrett is a personal friend of mine from  
18 Albuquerque that recently moved to Buckeye. He is a  
19 general contractor, has nothing to do with the beverage  
20 business, but is a general contractor here in the valley  
21 now.

22 Q. Did anyone besides you communicate with  
23 Mr. Barrett about this note?

24 A. Yeah, Sam would have also. He knew Sam very  
25 well and, as I say, a personal friend of mine and a

1 friend of Sam's. He knows Sam and Andrea.

2 I would say the three of us met in Albuquerque  
3 when we were all neighbors ten years ago. So Ron knew  
4 Sam and I when we both worked for Pepsi. And Ron's  
5 wife, Lisa, worked for Pepsi as well. That's how we all  
6 kind of know each other.

7 Q. What documents were sent to Mr. Barrett before he  
8 received this note? Documents about Shadow that is.

9 A. I would say Ron was at the office a few times  
10 and received the standard executive summary and strategy  
11 of Shadow and direction where we were going with brands  
12 and our strategy to acquire the No Fear brand at this  
13 time.

14 Q. Was Mr. Barrett told about any previous note  
15 defaults by Shadow before he received this note?

16 A. Not that I recall.

17 Q. Was Mr. Barrett told about any judgments against  
18 Shadow at the time?

19 A. Not that I recall, but based on the dates, I  
20 don't believe there was a judgment again at this time.

21 Q. Was Mr. Barrett told about any personal  
22 guaranty -- actually, never mind.

23 A. Okay.

24 Q. Next I am going to hand you what has been marked  
25 as Exhibit 26, a promissory note to Stacey Gervasi, Bates

1 No. SHADOW 6340. Do you know what this is?

2 A. Yes. So Stacey, you will see this will change a  
3 little bit over time, Stacey is Ron, I am sorry, George  
4 Karas' daughter. We spoke of George Karas earlier. And  
5 you will see that this changes.

6 Stacey and another friend wanted to make an  
7 investment back into Shadow. And you will see the name  
8 change into something like Four Paws. It was an LLC  
9 that they started. But when they had the money, they  
10 hadn't really set up their company. They wanted to make  
11 a couple investments. And they made a promissory note  
12 loan to Shadow under Stacey's name at this time. But it  
13 will change into Four Paws. And Four Paws became a  
14 lender to Shadow.

15 And Stacey, again, being George's daughter, knew  
16 of Shadow from a long time ago and the role that George  
17 played with the Pelican Group and Shadow.

18 Q. Did Ms. Gervasi ever have any management role?

19 A. Did who?

20 Q. Did Ms. Stacey Gervase?

21 A. Stacey is a female. Stacey did not. She was  
22 the daughter of George Karas.

23 Q. And the second paragraph mentions a maturity date  
24 of December 31st, 2011. Do you know if as of this date it  
25 was fully paid by that time?

1 A. I don't know if this was completely paid. I  
2 believe there was an agreement to extend, but I would  
3 have to go back to the files.

4 Q. On the third page, those signatures, are those of  
5 you and Mr. Jones?

6 A. Correct.

7 Q. Who communicated with Ms. Gervasi about this  
8 note?

9 A. About the note personally would have been Sam  
10 and I. About the company would have been her dad prior  
11 to his passing, myself and Sam.

12 Q. What documents, what Shadow documents were sent  
13 to Ms. Gervasi before she received this note?

14 A. I don't think anything was sent to her. She was  
15 at the office and was -- you know, saw and discussed our  
16 executive summary and our strategy on Shadow, what we  
17 were trying to accomplish.

18 Q. Was Ms. Gervasi told about any previous note  
19 defaults by Shadow before she received this note?

20 A. Not that I recall.

21 Q. Was she told about any judgments against Shadow  
22 at the time before she received this note?

23 A. Not that I recall. And again, at this time, I  
24 don't believe there was a judgment against Shadow, based  
25 on the date of the document.

1 Q. Next I am going to hand you what has been marked  
2 as Exhibit 27, a Maricopa Superior Court default judgment,  
3 Bates No. ACC 439. Do you know what this is?

4 A. This is against an account called The Pantry,  
5 who no longer exists, out of Florida. We were doing  
6 some business with Ironclad and we were in kind of  
7 disagreement with. This basically was referred to as a  
8 slotting fee that we did not agree to. We shipped them  
9 free product. They returned the product and filed a  
10 judgment against us for a cash amount. And we settled  
11 and paid that amount.

12 Q. Does this appear to be an accurate copy of the  
13 default judgment in that case?

14 A. I do believe so. It looks to be accurate.

15 Q. Why did the -- well, why didn't the company  
16 defend against the claim?

17 A. We were dealing with a buyer that we thought  
18 was -- we had a different agreement with. And the buyer  
19 told us that she had talked to the attorneys. And then  
20 we -- and it was really all -- I was handling the sales  
21 side. And my sales guy was talking to the buyer that  
22 said that she had talked to their attorneys. And we  
23 were working through the free product that we had sent  
24 them versus the amount that the company was claiming  
25 against us for slotting. And then a judgment was sent

1 to us and they pulled the money out of our bank account.

2 Q. Do you remember when the judgment was fully paid?

3 A. It would have been in December of 2011, around  
4 that time frame, as I recall.

5 MR. KITCHIN: Let's take a break for about ten  
6 minutes.

7 (A recess ensued from 10:20 a.m. to 10:34 a.m.)

8 MR. KITCHIN: Let's go back on the record.

9 BY MR. KITCHIN:

10 Q. Next I am going to hand you what has been marked  
11 as Exhibit 28, a promissory note, Spyglass Capital  
12 Partners, Bates No. SHADOW 7642. You have mentioned this  
13 earlier, I think. Do you know when this note was repaid,  
14 if it has been?

15 A. It has not been repaid. Well, I would say it  
16 is, it is currently not an obligation of Shadow's  
17 anymore. It has been transferred.

18 Q. Transferred to Mix 1?

19 A. Yes.

20 Q. When was that transfer done?

21 A. April 1st.

22 Q. And what were the terms of that transfer?

23 A. I think we submitted the transaction agreement,  
24 but the, all the note owed to Spyglass I and Spyglass  
25 II, because there were two, were all converted over to

1 the responsibility of Mix 1 as part the \$12.2 million  
2 transaction agreement, so, which included a mutually  
3 agreed to interest rate for the time frame. So this  
4 note currently, which needed to be to free up the rights  
5 to the license and all of those things, so this  
6 promissory note has been converted to the responsibility  
7 of Mix 1, this one and then there are a couple other  
8 ones.

9 Q. Was Spyglass Capital Partners told about any  
10 previous note defaults by Shadow before they received this  
11 note?

12 A. Yes. Yes, they were, absolutely. Spyglass made  
13 their equity investment prior to this. And it was part  
14 of their -- part of the deal was they were going to make  
15 an equity investment to help us with the obligations  
16 that were out there, which were judgments. And of  
17 course they saw our financials. They did their due  
18 diligence. So they knew everything that was out there.

19 And then the second part of the agreement from  
20 them was, they gave to make a capital investment on the  
21 equity side, and then a debt investment, which was --  
22 this is part of it.

23 Q. Was Spyglass Capital Partners told about any  
24 other security interests on any Shadow assets before they  
25 received this note?

1 A. Absolutely.

2 Q. And do you know what security interests those  
3 were at the time?

4 A. Well, they, again, had done all of their due  
5 diligence. So any UCC filings or any interest in any of  
6 the brands, any promissory notes, anything that was  
7 outstanding, Spyglass had all access to that. They had  
8 an advisor that was intimately involved in the  
9 transaction. They had a board member. So, yeah, they  
10 had full transparency to everything that was going on.

11 Q. Next I am going to hand you what has been marked  
12 as Exhibit 29, a loan agreement with Spyglass Capital  
13 Partners, Bates No. SHADOW 7635. Was this agreement part  
14 of the same transaction as the note, that Exhibit 28?

15 A. Correct.

16 Q. On the first page in paragraph 6, Negative  
17 Covenants, it says the borrower agrees that, so long as  
18 the loan remains unpaid, the borrower shall not take the  
19 following actions without the prior written consent of the  
20 lender. And on page 2, subsection (a) is create, assume  
21 or suffer to exist any encumbrance, lien or charge of any  
22 kind upon any of its assets, except liens provided for in  
23 this agreement.

24 Did Shadow seek Spyglass Capital Partners'  
25 written consent whenever it had any future security

1 agreements to create liens on any of its assets?

2 A. Yes. I mean they were always part of -- again,  
3 because we had an advisor sitting on the board, and  
4 review of the balance sheet and knowing exactly where we  
5 stood, they had, they had full knowledge of what liens  
6 and where the debt was coming from and where the --  
7 based on the asset value, you know, all the way from  
8 whatever assets there were, from receivables to the  
9 license to intangible assets to all those, they had full  
10 knowledge of, you know, what encumbrances or liens were  
11 going against that, that value.

12 That's why we got to the point where when, with  
13 Spyglass, we got to that point where we felt that we  
14 could not continue to take either. It was either sell  
15 more equity in the company or sell an asset. That's why  
16 we sold the asset of the No Fear brand. And we needed  
17 their approval, which was we needed Spyglass' approval,  
18 which actually took a lot of, I guess, influencing them  
19 to be sure that we were doing the right thing, to be  
20 sure that they agreed to give No Fear the license,  
21 which, or give Mix 1 the license, which meant they had  
22 to agree to all their promissory notes and transfer them  
23 over to Mix 1, which was a pretty big deal, because that  
24 was their only, their real asset that they had. Because  
25 at Mix 1 they were going to lose that asset. They were

1 going to lose that kind of security. They were just  
2 going to transfer that debt over to them to be paid in  
3 quarterly installments and whatever the terms of the  
4 agreement are, which are a part of the sale.

5 So it was a big deal to be sure that -- Spyglass  
6 was the first hurdle to be sure that we could sell the  
7 asset, you know, in that combination of cash, this debt  
8 that got moved over to Mix 1, and the stock and the  
9 value of stock to be able to take care of all the  
10 obligations.

11 And, again, these notes, which there are, I  
12 think there is probably three or four of them between  
13 Spyglass I and Spyglass II, that all got converted over  
14 to Mix 1 to clear that debt of somewhere around  
15 3 million, again I am using rough numbers, that all got  
16 converted over to Mix 1 debt.

17 Q. So next I am going to hand you what has been  
18 marked as Exhibit 30, a trademark collateral assignment  
19 and security agreement, Bates No. SHADOW 7650. This is  
20 the security agreement connected to the same transaction  
21 as the loan agreement, Exhibit 29, and the note in  
22 Exhibit 28?

23 A. Uh-huh, yeah. I am sorry. This is what I was  
24 just speaking to, yeah.

25 Q. And the paragraph 2 mentions a security interest

1 and all the assets listed in Exhibit A. And those are the  
2 WheyUP trademark and the trademark for the Original  
3 Protein Drink with Energy?

4 A. Uh-huh.

5 Q. Did Spyglass still have a security interest in  
6 those trademarks up until the point when they made the  
7 transaction with Mix 1?

8 A. I am sorry. Ask me that question again.

9 Q. Did Spyglass Capital Partners still have the  
10 security interest in those trademarks up until the point  
11 when you described their transaction with Mix 1?

12 A. Yeah. I am sorry. They do, they do still have,  
13 and Shadow still owns this trademark.

14 Q. Does it?

15 A. And this trademark in particular had nothing to  
16 do with the transaction with Mix 1. The transaction to  
17 Mix 1 had only to do with the No Fear license agreement.  
18 So this assignment went away because it all got  
19 transferred to Mix 1.

20 Q. So Spyglass Capital Partners currently has a  
21 security interest in these two trademarks?

22 A. No. They relinquished their security agreement  
23 in this brand. I am sorry if I didn't say that right.  
24 We, Shadow, still owns this trademark. Right?

25 Q. Uh-huh.

1 A. And the brand itself is kind of shelved, if you  
2 will. We are not doing anything with it. We still own  
3 the trademark but the collateral was released from  
4 Spyglass because it was all secured by Mix 1 in the  
5 transaction with No Fear. So I am sorry if I did not  
6 make that clear.

7 Q. That's all right.

8 And when was it that they released the -- when  
9 was it that Spyglass released its security interest in  
10 these two trademarks?

11 A. I think the release is dated somewhere around  
12 March 15th, but the transaction was closed April 1 of  
13 2015. Officially the transaction closed April 1, where  
14 everything got moved to Mix 1, of 2015.

15 Q. Do you know if Spyglass Capital Partners ever  
16 recorded the security interest mentioned in this  
17 agreement?

18 A. I do not know one way or another if they did.

19 Q. Next I am going to hand you what has been marked  
20 as Exhibit 31, a convertible promissory note to Bradie  
21 James, Bates No. SHADOW 7632. What is this?

22 A. This would be a, just a note from Bradie in  
23 2012.

24 Again, I have never met with Bradie. I don't  
25 know Bradie. This was done by Rick Peterson, who at the

1 time had just come on with Shadow. And last time you  
2 and I met we spoke about Rick Peterson in depth of his  
3 role with Shadow. And his role was, at this time, was  
4 helping Shadow secure capital either through equity or  
5 through debt. And Rick met Bradie through a contact he  
6 had.

7 Rick came from Dallas. Bradie James is a  
8 professional, was a professional athlete. And I don't  
9 know if he was playing for the Dallas Cowboys or the  
10 Houston Texans. But Rick met him as a professional  
11 athlete. And Bradie was a consumer or user of WheyUP,  
12 the protein energy. And Rick met him. And Bradie was  
13 looking at investing some capital. And Rick went down  
14 to Texas, I don't know exactly where, and met with  
15 Bradie.

16 Again, I personally did not meet with Bradie. I  
17 didn't present to Bradie. Rick went down, presented our  
18 executive summary, our business, our brand strategy  
19 around WheyUP -- it was really what Bradie was  
20 interested in, was the WheyUP brand -- and came back and  
21 said Bradie was interested in making an investment in  
22 Shadow. We wanted him to do an equity investment.  
23 Bradie did not. Bradie wanted to, but through his  
24 financial advisor, which again I was not a part of, it  
25 was really Rick Peterson, we made this agreement with

1 Bradie.

2 Q. Paragraph number 2 on the first page mentions a  
3 maturity date of February 9th, 2014. Do you know if this  
4 note was fully paid by that date?

5 A. No, this note has not been paid.

6 Q. Did Mr. James ever have any management role in  
7 Shadow?

8 A. None at all.

9 Q. In paragraph 5, section 5.1 refers to a  
10 conversion option. Do you know if this was ever converted  
11 to membership interests?

12 A. No. While I mentioned I never spoke to  
13 Bradie -- I am sorry. I never met Bradie; I have spoken  
14 to him on the phone. And as we got closer to the due  
15 date, I spoke to Bradie on an extension and explained to  
16 him what we were trying to accomplish with the selling  
17 of an asset to be able to pay, or the conversion -- at  
18 the time Bradie had been, I don't know what the word is,  
19 retired or cut and he was no longer playing professional  
20 football -- and got his financial advisor on the phone  
21 and said that they did not want any, did not want to  
22 convert and they wanted the note paid on time. And that  
23 was the only discussion they wanted to have.

24 And my point with them was we were not in a  
25 position to be able to pay, that we did need an

1 extension. We were working on a couple options. You  
2 can see that it was due the 15th. I explained a couple  
3 of the options. This note, this No Fear sale to Mix 1  
4 was in discussion, and we talked about how long that  
5 would take but that we were going to work towards that  
6 agreement. And Bradie, Bradie's financial officer did  
7 not like that. But that's the discussion I once had  
8 with Bradie.

9 Q. On the final page there is a blank signature line  
10 for Shadow Beverages. Do you know if it ever was signed  
11 by anyone?

12 A. Yeah. This had to have been signed by myself.  
13 There was a -- I would have signed this. I know, when  
14 Rick brought this back to me, I would have signed it. I  
15 don't know why there was not a signed copy executed by  
16 both parties in the file.

17 Q. What Shadow documents were sent to Mr. James  
18 before he received this note?

19 A. Nothing was sent to him. It was Rick went down  
20 specifically for a meeting and met with Bradie. And  
21 specifically I know that we, again, presented our  
22 executive summary and our WheyUP brand strategy. Again,  
23 that was the interest of Bradie. He was a believer in  
24 the use of protein and was drinking three or four of  
25 them on a workout that was providing, you know, an extra

1 80 to 100 grams of protein for him in his regular diet,  
2 were providing the energy to go work out. That is what  
3 this brand is. It is a fitness brand. So I know we  
4 presented the executive summary and the brand strategy.

5 Q. Before he received the note, was Mr. James told  
6 about any previous note defaults by Shadow?

7 A. That I am not aware of.

8 Q. At the time was Rick Peterson aware of any  
9 previous note defaults by Shadow?

10 A. This was, you know, in the middle of 2012. Rick  
11 Peterson was aware that, you know, we had a judgment.  
12 He was aware that we paid the judgment off with Brent  
13 Tunnell. You know, he was aware that we had that period  
14 of time, which would have been, you know, '10 and '11,  
15 where we were late on notes, that we made a sale of the  
16 company, we had an investment of Spyglass, that we  
17 cleared the notes up, and that we were now taking it to  
18 a different stage. So to what extent that discussion  
19 happened, I don't know what extent Rick had, but Rick  
20 had the knowledge of the history of the company,  
21 correct.

22 Q. Was Mr. Peterson given any instructions to tell  
23 Mr. James about any of the, any of that background you  
24 just mentioned?

25 A. He was not given any instructions either to

1 discuss or not discuss. There were no discussions on  
2 that.

3 Q. Before he received this note, was Mr. James told  
4 about any existing security interests on any Shadow  
5 assets?

6 A. On security interest of Shadow assets. I don't  
7 know exactly the discussion that Rick and Bradie had.  
8 And I was not part of that meeting. And I was not the  
9 one raising or involved in that piece. So I am not  
10 aware.

11 Q. Did the company give Mr. Peterson any  
12 instructions on what -- on telling Mr. James about any  
13 security interests that existed on any Shadow assets?

14 A. Yeah. I mean in total, the board had  
15 discussions around what assets we had, right, again, as  
16 we scaled them from receivables to what we called  
17 inventory, so raw materials and full goods, and then to  
18 the assets, which included our license assets, our  
19 trademarks and our intangibles.

20 So we had that list of knowing what our asset  
21 value was. And we knew that whatever promissory notes  
22 or what we were going out to could never exceed what our  
23 asset value was. So we knew as a board that if we were  
24 borrowing any money, that we could never exceed a  
25 percentage of our asset value. And I think we were

1 always given direction by board members like Doug  
2 Iannarino, who was a vice president of finance for  
3 PepsiCo, that we could never exceed the 60 percent  
4 range. And that was just kind of a rule of thumb. And  
5 because that rule of thumb was always really kind of  
6 governed by, you know, that financial, I don't know what  
7 you call --

8 We always had this argument about intangible  
9 asset value. Right? And we always used all these  
10 different measurements, from public companies to private  
11 companies, what is an intangible customer list,  
12 distribution value, all of those different values going,  
13 what is that real value. And we always tried to play  
14 that, well, 60 percent is probably the most we could  
15 ever be out there, because we need to have real value to  
16 what we have.

17 And I think, if you look at how we measured that  
18 up and to the final point to what we sold Mix 1 to, we  
19 were always in that range. And what we did for a value  
20 to what our obligations were to what we sold one asset  
21 for, we were always in that range and had the value to  
22 cover that.

23 So did Rick and did the board and did myself,  
24 did we always know what we were doing with kind of  
25 promissory notes and what the value of what we had

1 versus what we were borrowing? Absolutely. I think we  
2 always had those discussions openly with understanding a  
3 balance sheet and this is what our assets look like and  
4 this is the amount of money we could borrow.

5 Q. What instructions, if any, did Mr. Peterson  
6 receive about what he was required to tell Mr. James about  
7 any existing security interests on Shadow assets?

8 A. He didn't have any instructions to, one way or  
9 the other, to have that discussion.

10 Q. Next I am going to hand you what has been marked  
11 as Exhibit 32, a limited security agreement with Bradie  
12 James, Bates No. SHADOW 6724. On the final page, is that  
13 your signature?

14 A. Correct.

15 So these two would go hand in hand with my  
16 previous comments of, you know, the security agreements  
17 of what we knew based on, you know, our balance sheet,  
18 what collateral we had to borrow money with based on the  
19 items I previously mentioned, so documents from a  
20 promissory note to a security agreement based on the  
21 loan amount on a balance sheet of what collateral we  
22 truly had in the company to ensure that we had  
23 collateral to borrow money against in the nontraditional  
24 banking ways. But we had collateral based on the assets  
25 that the company owned.

1 Q. Next I am going to hand you what has been marked  
2 as Exhibit 33, a promissory note to Pelican Group, Bates  
3 No. Shadow 7508. What is this?

4 A. Well, the Pelican Group is demonstrated in the  
5 earlier documents. Richard Scherer was a founding, as  
6 we would say, a founding member and early officer, then  
7 stepped away to run his own business with the Pelican  
8 Group, who is a management company and provides products  
9 to operators, as we discussed earlier. He also made a  
10 loan to the company, so very intimately involved in  
11 Shadow, was an early equity member and owner of  
12 membership shares in Shadow. And at this time, that  
13 Shadow was in need of capital, and he understood what we  
14 were trying to accomplish, he made a loan to the  
15 company.

16 Q. Can you remind me, when was it that he left  
17 Shadow?

18 A. Well, he never necessarily left Shadow. He was  
19 just kind of a founding officer and, as we continued to  
20 bring people into the company, his role kind of stayed,  
21 kind of separated to just being a member and not  
22 necessarily a day-to-day member, at one point was going  
23 to be a board member but was too busy with his own  
24 business to be a board member. But he was a very close.  
25 He is an -- advisor is probably not a good word, but he

1 was a member that is in the industry and in the  
2 business, so stayed pretty close to what we were doing.

3 Q. When did he stop being an officer of the company?

4 A. As we brought in officers that were more  
5 beverage, with more beverage expertise, is when he  
6 stopped.

7 Q. Do you recall approximately when that was?

8 A. That would have been, you know, early 2009.

9 Q. The second paragraph of the Exhibit 33 mentions a  
10 maturity date of September 1st, 2013. Do you know if the  
11 note was fully paid by that date?

12 A. I do not believe this note has been paid by  
13 2013. This is still a debt owed to Pelican.

14 Q. Who communicated with Mr. Scherer about making or  
15 receiving this note?

16 A. Sam and I would have both had this discussion  
17 with Richard.

18 You know, part of the history is, again, Sam,  
19 well, again, if you go back to the history, was once an  
20 employee of PepsiCo. And then Sam was once an employee  
21 of the Pelican Group, once worked for Richard before he  
22 started with Shadow. Him and I started Shadow. So the  
23 three of us have a long history of working together.

24 We -- again, he was a business partner. Because  
25 a lot of products that we were producing and building

1 were being used in the business management side of what  
2 Pelican does. So Sam and I would have had this  
3 discussion with Richard.

4 Q. Before Mr. Scherer received this note, was he  
5 told about any previous note defaults by Shadow?

6 A. Not that I recall specifically, but I am fairly  
7 certain Richard would have been aware of what was going  
8 on. He was, again, involved in the company. He was not  
9 necessarily, you know, at a distance.

10 Richard knew what was going on with Shadow and  
11 knew about the Pepsi involvement and Costco involvement.  
12 And we were working with the Pepsi bottlers to help us  
13 service Costco. And, again, there was a network of, you  
14 know, beverage and distribution and retailers that all  
15 combined together, from Richard to the Pepsi bottlers to  
16 what Shadow was doing. It was an intimate relationship  
17 from all parties.

18 Q. Before Mr. Scherer received this note, was he  
19 told about any judgments against Shadow?

20 A. Yeah. He was aware of the Tunnell judgment. He  
21 was aware of The Pantry judgment. He was aware of  
22 those. I don't know, again, specifically the discussion  
23 happened during this agreement, but he was aware.

24 Q. Next I am going to hand you what has been marked  
25 as Exhibit 34, another promissory note to the Pelican

1 Group, Bates No. SHADOW 7506. The second paragraph  
2 mentions that this note had a maturity date of  
3 October 1st, 2013. Do you know if this note was fully  
4 paid by that time?

5 A. No. I know that he is still owed 350. It was  
6 two different notes.

7 Q. And the Exhibit 33 is for 250,000 and Exhibit 34  
8 is for 100,000. So the 350 he is owed is the sum of these  
9 two?

10 A. Uh-huh, uh-huh.

11 Q. Next I am going to hand you what has been marked  
12 as Exhibit 35, a UCC Financing Statement, Bates No.  
13 ACC 1079. Do you know what this is?

14 A. Well, this is with First Community, which at one  
15 point was doing invoice financing. So they were -- God,  
16 I can't remember his name at the bank that was doing  
17 invoice financing for us for a period of time, maybe  
18 about a year, year and a half. So when they were doing  
19 that, of course they had the first right to the invoice  
20 that came, and then it went into our bank. So they  
21 filed the UCC to collect the money first and then it  
22 went into the bank, and then we -- since it was a  
23 nonterm factoring invoice, factoring agreement. So  
24 that's what that was. So when they do a factoring  
25 agreement, they put the UCC that they get first.

1 Because they would loan us that money, or they would put  
2 that money in the bank, and then the --

3 And it was really designed for the Pepsi  
4 business, because the Pepsi business was an ACH payment  
5 on Pepsi corporate business. So Pepsi corporate, the  
6 way we would make a delivery, they would put it in a  
7 portal where First Community would see what date it was  
8 going to get paid and they would wire whatever that  
9 agreement was, 87 percent of that money, to our bank.

10 Q. Were you aware that First Community Financial had  
11 or intended to file this document?

12 A. I believe it was in the agreement that they  
13 signed with First Fidelity, which was our bank. So  
14 First Fidelity was our banker, who originally we looked  
15 to them to help us with this, you know, form of  
16 factoring. And they came back and said we don't do  
17 factoring but our partner, First Community Financial,  
18 does and we are going to have them set that up. And we  
19 did it, not necessarily through First Fidelity, but it  
20 was through their partner, First Community.

21 So we never really kind of saw the financing.  
22 It just went straight to First Fidelity through our  
23 bank. So it wasn't like First Community doing through  
24 us. So we had an agreement with First Fidelity who was  
25 using First Community.

1 Q. Does this document appear to be consistent with a  
2 UCC-1 form that First Community Financial would have  
3 filed?

4 A. It looks to me like it would have been, you  
5 know, consistent for what they were funding, their  
6 87 percent of a document that was going to PepsiCo. And  
7 we were just, all we were doing was we were factoring  
8 only PepsiCo invoices. Because in our agreement with  
9 Spyglass bottlers, we had ten-day terms of what we were  
10 delivering to Spyglass bottlers. So we didn't need that  
11 financed. But with our agreement with PepsiCo, we had  
12 30-day terms. So we wanted that cash financed or  
13 factored. So this was just an agreement to factor  
14 PepsiCo because we didn't really need the Spyglass for  
15 bottler world factors.

16 I don't know. I am not sure if any of it  
17 actually happened that way, but that's kind of the  
18 banking agreement. That looks to be right.

19 Q. Next I am going to hand you what has been marked  
20 as Exhibit 36, a factoring agreement, Bates No. ACC 834.  
21 Does this appear to be consistent with the factoring  
22 agreement that Shadow Beverages had with First Community  
23 Financial?

24 A. Factoring limit of a million bucks seems a  
25 little high, but...

1           Yep, it was signed by me. This would have  
2 been -- it is my signature so that would have been  
3 right.

4           Q.       Next I am going to hand you what has been marked  
5 as Exhibit 37, a promissory note to Canis Major  
6 Development, Bates No. SHADOW 7360. Who are the people  
7 behind Canis Major Development?

8           A.       This would be a gentleman by the name of Dave  
9 Kelly from Minneapolis. This would be one of Rick  
10 Kelly -- Rick Peterson's, if you kind of remember the  
11 Rick Peterson story and his position on bringing in  
12 a million dollars of capital, this would be his other  
13 half a million from Bradie James.

14                 I don't remember exactly how he ran into -- oh,  
15 I do remember. And I can't remember the GoDaddy guy's  
16 name, but the person who owns GoDaddy we met with two or  
17 three times to make an investment into Shadow. And we  
18 were going to produce a product for him and Danica for  
19 the race car. And kind of the 12th hour, and Rick  
20 Peterson was the guy doing most of that work, and at the  
21 12th hour GoDaddy opted not to do that. And in return,  
22 they gave us a guy named Dave Kelly that was looking at  
23 investing some capital. And he opted to do this.

24                 This was, again, Rick Peterson's guy. Dave  
25 Kelly came to Shadow. I met him for the first time. We

1 presented the executive summary, kind of our business  
2 strategy, what we were doing, the same thing that we had  
3 presented to the GoDaddy folks. And Dave Kelly made an  
4 investment under his company name Canis Major  
5 Development. And that's how we got to know Dave Kelly.

6 Q. When he visited Shadow, did he meet with anyone  
7 in addition to you?

8 A. It was Rick and I and Sam. I believe Sam came  
9 in for that because we were presenting, again, this  
10 GoDaddy strategy a couple different times.

11 Q. The second paragraph mentions a maturity date of  
12 May 6, 2013. Do you know if this note was fully paid by  
13 that date?

14 A. No, I know this note has not been paid.

15 Q. And on the second page, that's your signature?

16 A. Yes.

17 Q. What documents were sent to Mr. Kelly about  
18 Shadow before this note was made?

19 A. No documents sent. Again, he was at the office,  
20 saw the executive summary and the company strategy, what  
21 we were trying to accomplish and how, you know, we had  
22 the flexibility of building different brands for  
23 different folks, example of GoDaddy and the Danica race  
24 car energy product that we were looking to produce for  
25 her.

1 Q. Was Mr. Kelly told about any judgments against  
2 Shadow before this note was made?

3 A. I don't recall that discussion happening with  
4 Dave.

5 Q. Was he told about any judgments against Shadow  
6 before this note was made?

7 A. I don't recall that. I do recall, again, that  
8 the GoDaddy folks had done their due diligence. And he  
9 was tied to the GoDaddy folks. So he had pretty much,  
10 you know, pretty good due diligence on Shadow based on  
11 the GoDaddy folks.

12 And I do know, since then I have got to know  
13 Dave fairly well. And he got fairly involved into our  
14 relationship with Mix 1. And a year later he invested  
15 another, he invested another half a million into Mix 1,  
16 knowing that Mix 1 was going to acquire the No Fear  
17 brand.

18 So in, give you a close range, October of 2014  
19 somewhere, knowing that we were negotiating for this  
20 sale of No Fear to Mix 1 to make Mix 1 a public company  
21 with a couple different beverages, he bought 200 -- or  
22 bought half a million shares of Mix 1 and is an active  
23 member.

24 I met with Dave Kelly a couple weeks ago, just  
25 to give him an update what was going on with Shadow and

1 Mix 1. So I do know Dave now fairly well. But at this  
2 point I did not know Dave when he did this promissory  
3 note.

4 Q. Before this note was made, was Mr. Kelly told  
5 about any personal guaranties that you or Sam Jones had  
6 not paid on in the past?

7 A. None that I recall.

8 Q. Was Mr. Kelly told about any other, any security  
9 interests that existed on any Shadow assets before this  
10 note was made?

11 A. None that I recall.

12 Q. Next I am going to hand you what has been marked  
13 as Exhibit 38, a limited security agreement with Canis  
14 Major Development, Bates No. SHADOW 7362. On the final  
15 page, is that your signature?

16 A. Correct.

17 Q. And this agreement was made in connection --

18 A. With the promissory note.

19 Q. The note, Exhibit 37?

20 A. Correct.

21 Q. Next I am going to hand you what has been marked  
22 as Exhibit 39, a payment and performance guaranty to Canis  
23 Major Development, Bates No. SHADOW 7353. Was this  
24 guaranty also made in connection with the note in  
25 Exhibit 37?

1 A. Yes, it was.

2 Q. And on page 7, are those your signature and Sam  
3 Jones' signature?

4 A. Yes, they are.

5 Q. And did you or Sam Jones ever make any, ever  
6 personally make any payment to Mr. Kelly or Canis Major  
7 Development based on this guaranty?

8 A. I have not. And to the best of my knowledge,  
9 neither has Sam.

10 Q. Next I am going to hand you what has been marked  
11 as Exhibit 40, a settlement agreement with Dave Kelly,  
12 Bates No. SHADOW 7344. On page 4 there is a blank  
13 signature line for Shadow Beverages. Do you know if this  
14 was ever signed?

15 A. This was not executed.

16 Q. Why is that?

17 A. Well, this would be, as you can see the date in  
18 May, so, you know, the asset. So as the recitals  
19 clearly state, on April 1 we sold the No Fear asset to  
20 Mix 1. And now the parties are looking to settle the  
21 promissory note and the documents you just presented and  
22 pursuant to the agreement responsible for issuing  
23 payment to lenders.

24 So what we were looking to do across the  
25 settlement agreement is to offer them the shares of

1 Mix 1 Life and full transfer. That's 16,000 shares.  
2 And we offered that to them and proposed this to their  
3 attorneys. And we have others like this that we  
4 proposed.

5 Because, again, in the settlement agreement  
6 we -- there was three components. It was cash. It was  
7 debt transfer. And it was stock. And we were going to  
8 use the stock to settle these agreements. And until we  
9 had agreements settled with everybody, we were not going  
10 to disburse the stock. Right?

11 So as it stands today, we still have our stock  
12 certificate under lock and key, and we have not  
13 disbursed one share to any board member, any owners, any  
14 investors until we have fully got acceptance from all  
15 creditors on all obligations.

16 So we presented probably, I am going to guess it  
17 is probably seven or eight settlement agreements to  
18 folks. And we had most of these agreed to. And we have  
19 a couple that we did not get agreements to that felt  
20 they wanted more cash or they wanted cash instead of  
21 stock.

22 And then as -- where we ran into real issues was  
23 in the June, July time frame. As you can see, this was  
24 a May kind of document. And in, I am going to use the  
25 end of June, early July, as the records go, you can see

1 the stock price at this time frame was in the \$6 range,  
2 and in July the stock price started to dip in the \$3  
3 range. So the value of what people were going to be  
4 getting was going to be a lot less. And as it stands  
5 today, the stock price is probably going to be around 75  
6 cents. That is really where the issues lie today in  
7 what we are trying to accomplish.

8 Mix 1, as a company, has an SEC filing with a  
9 couple of brokers on short selling issues and illegal  
10 activity, that they claim is illegal activity. There is  
11 some public records that you can go onto, press releases  
12 that have broke. I met with Mix 1 a week ago. They say  
13 there are filings on that that have happened. And, you  
14 know, they look at DTC reports on a weekly basis. We  
15 know that stock price should be going back up.

16 You know, our transaction agreement, as you see,  
17 has no guaranty on stock price. We are having some  
18 discussions with them kind of on a legal standpoint of  
19 where the stock price should be. And if there is any  
20 changes to our transaction agreements so we can get  
21 these settlement agreements back in place, that has  
22 caused other creditors to file the involuntary, which we  
23 all know is in place, or in play, we are dealing with  
24 that.

25 But these settlement agreements were all written

1 in prior in getting all these documents, again, why the  
2 transaction occurred, how we were prepared to get all  
3 the obligations handled based on all the promissory  
4 notes that we have looked at, all the obligations the  
5 company had, and then kind of the struggles that Mix 1  
6 has had, both from raising capital --

7           So the story is that on the cash component side,  
8 there is probably another, I am going to use round  
9 numbers, another \$700,000 that Mix 1 is responsible for  
10 to Shadow. And then there is the stock component that  
11 is an issue at Shadow, for Shadow, which is in that  
12 range of about \$8 million. And once those get kind of  
13 settled, and it will either be through the trustee or  
14 through the courts, then we can address all these  
15 settlement agreements to either, you know, lenders or  
16 our creditors in some form or fashion.

17           But this is one example of, you know, there was  
18 probably eight of those, nine of those that were written  
19 to all kinds of examples of the promissory notes that we  
20 have, we have reviewed in just this fashion, recitals  
21 based everything that has happened, and the settlement  
22 agreement, knowing that the stock originally had a  
23 six-month hold on it. And that was as of April 1. So  
24 the stock in today's world, based on what the  
25 transaction agreement said, is actually live and

1 transferrable cash today, but it is under lock and key  
2 until the rest of it is gone through. And as it stands  
3 today, we are not under court order to do anything with  
4 it until we are -- until we figure this out.

5 Q. Next I am going to hand you --

6 A. Sorry for the long story.

7 Q. That's fine.

8 A. But my story can go on forever, but I hate to  
9 bore you with all of it.

10 Q. That's all right.

11 A. I think it is important to give you a little bit  
12 of the background because we are talking about where the  
13 documents, I guess, came from. And it is kind of  
14 important to know the sequence of where the documents  
15 are going to end. And, you know, I think it is  
16 important to have that background so you know where we  
17 are going with that.

18 And we are, as you and I have spoke quite a few  
19 different times, knowing that we are right in the middle  
20 of this, and I know we have talked and you have been  
21 more than generous and kind of postponing and giving us  
22 some time to -- because you know that we are dealing  
23 with all this other stuff. Right? And that is all  
24 coming -- well, I won't say coming to an end, but it is  
25 in process. Right?

1           So, you know, Judge Brenda Martin is the one  
2 with our case, and she will be handling that. And we  
3 are working through that. And we do have this whole  
4 other side of, well, we have a transaction; if it was as  
5 simple as we had all that in our hands, we could take  
6 care of all the issues. And, you know, you have got to  
7 look on the flip side of it. You know, you can't blame  
8 all the creditors for, you know, raising red flags and  
9 going what are you guys doing, you did a deal April 1  
10 and here you are Thanksgiving and you haven't done  
11 anything with it.

12           But it has all been under lock and key, and  
13 nobody has gotten paid, not one dollar spent until we  
14 get to the bottom of where we can do what is right. And  
15 we are going to take the advice of the court to be sure  
16 we are doing what is right and fair to everybody.

17       Q.     And --

18       A.     So, again, sorry for the commentary.

19       Q.     That's fine.

20       A.     You are probably like shut up and let's get this  
21 over with.

22       Q.     You are welcome to have whatever commentary you  
23 think is useful. That's fine.

24           Next I am going to hand you what has been marked  
25 as Exhibit 41, a promissory note to Rick Andersen, Bates

1 No. Shadow 6358. On the second page it is your signature,  
2 correct?

3 A. Correct.

4 Q. And the second paragraph, on the first page the  
5 second paragraph mentions maturity date of April 5, 2014.  
6 Was this note paid by that date?

7 A. No. And you will see this converts over to Rick  
8 Andersen, to Legacy Insurance Company.

9 Rick Andersen is actually a cousin of mine from  
10 Omaha. And Rick was one that has been out to Phoenix,  
11 again, a relative, so he knows about Shadow through me,  
12 knows nothing about beverages, got a very small glimpse  
13 of Shadow through the executive summary, but did a  
14 promissory note and investment into Shadow. He is a  
15 creditor based on our personal relationship. And his  
16 note is still outstanding.

17 Q. Did --

18 A. And there was actually two of them. So you will  
19 see that there is another one.

20 Q. Did anyone else communicate with Mr. Andersen  
21 about this note?

22 A. No, just me personally.

23 Q. What Shadow documents did Mr. Andersen receive  
24 before this note was made?

25 A. Just a very brief discussion on the executive

1 summary.

2 Q. Was Mr. Andersen told about any previous Shadow  
3 note defaults before this note was made?

4 A. Not that I recall.

5 Q. Was he told about any judgments against Shadow  
6 before this note was made?

7 A. Not that I recall.

8 Q. Was he told about any other security interests  
9 that existed on Shadow's assets before this note was made?

10 A. Not that I recall.

11 Q. Next I am going to hand you what has been marked  
12 as Exhibit 42, a limited security agreement with  
13 Mr. Andersen Bates No. SHADOW 6360. This agreement was  
14 made in connection with the note that we just looked at?

15 A. That is correct.

16 Q. And the final page, that is your signature,  
17 correct?

18 A. That is correct. And this is half of -- well,  
19 there is another document that Rick or Legacy Insurance  
20 has half a million dollars.

21 Q. I think we will get into it in here. I don't  
22 remember when it happens.

23 A. I'm sorry.

24 Q. That's fine.

25 Next I am going to hand you what has been marked

1 as Exhibit 43, a Maricopa County Superior Court default  
2 judgment, Bates No. ACC 456. Do you know what this is?

3 A. Nevada Beverage is a distributor that was a  
4 distributor of some brands of Shadow back in 2012 maybe.  
5 And they had some product that they destroyed, 50,000,  
6 \$60,000. And we did not fight it because we do owe them  
7 60 grand.

8 Q. Does this document --

9 A. I am not sure. Yeah, 68 grand.

10 Q. Does this document appear to be consistent with  
11 what the default judgment in this case looked like?

12 A. Uh-huh.

13 Q. Sorry. Just so she can write it down, that was a  
14 yes?

15 A. Yes. Sorry about that.

16 Q. That's fine.

17 Has this judgment been paid yet?

18 A. No, it has not.

19 Q. Next I am going to hand you what has been marked  
20 as Exhibit 44, a promissory note to Bradly Fagan, Bates  
21 No. SHADOW 6568. Who is Mr. Fagan?

22 A. Bradly is a personal acquaintance in Gilbert,  
23 Arizona.

24 Q. And in the second paragraph, there is a maturity  
25 date mentioned of October 31st, 2015. Was this note paid

1 by that date?

2 A. No. This amount was still owed. Bradley, he has  
3 a couple other notes. And he is doing some time in  
4 prison for eight years and just prior to this received  
5 his insurance benefit and made a decision to loan the  
6 company the money and invest. And these are still  
7 outstanding. And we have not been able to talk to him  
8 for a little bit. But he is still owed some money. And  
9 he has two or three of these.

10 Q. The third paragraph mentions quarterly interest  
11 payments of 9 percent. Did the company make those  
12 payments to him on time?

13 A. We did make some quarterly interest payments  
14 when he first got his first payment and was going  
15 through his court process and needed some cash for some  
16 court fees. So we borrowed some money from him. And we  
17 did make some quarterly cash payments to him that are on  
18 record to the bank account that we did. And the  
19 agreement, as his insurance company money came in, he  
20 was putting it into Shadow before he knew he was going  
21 to be gone for awhile.

22 Q. When was the first quarterly interest payment  
23 that Shadow didn't make on time?

24 A. It would have been maybe the first quarter of  
25 2015, when he was sent away and didn't need the money.

1 Q. And is this second page your signature?

2 A. Correct.

3 Q. What documents about Shadow were sent to  
4 Mr. Fagan before the note was made?

5 A. He was shown our executive summary and what we  
6 were doing with Shadow and the long-term strategy with  
7 Shadow and was intimately aware of the potential  
8 acquisition between Mix 1. And his interest was really  
9 in securing stock into Mix 1 for a long-term investment.

10 Q. Who communicated with him about the note before  
11 it was made?

12 A. Me personally.

13 Q. Anyone else?

14 A. No, I don't think so.

15 Q. Was Mr. Fagan told about any previous note  
16 defaults by Shadow before this note was made?

17 A. Yeah. He and I talked about the position of the  
18 company and the strategy of Mix 1 and why we were doing  
19 what we were doing. So, yeah, he was aware of kind of  
20 the financial situation of the company.

21 I don't know specifically of how many of the  
22 judgments and who and the defaults, but he knew the  
23 company was at its max. And his money was invested to  
24 really be converted into Mix 1 stock. He had a personal  
25 situation that, again, it was insurance money from the

1 death of his wife that he wanted to put somewhere.

2 Q. And beyond the financial state of the company  
3 generally, was he told about any particular notes that the  
4 company hadn't yet paid on time?

5 A. Not specifically. We reviewed balance sheets,  
6 so he saw the debt of the company. He had balance  
7 sheets, income statements.

8 So he actually was a financial guy from one of  
9 the banks from Chase Bank. So he was the finance  
10 person. And he knew how to read balance sheets and  
11 income statements and what he was doing there.

12 Q. Do the balance sheets or income statements  
13 include the due dates for any amounts owed?

14 A. No. Typically a balance sheet wouldn't have due  
15 dates.

16 Q. Before the note was made, was Mr. Fagan told  
17 about any other security interests that existed on any  
18 shadow assets?

19 A. Not that I recall.

20 Q. Before the note was made, was he told about the  
21 loss of marketing funding from GNC?

22 A. Uh-huh, yep. He knew about the GNC situation.

23 Q. Next I am going to hand you what has been marked  
24 as Exhibit 45, a limited security agreement with  
25 Mr. Fagan, Bates No. SHADOW 6583. This agreement was made

1 in connection with the note of Exhibit 44, correct?

2 A. That is correct.

3 Q. And that's your signature on the fourth page?

4 A. That is correct.

5 Q. Next I am going to hand you what has been marked  
6 as Exhibit 46, another promissory note to Mr. Fagan,  
7 Bradly Fagan, Bates No. SHADOW 6574.

8 A. It is a month later.

9 Q. So the second paragraph of this note mentions a  
10 maturity date of January 15th, 2014. Was this note paid  
11 by that date?

12 A. No, it was not.

13 Q. And on the second page, is that your signature?

14 A. Correct, it is.

15 Q. And before this particular note was made, was  
16 Mr. Fagan told about any Shadow notes that had not yet  
17 been paid on time?

18 A. No. He had the same information from the same  
19 month before that he had made the first one. It was --  
20 he was making his investments as the insurance money was  
21 coming in.

22 Q. Next I am going to hand you what has been marked  
23 as Exhibit 47, a settlement agreement with Bradly Fagan,  
24 Bates No. SHADOW 6564. Was this settlement agreement ever  
25 executed?

1 A. No. This is another one, similar to what we  
2 reviewed with Mr. Dave Kelly as of May, as you can see.  
3 So those are recitals of what we were trying to do with  
4 the stock payments, as you can see, whatever the stock  
5 amount was with. So this was just actually agreeing to  
6 give him some of his stock and the interest that we  
7 already paid.

8 But this had not been executed. This is similar  
9 to Dave Kelly's, again, dated May, where we were trying  
10 to get all his loans together and with stock payments  
11 and some of the cash that we had already paid him, get  
12 his obligation met.

13 Q. Next I am going to hand you what has been marked  
14 as Exhibit 48, a Maricopa Superior Court final judgment,  
15 Bates No. ACC 4488. Do you know what this is?

16 A. Yeah. This is Portland Bottling. This is a  
17 bottler that produced No Fear bottling product for us.  
18 So this was, you know, for product produced. It was a,  
19 what we refer to as a payable for around 30 grand.

20 In our agreement with Mix 1, if you recall,  
21 there is, part of our agreement was 1.5, up to  
22 \$1.5 million in No Fear payables. So their  
23 responsibility was to cover our debt that had anything  
24 to do with No Fear. And this was one of them. And a  
25 part of that tied to their, them raising their money,

1 which was due in end of May, first of June when they  
2 were getting uplisted to NASDAQ.

3 So I think we had that discussion last time I  
4 was here. And that was really the principle of the  
5 agreement that we did with them, that it was an  
6 April transaction. We moved the asset over. They were  
7 getting uplisted to NASDAQ. They had 15 million coming  
8 in. 1.5 million was coming in to cover No Fear  
9 payables, as written in the agreement, which was this  
10 and some of these production promissory notes that we  
11 had taken.

12 Mix 1 has not been able to raise any of that  
13 money, so, because their NASDAQ uplisting did not  
14 happen. So they have still struggled and they are  
15 working to raise money. And that's where that 700,000  
16 still comes in. And when that comes in, these  
17 obligations will be covered.

18 But that's -- we have -- we didn't fight this  
19 because we know we owe this money. This is not us going  
20 to them and arguing that we owe them \$30,000. We know  
21 we owe them \$30,000.

22 Q. And this one is still waiting to be paid?

23 A. Uh-huh. It is on our payable list with the  
24 court.

25 Q. Does this document appear to be consistent with

1 the final judgment in this case?

2 A. It does. I believe so, 30 grand. And I think  
3 that's what this is.

4 Q. Next I am going to hand you what has been marked  
5 as Exhibit 49, a loan agreement with Brown Bottling Group,  
6 Incorporated, Bates No. Shadow 7338. What is this?

7 A. This was a -- so Brown Bottling is, it is a  
8 Spyglass bottler, so a member of Spyglass. They did a  
9 promissory note for 40 grand.

10 This note has not been paid. It is partially  
11 paid. I think, if you see some of the documents, that  
12 we have paid part of it. We put together -- there is a  
13 settlement agreement for a part of this to be paid in  
14 stock. We, again, have an agreement.

15 And at one point in all these, and I don't know  
16 if you have the document that has a list of every  
17 creditor and every debt that we have, how it is going to  
18 be paid off with the cash and the stock from the Mix 1  
19 transaction, but it is same loan agreement from Brown  
20 Bottling through -- from Shadow. This is -- again, the  
21 documents are a little bit different because each, each  
22 creditor.

23 (Electrical difficulties ensued.)

24 THE WITNESS: What was that?

25 BY MR. KITCHIN:

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1 Q. The motion sensor in here is unreliable.

2 A. This is a loan document with Brown Bottling.

3 Q. Why did Brown Bottling loan the money?

4 A. Why? For production purposes. And you can see  
5 this one is structured different.

6 This is a very typical bottler kind of thing,  
7 deal. They really didn't want the money based on  
8 percentage. You can see they wanted it based on a per  
9 case basis so they know, if you borrow \$40,000, you can  
10 make X amount of cases based on \$5. And they wanted an  
11 extra dollar a case. So that's exactly how this one,  
12 and one to Walton Beverage, where we borrowed the money  
13 to produce product, this would be another example of, as  
14 we describe the No Fear payables on our transaction  
15 agreement with Mix 1, that is paid from that cash  
16 payment owed to us.

17 Q. Was --

18 A. That will be paid by those guys.

19 Q. Was this, I am sorry, was this product that Brown  
20 Bottling was going to produce?

21 A. No, no. We were producing it through PNB. So  
22 PNB is a co-op for the Pepsi bottlers.

23 Q. Pepsi Northwest Beverages?

24 A. Yes.

25 Q. What involvement would Brown Bottling have had

1 with the product that was produced with these funds?

2 A. What involvement would they have?

3 Q. Right.

4 A. They would buy the product.

5 Q. I see. Okay. So --

6 A. They would be a distributor.

7 Q. Right.

8 A. So they loaned us the money to borrow to produce  
9 it. They would place an order, because they distribute  
10 it, so we would sell it back to them. And then they  
11 would pay for the product to go distribute in the  
12 marketplace.

13 Q. In paragraph 5 --

14 A. Does that make sense?

15 Q. It does, yeah. And, yeah, it is sort of what I  
16 was trying to get at but wasn't sure how to describe it.  
17 Just to be clear, they were financing the production of  
18 product that they would then be selling?

19 A. Uh-huh.

20 Q. Was that a yes?

21 A. Yes.

22 Q. Thank you.

23 A. Sorry about that.

24 Q. When did Shadow first fall behind on the payments  
25 that were due to Brown Bottling with this agreement?

1 A. Almost immediately. I mean we never really  
2 started to live up to that. And they were kind of okay  
3 with that. Because we knew what we were trying to  
4 accomplish in this bigger sale.

5 It was kind of almost immediately we set this  
6 up. We had this distribution agreement going on with  
7 Sysco that they were a part of. So this was kind of  
8 their finance guy that put this together, said let's do  
9 it this way. We agreed. And then it really didn't work  
10 out that way.

11 Q. We can skip this one.

12 Next I am going to hand you what has been marked  
13 as Exhibit 51, the loan agreement with Walton Beverage  
14 Company, Bates No. SHADOW 7895. Was this financing of  
15 product that Walton Beverage was going to sell similar to  
16 the loan agreement we saw?

17 A. That's exactly. Walton Beverage is a bottler in  
18 Burlington, Washington, part of the same Spyglass. They  
19 are part of PNB, the co-op. It is exactly the same as  
20 Brown Bottling. Walton Beverage is in Burlington,  
21 Washington.

22 Q. Did Shadow ever fall behind on the payments to  
23 Walton Beverage under this agreement?

24 A. Yes. We did the same as we did with these guys.  
25 We did make a couple payments.

1           If you go on record and if you look at the  
2 settlement agreements that we had put together for these  
3 guys, we can show that there is a payment that -- there  
4 was a payment due. So if you can -- a good example, so  
5 if you see in the recitals, as of March, 26,000 payments  
6 against principle and interest were made. So as of  
7 April 15th, the outstanding balance was 22 out of the 40  
8 that was borrowed out of the 48 due. So that was the  
9 settlement agreement of 4500 shares out of the  
10 1.5 million shares that we own.

11         Q.       When did Shadow first fall behind on payments to  
12 Walton?

13         A.       I would say it was almost immediately. The cash  
14 flow we were using to build the Sysco business that we  
15 talked last time. In this same time frame we had just  
16 secured the Sysco business. So we were directing all  
17 funds into trying to build that Sysco business.

18         Q.       And for both Brown Bottling company and Walton  
19 Beverage Company, when you say that Shadow fell behind  
20 almost immediately, does that mean within a month of the  
21 agreement date or more than that, less than that?

22         A.       Yeah, I would say 30 to 60 days, to the best of  
23 my knowledge.

24         Q.       Next I am going to hand you what has been marked  
25 as Exhibit 53, a loan agreement with Catherine Leyen and

1 Don Johnson, Bates No. SHADOW 6897. What is this?

2 A. Catherine is a, she is a broker, financial  
3 broker that, I guess, through 2014 and '15 was looking  
4 at brokering some products that Shadow had to India, so  
5 works for a company, represents a company called, I  
6 really believe, Mid Set India. Anyway, they broker  
7 products to India.

8 So she had come into Shadow and had seen some  
9 GNC products and looked at being a broker for Shadow to  
10 get products to India. It never really worked out. But  
11 she was very familiar with the Shadow business, had seen  
12 the executive summary, had seen very close, then in this  
13 December 13th understood what we were doing with the  
14 Sysco business, the discussions that were going on with  
15 Mix 1.

16 She would come in, was, again, looking at  
17 products, what products we had to broker, very familiar  
18 with Shadow, and agreed to do -- she had, again, some  
19 funds that she was looking at investing. And she and  
20 her -- I don't know if Don is her husband or significant  
21 other, but between the two of them, they loaned the  
22 company \$25,000.

23 Q. And --

24 A. This is still an outstanding note. I spoke to  
25 her a couple weeks ago.

1 Q. Did they make the loan for the purpose of making  
2 a profit on the repayment or for any other purpose?

3 A. Yeah, just for an investment to make money off  
4 of their investment.

5 Q. Did Catherine Leyen and Don Johnson ever have any  
6 management role at Shadow Beverages?

7 A. None at Shadow, no. They had their own -- they  
8 were a broker, trying to broker products  
9 internationally.

10 Q. When did Shadow first fall behind on payments due  
11 to them based on this loan?

12 A. Immediately. We never made a payment based on  
13 the agreement here. We had very -- again, once this  
14 loan became -- or when we did not get to this payment  
15 date, it was due to what we were doing at Sysco and this  
16 discussion with Mix 1. So we all, every one of these  
17 folks we had discussions with, this is what we are  
18 doing, the notes are going to have to be extended, we  
19 are not going to be making payments, but we will be able  
20 to do, you know, payments will be coming in shares  
21 and/or cash, so... And every one of these folks I have  
22 spoke to within the last 30 to 60 days. So everybody is  
23 kind of aware of why we have not and what we are trying  
24 to accomplish.

25 Q. In section 3, under Loan Consideration, it says

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1 that the lender will receive \$1 for each case that Shadow  
2 sells. When, after that agreement on December 6, when was  
3 the first time that Shadow sold any cases that would have  
4 triggered a payment obligation?

5 A. Well, sales were ongoing. It was on a weekly  
6 basis. We were selling product. I mean we never  
7 stopped selling product, if that answers your question.

8 Q. How long, once they lent this money, how long  
9 would it typically take for those funds to be turned into  
10 new product? Is it right away or does it take a few days?

11 A. Oh, no. It would take somewhere between 60 to  
12 90 days. I am sorry. I didn't understand your  
13 question. It would take 60 to 90 days to buy raw  
14 material, schedule production, then to make the  
15 inventory and then get it out on the marketplace.

16 Q. Who communicated with Ms. Leyen or Mr. Johnson  
17 about this loan before it was made?

18 A. Communicated what? The company, about the  
19 company?

20 Q. Anything about --

21 A. Well, she had been working with the company for  
22 two years. So it would have been either Rick, myself,  
23 Sam. She was looking at all our product. She brought  
24 us product ideas, things that she would like to see us  
25 formulate, adult nutrition products. She had some

1 healthcare history. I mean so she was very involved in  
2 looking at different formulas, different ingredients,  
3 distribution to India. So she knew of our company very  
4 thoroughly, what we did and what our capabilities were.

5 Q. Before this agreement was made, were Ms. Leyen or  
6 Mr. Johnson told about any previous notes or loans that  
7 Shadow had defaulted on?

8 A. Mr. Johnson, no, because, again, I had never met  
9 him. He was just part of the document, because the  
10 money must have come from both of them, or accounts from  
11 them. But Catherine, she was aware of the company. But  
12 not that I recall specifically any, anything very  
13 specific on any of those issues.

14 Q. Before the agreement was made, were either of  
15 them told about any judgments against Shadow?

16 A. Not that I recall, if it was specific on  
17 judgments. But, again, Catherine is very well aware of  
18 what was going on with the company. She was a pretty  
19 intimate broker involved with the company.

20 Q. Before the agreement was made, were either of  
21 them told about the loss of GNC marketing funding?

22 A. Yeah. Yeah, Catherine was, she was involved on  
23 the GNC side. Again, with her kind of little bit of  
24 healthcare background, she had a lot of involvement into  
25 what products we were producing with GNC. And then when

1 Tom Dowd and GNC ended, the reason why, and their  
2 marketing pools, she was as disappointed as anybody why  
3 GNC opted to go a different direction.

4 Q. On the second page, is this your signature?

5 A. Correct.

6 MR. KITCHIN: Let's go off the record now.

7 (An off-the-record discussion ensued.)

8 MR. KITCHIN: Let's go back on the record.

9 And so we will agree to continue to another date  
10 that we will schedule afterward, and we will finish for  
11 the day here.

12 THE WITNESS: Yes.

13 MR. KITCHIN: Thanks.

14 THE WITNESS: I am fairly flexible through the  
15 rest of the year. I am not really traveling for the  
16 holidays or anything.

17 MR. KITCHIN: Me, too.

18 We can go off the record.

19 (The examination under oath was recessed at  
20 12:02 p.m.)

21

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25

1 STATE OF ARIZONA )  
COUNTY OF MARICOPA )

2

3 BE IT KNOWN that the foregoing proceedings were  
4 taken before me; that the witness before testifying was  
5 duly sworn by me to testify to the whole truth; that the  
6 foregoing pages are a full, true, and accurate record of  
7 the proceedings all done to the best of my skill and  
8 ability; that the proceedings were taken down by me in  
9 shorthand and thereafter reduced to print under my  
10 direction.

7

8 I CERTIFY that I am in no way related to any of  
9 the parties hereto nor am I in any way interested in the  
10 outcome hereof.

9

10 [ ] Review and signature was requested.  
11 [ ] Review and signature was waived.  
12 [X] Review and signature was not required.

11

12 I CERTIFY that I have complied with the ethical  
13 obligations set forth in ACJA 7-206(F)(3) and ACJA 7-206  
14 (J)(1)(g)(1) and (2). Dated at Phoenix, Arizona,  
15 this 30th day of November, 2015.

14



15

16

Colette E. Ross  
Certified Reporter  
Arizona CR No. 50658

17

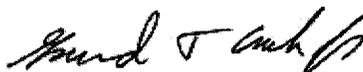
18 I CERTIFY that Coash & Coash, Inc., has complied  
19 with the ethical obligations set forth in ACJA 7-206  
20 (J)(1)(g)(1) through (6).

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COASH & COASH, INC.  
Registered Reporting Firm  
Arizona RRF No. R1036

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BEFORE THE  
ARIZONA CORPORATION COMMISSION  
SECURITIES DIVISION

IN THE MATTER OF THE INVESTIGATION)  
OF: ) FILE NO. 8507  
)  
SHADOW BEVERAGES AND SNACKS, LLC. )  
\_\_\_\_\_ )

EXAMINATION UNDER OATH OF LUCIO GEORGE MARTINEZ  
VOLUME III  
(Pages 253 through 355, inclusive.)

Phoenix, Arizona  
December 9, 2015

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Prepared By:  
Colette E. Ross, CR  
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## 1 INDEX TO EXAMINATIONS

2	WITNESS	PAGE
3	LUCIO GEORGE MARTINEZ	
4	Examination by Mr. Kitchin Continued	259
	Examination by Mr. Beliak	324
5	Further Examination by Mr. Kitchin	345

## 6 INDEX TO EXHIBITS

7	NO.	DESCRIPTION	MARKED	IDENTIFIED
8	Exhibit 54	Term Loan from Bradly Fagan, Bates Nos. SHADOW006579, 6580	5	263
9				
10	Exhibit 55	Judgment, Bates No. ACC00464	5	265
11				
12	Exhibit 56	Promissory Note to Jimmy Stephensen, Bates Nos. SHADOW007258, 7259	5	266
13				
14	Exhibit 57	Promissory Note to Salganicks, Bates Nos. SHADOW007179, 7180	5	268
15				
16	Exhibit 58	Personal Guaranty to Salganicks, Bates Nos. SHADOW007182, 7183	5	270
17				
18	Exhibit 59	Promissory Note to Richard Peterson, Bates Nos. ACC008782, 8783	5	271
19				
20	Exhibit 60	Personal Guaranty to Richard Peterson, Bates Nos. ACC008787, 8788	5	273
21				
22	Exhibit 61	Promissory Note to Reed Hatkoff, Bates Nos. SHADOW006710-6715	5	274
23				
24	Exhibit 62	Security Agreement with Reed Hatkoff, Bates Nos. ACC008984-8990	5	280
25				

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2  
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25

## INDEX TO EXHIBITS

NO.	DESCRIPTION	MARKED	IDENTIFIED
Exhibit 63	Promissory Note to Legacy Insurance Services, Inc., Bates Nos. SHADOW007502, 7503	5	281
Exhibit 64	Utah Legal Notice, Bates Nos. ACC000618-620	5	283
Exhibit 65	Promissory Note to Ravenstead Enterprises, LLC, Bates Nos. SHADOW006891, 6892	5	284
Exhibit 66	Personal Guaranty, Bates Nos. SHADOW007091, 7092	5	288
Exhibit 67	Promissory Note to Richard Peterson, Bates Nos. SHADOW007089, 7090	5	288
Exhibit 68	Promissory Note to Michael Crane, Bates Nos. SHADOW006427, 6428	5	289
Exhibit 69	Personal Guaranty to Michael Crane, Bates Nos. ACC000085, 86	5	291
Exhibit 70	Promissory Note to Kurt Moore, Bates Nos. SHADOW006942, 6943	5	291
Exhibit 71	Personal Guaranty to Kurt Moore, Bates Nos. SHADOW006944, 6945	5	293
Exhibit 72	Promissory Note to Viole Property Investments, LLC, Bates Nos. SHADOW007939-7955	5	293
Exhibit 73	Notice of Judgment, Bates Nos. ACC000468, 469	5	298

1	INDEX TO EXHIBITS			
2	NO.	DESCRIPTION	MARKED IDENTIFIED	
3	Exhibit 74	Mutual Release, Bates Nos. ACC000973, 974	5	299
4	Exhibit 75	Convertible Promissory Note to Bouchards, Bates Nos. SHADOW006413, 6414	5	300
5				
6	Exhibit 81	Personal Financial Statement, Bates Nos. ACC000403-405	5	301
7				
8	Exhibit 85	Meeting Agenda, Bates No. SHADOW005886	5	302
9				
10	Exhibit 86	2/1/13 Board Meeting Minutes, Bates Nos. SHADOW005887, 5888	5	304
11	Exhibit 87	3/21/13 Board Meeting Minutes, Bates Nos. SHADOW006010, 6011	5	305
12				
13	Exhibit 88	5/20/13 Board Meeting Minutes, Bates Nos. SHADOW006024, 6025	5	306
14	Exhibit 89	(Not Utilized)	5	--
15	Exhibit 90	(Not Utilized)	5	--
16	Exhibit 91	(Not Utilized)	5	--
17	Exhibit 92	1/30/14 Board Meeting Minutes, Bates Nos. SHADOW006157, 6158	5	307
18				
19	Exhibit 93	3/12/14 Board Meeting Minutes, Bates Nos. SHADOW006170, 6171	5	310
20	Exhibit 94	(Not Utilized)	5	--
21	Exhibit 95	4/14/14 Letter from Kevin Senn, Bates No. ACC008815	5	313
22				
23	Exhibit 96	Promissory Note to Pelican Group, Bates Nos. SHADOW007506, 7507	5	314
24				
25				

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24  
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## INDEX TO EXHIBITS

NO.	DESCRIPTION	MARKED	IDENTIFIED
Exhibit 97	Promissory Notes, Term Loans, Bates No. SHADOW007510	5	315
Exhibit 98	Bank Account Statement Excerpt, Bates No. ACC000271	5	316
Exhibit 99	6/19/14 Letter from Novus Aurum Trust, Bates No. SHADOW007087	5	317
Exhibit 100	6/20/14 E-Mail from George Martinez, Bates No. SHADOW007093	5	320
Exhibit 101	Check Images, Bates No. ACC008111	5	323

1 EXAMINATION UNDER OATH OF LUCIO GEORGE MARTINEZ  
2 was reconvened on December 9, 2015, commencing at 9:01  
3 a.m., at the Arizona Corporation Commission, Securities  
4 Division, 1300 West Washington Street, Phoenix, Arizona,  
5 before COLETTE E. ROSS, Certified Reporter No. 50658 in  
6 and for the County of Maricopa, State of Arizona.

7

8 APPEARANCES:

9

For the Securities Division:

10

Mr. Paul Kitchin  
Enforcement Attorney  
1300 West Washington Street, Third Floor  
Phoenix, Arizona 85007

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15

ALSO PRESENT:

16

Mr. Avi Beliak, Forensic Accountant, Securities  
Division  
Mr. Mike Brokaw, Special Investigator, Securities  
Division

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1 LUCIO GEORGE MARTINEZ,  
2 called as a witness herein, having been first duly sworn  
3 by the Certified Reporter to speak the truth and nothing  
4 but the truth, was further examined and testified as  
5 follows:

6

7

EXAMINATION CONTINUED

8 BY MR. KITCHIN:

9 Q. This is part of an inquiry by the Securities  
10 Division of the Arizona Corporation Commission in the  
11 matter of Shadow Beverages and Snacks, LLC and Lucio  
12 George Martinez to determine if there has been full  
13 compliance with the Securities Act of the State of  
14 Arizona. The information obtained today may reveal  
15 violations of statutes outside the Securities Act.

16 Mr. Martinez, you have the right to refuse to  
17 answer any questions if you think the answer may tend to  
18 incriminate you. You have the right to refuse to produce  
19 any private papers which you feel may tend to incriminate  
20 you. You do not have the right to refuse to produce  
21 corporate papers based on any claim of self-incrimination.

22 Do you understand that you have the right to be  
23 represented by counsel?

24 A. I do.

25 Q. Would you like to go forward without an attorney?

1 A. I do.

2 Q. If at any time you feel you need legal counsel,  
3 tell me immediately and we will stop the proceeding to  
4 allow you to obtain counsel.

5 A. Okay.

6 Q. The reporter will go off the report at my  
7 direction. If you would like to go off the record, tell  
8 me and I will try to accommodate you.

9 Since your testimony is being recorded by a  
10 reporter, please respond verbally as opposed to nodding or  
11 shaking your head. Also please let me finish asking a  
12 question before you answer so there will not be two people  
13 speaking at once. If you don't hear a question or don't  
14 understand the question, say so and the reporter will  
15 repeat it or I will explain the question further.

16 And you are under oath so any false statements  
17 you make may be criminally prosecuted as perjury.

18 Do you understand what I have explained to you so  
19 far?

20 A. I do.

21 Q. Are you taking any medication or do you have any  
22 physical problem that would prevent you from hearing or  
23 understanding my questions?

24 A. I am not.

25 MR. KITCHIN: Can we go off the record for a

1 moment.

2 (An off-the-record discussion ensued.)

3 MR. KITCHIN: Let's go on the record.

4 BY MR. KITCHIN:

5 Q. Has Mix 1 Life ever traded on any public stock  
6 exchange?

7 A. I would believe so. They are a publicly traded  
8 company so you can see the stock traded daily and the  
9 amount of shares. So the answer would be yes.

10 Q. Do you happen to know what exchange they are on?

11 A. Yeah, just the OTB, over the counter, kind of on  
12 that board. The symbol, trading symbol is MIXX.

13 Q. What is Sam Jones' contact information?

14 A. What is his contact information? I could send  
15 you his cell phone number and home address --

16 Q. Okay.

17 A. -- if needed, yeah.

18 Q. Do you know his wife's full name?

19 A. Andrea Frohning.

20 Q. Did Mr. Jones ever stop serving on the Shadow  
21 board managers?

22 A. Yes.

23 Q. When was that?

24 A. It would have been early 2014. And I would have  
25 to go back and look at the calendar.

1 Sam and Andrea live in Newtown, Connecticut.  
2 And they had a couple children in the schools when that  
3 tragedy happened. They were both business professionals  
4 that were traveling. They were both out of the city  
5 traveling. Sam was actually here in Arizona working on  
6 Shadow business when that occurred. And they had  
7 trouble getting the kids out of the school, though  
8 nothing happened to their kids. And Sam took three to  
9 four months off after that to deal with, you know,  
10 funerals of friends that have lost kids, and then after  
11 that just wasn't ready to continue the travel and the  
12 work at Shadow, and he resigned his position.

13 Q. Do you know how long after the tragedy he  
14 resigned?

15 A. It is going to be somewhere six to ten months.  
16 I would have to go back and look at the records. It was  
17 a little bit of a slow process. We gave him some time  
18 to kind of deal with the personal situation and then  
19 tried to get him back engaged into his portion of the  
20 business, which was kind of running the formula and  
21 handling suppliers and those kind of things, and then  
22 opted not to come back and become a stay-at-home dad, as  
23 his wife works for Hubbell corporation and is a senior  
24 vice president of human resources. So she stayed there.

25 Q. Turning back to Shadow's promissory notes, for

1 any of the Shadow promissory notes, did anyone at Shadow  
2 ever specifically ask any of the note purchasers whether  
3 they were buying the notes for their own account as  
4 opposed to on someone else's behalf?

5 A. Not that I recall. I would not have an example  
6 of when that might have happened.

7 Q. And for any Shadow note purchasers, whoever  
8 received LLC units or warrants to buy the LLC units, were  
9 they ever specifically asked if they had any intention of  
10 reselling those units?

11 A. Not that I recall. It was never done for  
12 reselling those units in an LLC, because the operating  
13 agreement has some specific language around how the  
14 units can be transferred. And I don't believe that  
15 discussion ever happened. But everybody had an, if you  
16 were an equity holder and bought membership shares, you  
17 had an operating agreement that outlined transfers of  
18 shares and who had the first right to bid on them or  
19 sell them.

20 Q. Next I am going to hand you what has been marked  
21 as Exhibit 54, Bates No. SHADOW 6579. What is this?

22 A. It was a term loan made to Shadow from Bradley  
23 Fagan.

24 Q. And on the second page, is that your signature?

25 A. It is.

1 Q. Who communicated with Mr. Fagan about making this  
2 note?

3 A. It would have been myself.

4 Q. Anyone else?

5 A. Yeah. I think there were a couple different  
6 individuals in the office, maybe Richard Amrozowicz and  
7 potentially Rick Peterson. When we had anybody coming  
8 in that wanted to know about the company, we brought the  
9 company executives in to talk about the company and what  
10 the plans were.

11 Q. What Shadow documents were sent to Mr. Fagan  
12 before the note was made?

13 A. I don't believe anything was sent to Brad. He  
14 came in and we presented our executive summary and the  
15 company strategy, what we were trying to accomplish,  
16 which was similar documents or the same documents that  
17 got updated that you have record of that we referred to  
18 as the executive summary.

19 Q. Before this note was made, was Mr. Fagan told  
20 about any Shadow defaults on previous notes or loans?

21 A. Not that I recall that discussion.

22 Q. Before the note was made, was Mr. Fagan told  
23 about the loss of the GNC marketing funding?

24 A. I would believe so. At this time frame in 2014,  
25 we knew we were already out of GNC. So yes, he would

1 have been notified that GNC was not in the plan moving  
2 forward.

3 Q. Next I am going to hand you what has been marked  
4 as Exhibit 55. What is this?

5 Oh, I am sorry. It is Bates No. ACC 464.

6 A. This is a judgment. We worked with GNC since  
7 2013 on kind of coming to an agreement on the resolution  
8 of our licensing agreement with them. We had another  
9 two years where there was an amount owed to them that  
10 was a guaranteed. And, again, when they cancelled the  
11 agreement, the guaranty kind of came off.

12 They filed against us in Pennsylvania. We did  
13 not have an attorney in Pennsylvania to defend it. We  
14 went to -- worked with their counsel specifically on  
15 negotiating a settlement. And that settlement  
16 included -- we had specific bottle molds that said GNC  
17 on it. They were assets of the company that we were  
18 trying to get them to settle the agreement for.

19 At one point in time I think there was some  
20 records and e-mails that they agreed to settle for  
21 \$200,000, which was kind of really the amount owed, not  
22 necessarily for the life of the agreement but for  
23 product that we actually had sold. And we were working  
24 on the settlement agreement with them. And they filed  
25 and were awarded this judgment for the full note. Even

1 as late as June of this year we had discussions with  
2 their legal folks on settling for \$200,000, which was  
3 kind of the proper amount.

4 Q. Has that judgment been paid yet?

5 A. None.

6 Q. And this particular document wasn't provided by  
7 the company itself, but does this appear to be consistent  
8 with the judgment document in that case?

9 A. Yeah. Yeah, I would believe so.

10 Q. Next I am going to hand you what has been marked  
11 as Exhibit 56, a promissory note to Jimmy Stephensen,  
12 Bates No. SHADOW 7258. What is this?

13 A. It was another term loan from a -- Jimmy  
14 Stephensen was, I guess, a spokesperson, if you will in  
15 those terms, for Shadow. Over the past four or five  
16 years he was, he is, I say race car driver, he is a --  
17 if you know the LOORS off-road racing circuit, Jimmy has  
18 a truck. He was branded No Fear for the last three or  
19 four years. He was paid a specific amount for that  
20 sponsorship, marketing and spokesmanship purposes.

21 He quit driving about a year and a half ago so  
22 he is no longer in that sport, and was, again, a partner  
23 of Shadow at one point in time. And as we were looking  
24 for finance or some funds to get, I believe at this time  
25 frame this was kind of the same time we were looking at

1 production dollars, Jimmy made a loan to the company for  
2 \$30,000.

3 Q. The note mentions a maturity date of April 13th,  
4 2014. Has this note been paid yet?

5 A. This has not been paid.

6 Q. And on the second page, that's your signature,  
7 correct?

8 A. It is.

9 Q. Who communicated with Mr. Stephensen about making  
10 the note?

11 A. It would have been myself, and probably more  
12 likely that I don't recall the discussion with Jimmy in  
13 our conference room, Sam Jones. Sam was closer to Jimmy  
14 and managed the marketing side when Jimmy was a sponsor  
15 for Shadow.

16 Q. What Shadow documents were provided to  
17 Mr. Stephensen before this note was made?

18 A. It would have been our executive summary, same  
19 documents.

20 Q. Was Mr. Stephensen told about any previous  
21 judgments or judgments against Shadow before this note was  
22 made?

23 A. Not that I recall any specific discussion.  
24 Jimmy did know about GNC and where we were with GNC  
25 because he was -- at one time we thought about

1 converting his truck over to a GNC sponsorship, and he  
2 knew that that deal did not work anymore or was, was  
3 closed.

4 Q. Did he know about the judgment that was,  
5 specifically about the judgment that's at Exhibit 55  
6 before the note was made?

7 A. Not that I recall if he knew specifically about  
8 the judgment or not. I don't recall that.

9 Q. Was Mr. Stephensen told about any previous Shadow  
10 defaults on any notes or loans before this note was made?

11 A. Not that I recall that discussion specifically.

12 Q. Next I am going to hand you what has been marked  
13 as Exhibit 57, a promissory note to Jason and Robbyn  
14 Salganick, Bates No. SHADOW 7179. What is this?

15 A. This would have been a term loan.

16 I don't know. I have never met Jason, but they  
17 were, Jason and Robbyn are neighbors -- I did meet  
18 Robbyn one time. She came to the office to see -- pick  
19 up some product samples. But Jason and Robbyn were  
20 neighbors to Rick Peterson, who, as we have already  
21 recorded, that Rick during this time frame was working  
22 with the company on helping finding capital resources.  
23 So they are neighbors of Rick's, or were neighbors. I  
24 don't know if they are today or not.

25 Q. The note mentions a maturity date of July 15,

1 2014. But has this note ever been paid?

2 A. This has not been paid.

3 Q. And is that your signature at the second page?

4 A. Correct.

5 Q. Did anyone other than Mr. Peterson communicate  
6 with the Salganicks before this note was made?

7 A. No, none.

8 Q. Was there any, did the company have any problem  
9 with Rick Peterson finding neighbors to be lenders?

10 A. No. I mean they were, they were, you know, just  
11 part of his network. I don't know if -- again, I had  
12 never met either one of them. It was all handled by  
13 Rick Peterson, other than Robbyn I did meet when she  
14 came into the office.

15 Q. What Shadow documents were provided to the  
16 Salganicks before this note was made?

17 A. It would have been our executive summary that  
18 Rick Peterson took them through, showed them where our  
19 company was at and what the strategy was with the  
20 company and what we were trying to accomplish.

21 Q. Were the Salganicks told about any previous  
22 Shadow defaults on any notes or loans before this note to  
23 them was made?

24 A. Not that I am aware of.

25 Q. Were the Salganicks told about any judgments

1 against Shadow before this note was made?

2 A. Not that I am aware of.

3 Q. Were they told about any personal guaranties that  
4 you or Mr. Jones hadn't paid on in the past before this  
5 note was made?

6 A. Not that I am aware of.

7 Q. Were the Salganicks told about the loss of the  
8 GNC marketing funding before this note was made?

9 A. Yes. They would have known that the GNC product  
10 was no longer being pursued. That was part of the  
11 executive summary at that time.

12 Q. Next I am going to hand you what has been marked  
13 as Exhibit 58, a personal guaranty, Bates No. SHADOW 7182.  
14 Was this guaranty made in connection with the note that is  
15 Exhibit 57?

16 A. Yeah. This document came directly from Jason or  
17 Robbyn. I don't know which one. But once they had  
18 made, agreed to make the term loan through part of their  
19 legal counsel, they sent this to us and said we needed  
20 to execute this document to them as well for the  
21 funding. And we agreed to.

22 Q. Were the Salganicks given a copy of your personal  
23 financial statement before the note was made?

24 A. Not that I am aware of or not directly by me,  
25 but potentially through Rick Peterson.

1 Q. Did Mr. Peterson already have a copy of that  
2 personal financial statement?

3 A. Yes, he did.

4 Q. Was he authorized to share it with people?

5 A. Yes, he was.

6 Q. Next I am going to hand you what has been marked  
7 as Exhibit 59, a promissory note to Richard Peterson,  
8 Bates No. ACC 8782. Do you know what this is?

9 A. Yep. It was in this same time frame, early  
10 first quarter 2014, where we were looking for production  
11 funding. And Rick had sold a house in Dallas. Again,  
12 on record last time, we spoke about Rick's situation  
13 moving from Dallas to Phoenix for family issues. And he  
14 had sold a house and had some funds that he was willing  
15 to put into this program, this, as a term loan to the  
16 company.

17 Q. Has this note been paid yet?

18 A. It has not.

19 Q. And in the third paragraph it mentions residual  
20 payment of 50 cents per case for sales of No Fear Energy  
21 drink capped at \$12,500. Was that residual payment a form  
22 of interest for the note?

23 A. Yes, it was.

24 Q. Is --

25 A. It is similar to the same way that Pepsi

1 bottlers -- or in this industry folks look at, you know,  
2 a different way to get a return on their dollars, doing  
3 it on a per case basis as we saw in a couple other  
4 documents.

5 Q. On the second page, is that your signature?

6 A. Yes, it is.

7 Q. And this document wasn't provided by the company  
8 itself, but do you know if this appears to be consistent  
9 with the note that Rick Peterson had?

10 A. Uh-huh.

11 Q. Is that a yes?

12 A. Yes.

13 Q. Okay. Who communicated with Mr. Peterson about  
14 making this note?

15 A. I did. As he was working through, you know,  
16 finding the funding, he brought this to me as an option  
17 because he had just sold a house in Dallas, that he had  
18 an option to participate. So it was me that he came to.

19 Q. Did anyone else speak with him about making the  
20 note?

21 A. No. It was just me.

22 Q. Was Mr. Peterson told about any previous defaults  
23 on Shadow notes or loans before this note was made?

24 A. I don't recall specifically a discussion but  
25 Rick had all the information on the companies. So I

1 would be certain he was aware of, you know, the  
2 liabilities, past judgments, the GNC contract. He was  
3 very involved in the business so he knew exactly what  
4 was going on.

5 Q. Do you know if he was aware of the GNC judgment  
6 we saw a few exhibits ago?

7 A. Was he aware? Yes.

8 Q. Was Mr. Peterson aware of any past personal  
9 guaranties that you or Mr. Jones had not paid on before  
10 this note was made?

11 A. I would say yes, because most of those were Rick  
12 kind of helped bring those to the table. So yes, he was  
13 aware.

14 Q. Next I am going to hand you what has been marked  
15 as Exhibit 60, a personal guaranty to Rick Peterson, Bates  
16 No. ACC 8787. Do you know what this is?

17 A. It looks to be a copy of what his neighbors  
18 brought to him, brought to them, to us. And as Dave  
19 felt this was important, he brought the same document.  
20 Looks like it was retyped. But it is the same document  
21 that whatever legal counsel for Robbyn and Jason  
22 brought, he wanted the same thing signed.

23 Q. Was this guaranty made in connection with the  
24 note to Peterson, Exhibit 59?

25 A. This was.

1 Q. And this wasn't provided by the company itself,  
2 but does this appear to be consistent with the guaranty  
3 document that Mr. Peterson had?

4 A. Yeah. I believe it is identical to Exhibit 58  
5 that we just looked at.

6 Q. Next --

7 A. It is.

8 Q. Next I am going to hand you what has been marked  
9 as Exhibit 61, a promissory note to Reed Hatkoff, Bates  
10 No. SHADOW 6710. Do you know what this is?

11 A. Yep, a term note. Again, I have never met Reed.  
12 This was a Rick Peterson contact that he brought to the  
13 table. Rick spoke to Reed and presented the Shadow  
14 business to Reed.

15 Q. Has this note been paid yet?

16 A. A portion of it has been paid.

17 Q. How much has been paid so far?

18 A. I would have to go look through the records but  
19 I believe it is right at 60- to 65,000 have been paid.

20 Q. Approximately when was that paid?

21 A. It would have been paid early 2014. Well, no, I  
22 am sorry.

23 Early 2015, when we first collected a portion of  
24 our Mix 1 collectibles, we paid those dollars. If you  
25 go back to the transaction agreement with Mix 1, they

1 were to pay \$1.5 million in cash against No Fear  
2 payables. And this was a No Fear payable. These  
3 dollars were used for production as paying -- most of  
4 these other ones that we reviewed were also No Fear  
5 production payables dollars that we borrowed to pay, or  
6 to execute production. And when we got our first  
7 payment, we paid a portion. We paid this one and maybe  
8 a labeling company, and we started to pay those notes  
9 down.

10 Q. Do you know approximately how many payments that  
11 amount was paid in?

12 A. Just one. We made one wire transfer from our  
13 attorney, who was negotiating the kind of settlement  
14 agreements with everybody as we were bringing the money  
15 in from Mix 1.

16 Q. I think you mentioned earlier that the payment  
17 would have been made in early 2014. Did you mean 2015?

18 A. Yeah, I mean '15, yes, because the deal with  
19 Mix 1 wasn't until 2015. So thanks for correcting me  
20 there.

21 Q. No problem.

22 Under Article 1, paragraph (d), labeled Security  
23 Instruments, there is a mention of a security agreement.  
24 Do you know what that collateral for that security  
25 agreement was?

1 A. Yeah. It was under kind of three buckets, which  
2 was a total to be secured under AR inventory and assets.

3 Q. And AR inventory --

4 A. Assets being the licensing agreements, both  
5 tangible and intangible assets.

6 Q. And the AR refers to accounts receivable?

7 A. Uh-huh.

8 Q. I am sorry. That's a yes?

9 A. Yes. Sorry about that.

10 Q. Under Article 2 there is mention of a calculation  
11 for royalty payments. Is that a type of interest for the  
12 note, similar to the Peterson note that you described?

13 A. Yes, on a per case basis, correct.

14 Q. On page 5, is that your signature?

15 A. It is.

16 Q. And is that Sam Jones' signature below it?

17 A. It is.

18 Q. Why would he sign as a former manager?

19 A. This was, you know, early '14, which was that  
20 time that he was taking some time off. And, again, I  
21 don't remember the Newtown thing. I want to believe it  
22 was June of '13 when the shooting occurred. So this  
23 was, you know, eight to ten months and Sam was trying to  
24 decide exactly what he was going to be doing.

25 Q. So he was still --

1 A. And I think Reed had already been presented as  
2 Sam had been, was a manager. And then we made the  
3 decision that he was going to not participate as a  
4 manager for the reasons discussed. But Reed still  
5 wanted him to be a part of it because that's what he saw  
6 in the original presentation.

7 Q. Who communicated with Mr. Hatkoff about making  
8 this note?

9 A. That would be all Rick Peterson.

10 Q. No one else?

11 A. I have never met Reed.

12 Q. What Shadow documents were provided to  
13 Mr. Hatkoff before this note was made?

14 A. The executive summary.

15 Q. Anything else?

16 A. Huh-uh.

17 Q. Was, before the note was made, was Mr. Hatkoff  
18 told about any previous Shadow defaults on any notes or  
19 loans?

20 A. Not that I am aware.

21 Q. Before the note was made, was Mr. Hatkoff told  
22 about any judgments against Shadow?

23 A. Not that I am aware of. But, and just to  
24 clarify, you are asking me the questions that were they  
25 told, which I take that as you are asking me if I have

1 told them or anybody from Shadow told them specifically.

2 As anything else, most of these investors did  
3 their own form of whatever you might -- how deep they  
4 went of due diligence. Now, there were a couple times  
5 where they would come back and say, hey, we found this.  
6 Because it was public record; it was nothing that nobody  
7 was hiding. So anybody that was going to make a loan or  
8 participate in our program or understand Shadow would do  
9 some level of their own due diligence process. And we  
10 did have a couple times where somebody came back, said  
11 explain this. Brent Tunnell, as an example, the  
12 judgment that was against us that we paid, we explained  
13 what happened and how that worked. Somebody might have  
14 come to us and said could you explain GNC, and we would  
15 explain GNC.

16 So I am answering your question. When you are  
17 asking did we specifically, that's to say I did not  
18 specifically mention it to them, but I know we answered  
19 a lot of questions when people would come back with due  
20 diligence questions, which is only responsible of them  
21 in making any kind of, you know, loan or investment  
22 opportunity, if that's how they viewed it. They would  
23 conduct, again, whatever level of due diligence, but  
24 most of it on, as all of that that we are referring to,  
25 public record that they could fairly easily access and

1 seen those documents.

2 Q. Just to clarify, going forward what I am talking  
3 about, were they told so and so, what I mean is: Did  
4 anyone at Shadow that you know of tell them either on your  
5 own initiative or in response to a question from them?

6 A. I mean we, again, we responded to anybody that  
7 came to us with, hey, this is what we saw or what we  
8 found. We did not present that in any of our executive  
9 summary information.

10 Q. Before the note was made, was Mr. Hatkoff told  
11 about any existing security interests on any Shadow  
12 Beverages assets?

13 A. Yeah. He would have also looked at the UCC  
14 filings and seen who and what amount and, you know, how  
15 that measured up against our balance sheet from AR to  
16 inventory to, you know, assets.

17 Q. Do you know if anyone at Shadow told them about  
18 any existing security interests apart from what he may  
19 have found on his own?

20 A. Not that I recall.

21 Q. Before the note was made, was Mr. Hatkoff told by  
22 anyone at Shadow about the loss of the GNC marketing  
23 funding?

24 A. Not that I recall since I did not speak to him  
25 specifically. My assumption would be he saw that in the

1 executive summary GNC was already moving on to a  
2 different stage.

3 Q. Oh, at what point did the marketing summary start  
4 reflecting that?

5 A. It would have been in late 2013 when we had  
6 already stopped our deal with those guys.

7 Q. And how did the executive summary describe that  
8 change?

9 A. It referred to it as, the GNC product, as an  
10 example of our strategy and skill sets of being able to  
11 take a brand and bring it into a new category. But it  
12 had nothing to do with the forecast of where the volume  
13 was coming from and where distribution was.

14 Q. Next I am going to hand you what has been marked  
15 as Exhibit 62, a security agreement with Reed Hatkoff,  
16 Bates No. ACC 8984. Do you know what this is?

17 A. Yep, a security agreement assignment of  
18 interest.

19 Q. Was this made in connection with the Reed Hatkoff  
20 note at Exhibit 61?

21 A. Uh-huh, and it identifies here what I have  
22 referred to as AR and inventory as part of security.

23 Q. And --

24 A. Yep, for his filing of a UCC, correct.

25 Q. And on page 7, is this your signature and

1 Mr. Jones' signatures?

2 A. It is, correct, they are.

3 Q. And this document wasn't produced by Shadow, but  
4 does this appear to be consistent with the security  
5 agreement that Shadow had with Mr. Hatkoff?

6 A. Yes.

7 Q. Next I am going to hand you what has been marked  
8 as Exhibit 63, a promissory note to Legacy Insurance  
9 Services, Incorporated, Bates No. Shadow 7502. Do you  
10 know what this is?

11 A. Yeah. This is another term loan from a cousin  
12 of mine in Omaha, so Rick Peterson, which his company is  
13 Legacy insurance companies.

14 Q. You mean Rick Andersen?

15 A. Rick Andersen. Did I say Peterson?

16 Q. Yes.

17 A. I meant Andersen.

18 Q. Has this note been paid yet?

19 A. No, it has not.

20 Q. And last time I think we saw a previous note to  
21 Rick Andersen.

22 A. For the same amount, 250.

23 Q. Why would he have been paid for another note with  
24 Shadow if he hadn't been paid on the first note yet?

25 A. Why would we make another term note when his

1 first one wasn't? I would say, you know, Rick was kind  
2 of a believer in what we were doing, in our strategy and  
3 the outcome, and had some excess funds that he was  
4 dealing with out of his insurance business and was  
5 looking for a place. Specifically we had this  
6 discussion. He was putting a lot of capital into gold,  
7 buying gold, and was looking to diverse himself a little  
8 bit, higher risk, higher return. And that's why he made  
9 this investment in Shadow twice.

10 Q. And is the signature on the second page yours?

11 A. Correct.

12 Q. Who communicated with Rick Andersen about making  
13 this note?

14 A. It would have been me.

15 Q. And anyone else?

16 A. I don't believe so. Rick had never been to our  
17 office. We discussed this at a family function in Omaha  
18 and he called and agreed to participate. And we did  
19 documents over e-mail and faxing.

20 Q. What Shadow documents were provided to  
21 Mr. Andersen before this note was made?

22 A. The executive summary.

23 Q. Any others?

24 A. No.

25 Q. Before the note was made, was Mr. Andersen told

1 about any previous Shadow defaults on notes or loans other  
2 than on his own previous note?

3 A. Specifically not that I am aware of.

4 Q. Before the note was made, was Mr. Andersen told  
5 about any judgments against Shadow?

6 A. Not that I am aware of.

7 Q. Next I am going to hand you what has been marked  
8 as Exhibit 64, a Utah legal notice, Bates No. ACC 618. Do  
9 you know what this is?

10 A. Yeah. That was a, this was an investment made  
11 by myself and a couple other investors into Shadow that  
12 invested into a company called Greentech. I think we  
13 spoke about this on record last time.

14 Greentech Mining is a surface mine in Utah. And  
15 we invested some capital to go do the initial testing  
16 and digging of what gold was actually there on in the  
17 surface mine. And we didn't have enough funds to keep a  
18 real mining operation running, so we started to look at  
19 selling the investment, or, as they say in this term,  
20 kind of selling the paper of the mineral rights of gold.  
21 And the operation itself was closed and was seized by  
22 the sheriff under this document here for public notice  
23 of sale.

24 Q. When did you become aware of this public notice?

25 A. I, you know, at an arm's length but not

1 following this investment, was aware, you know, probably  
2 late April that this was going on.

3 Q. And it is late April of 2014?

4 A. Uh-huh, correct.

5 Q. Was, after this notice, was there still any  
6 expectation that Greentech would be able to invest in  
7 Shadow Beverages?

8 A. Absolutely. After they sold, or this happened,  
9 the sale of all the assets, you know, the asset that  
10 Greentech had was the mineral rights, which were the  
11 rights to go surface mine. And that asset they were  
12 continuing to look at a sale of, or to, in the world of  
13 financing, they were looking at, you know, kind of  
14 collateralizing that unmined gold into a different note.  
15 And they still had a couple different options, which is  
16 documented on numerous hedge funds and folks they were  
17 working with on bringing funding into Greentech, which  
18 had an alliance, again, with Shadow to produce some  
19 funding.

20 Q. Next I am going to hand you what has been marked  
21 as Exhibit 65, a promissory note to Ravenstead  
22 Enterprises, LLC, Bates No. SHADOW 6891. What is this?

23 A. This is a term loan with a, kind of a business  
24 partner. I think we reviewed her note last time,  
25 Catherine and Don Johnson. Leyen is the last name. And

1 this comes from their family money.

2           So they made the investment, trying to total up  
3 to \$100,000. And they did it in a couple different  
4 fashions. So you would see a couple notes at 25 and  
5 then this one at 50.

6           But, again, Catherine had been working with  
7 Shadow for three or four years, helping us look at  
8 distribution in India on a couple brands and finding  
9 some other distributors, so intimately involved in the  
10 business for a few years.

11       Q.     Has this note been paid yet?

12       A.     No, it has not.

13       Q.     The sixth paragraph mentioned warrants for 24,000  
14 shares at a price of \$4.20 per share. Does shares in this  
15 context refer to units in Shadow Beverages and Snacks,  
16 LLC?

17       A.     Yes, it does.

18       Q.     And is that your signature on the second page?

19       A.     Yes, it is.

20       Q.     Who communicated with either Catherine Leyen or  
21 Don Johnson about making this note?

22       A.     It would have been both myself and Rick  
23 Peterson. Catherine and -- we will probably review  
24 another document by Daryl DeMillo. Catherine and Daryl  
25 DeMillo are partners at Market India, a company that

1 they have that looks at products going to India and,  
2 also, distributors here. Daryl and Catherine were  
3 brought to Shadow by Rick Peterson originally. And,  
4 again, if you refer back to what Rick has communicated  
5 on commissions due, these are some of the notes that he  
6 is referring to. These were his contacts.

7 Q. What Shadow documents were provided to Catherine  
8 Leyen or Don Johnson before this note was made?

9 A. It would have been the executive summary. And,  
10 again, over the course of the couple years that they  
11 were involved with the company, they had probably seen  
12 two or three different renditions of brands coming and  
13 going and different brands that we were looking at and  
14 companies we were working with.

15 Q. Were either Ms. Leyen or Mr. Johnson aware of any  
16 previous Shadow defaults on past notes or loans?

17 A. Specifically not that I am aware of.

18 Q. Do you know if anyone at Shadow told them about  
19 those?

20 A. Not specifically that I am aware of.

21 Q. Did anyone at Shadow tell them about any  
22 judgments against Shadow before the note was made?

23 A. Not that I am aware of in full detail, no.

24 Q. Did anyone at Shadow tell them about any personal  
25 guaranties that you or Mr. Jones had not paid on in the

1 past?

2 A. Not that I am aware of specifically.

3 Q. You mentioned Darren DeMillo.

4 A. Daryl.

5 Q. Daryl DeMillo. Did he also make a loan to Shadow  
6 Beverages similar to Catherine Leyen?

7 A. Uh-huh.

8 Q. Do you know if it was also documented with a  
9 promissory note?

10 A. I would imagine they were the same, yes.

11 Q. What was the amount of his loan?

12 A. I believe there was a couple different loans. I  
13 know one was he had sold some property in India and we  
14 waited on a couple different times as he brought the  
15 funds over. But a couple different -- somewhere in the  
16 total of 125 or so.

17 Q. Do you know when those loans were made  
18 approximately?

19 A. In this same first, early second quarter of  
20 2013.

21 Q. Did Mr. DeMillo have any management roles in  
22 Shadow Beverages?

23 A. Not at all.

24 Q. And did he also, was he also to receive an  
25 interest payment for his loan?

1 A. Yes.

2 Q. Next I am going to hand you what has been marked  
3 as Exhibit 66, a personal guaranty -- actually, let me  
4 skip that for a moment.

5 A. This is identical to the document you just  
6 reviewed.

7 Q. Let me also hand you what has been marked as  
8 Exhibit 67, 67 being a promissory note, Bates No.  
9 SHADOW 7089. What is Exhibit 67?

10 A. This was the second note by Rick Peterson. So  
11 you see there are two notes documented, one on  
12 February and then another one in June, from Rick  
13 Peterson, one for 57 and one for 100.

14 Q. Has this note been paid yet?

15 A. No, they have not been paid.

16 Q. Is this signature on the second page yours?

17 A. It is.

18 Q. And Exhibit 66, which is a personal guaranty,  
19 Bates No. 7091, was the guaranty in Exhibit 66 made in  
20 connection with the note in Exhibit 67?

21 A. 67, yes, it was.

22 Q. And on the second page of Exhibit 66, the date at  
23 the bottom, is that supposed to read 6/14/2014?

24 A. I believe it was. If I recall, to the best of  
25 my memory, is Rick came back and said, you know, what I

1 never did get from you was the promissory note, the  
2 personal guaranty that goes with the promissory note.  
3 So for whatever reason that document was not attached.  
4 So we executed the document on 11/14.

5 Q. So this is November 14, 2014?

6 A. Yep.

7 Q. Next I am going to hand you --

8 A. But that doesn't make sense, does it? It can't  
9 be 11.

10 Q. Why is that?

11 A. Yeah, it can. Yeah, it can. Never mind.

12 Q. Next -- I am sorry. Go ahead.

13 A. That is 11, yeah. That was my bad penmanship.

14 Q. Next I am going to hand you what is marked as  
15 Exhibit 68, a promissory note to Michael Crane, Bates No.  
16 SHADOW 6427. What is this?

17 A. Another term loan. And Michael Crane, I don't  
18 really know who this -- who he is. He is a contact of  
19 Rick Peterson's. So this was during the same time frame  
20 that we were looking for production capital. And Rick  
21 brought one of his contacts in, Michael. And I have  
22 never met Michael, or I don't believe I ever spoke to  
23 Michael personally.

24 Q. Has this note been paid yet?

25 A. It has not.

1 Q. The sixth paragraph refers to warrants. Are  
2 those warrants for units of Shadow Beverages and Snacks,  
3 LLC?

4 A. Correct, correct.

5 Q. Is the signature on the second page yours?

6 A. Correct.

7 Q. Did anyone other than Mr. Peterson communicate  
8 with Mr. Crane about making this note?

9 A. Not that I am aware of. It would have only been  
10 Rick.

11 Q. What Shadow documents were provided to Mr. Crane  
12 before making this note?

13 A. The --

14 Q. Executive summary?

15 A. Executive summary, correct.

16 Q. Anything else?

17 A. No, not that I am aware of.

18 Q. Before the note was made, did anyone at Shadow  
19 tell Mr. Crane about any previous Shadow defaults on notes  
20 or loans?

21 A. Not that I am aware.

22 Q. Before the note was made, did anyone at Shadow  
23 tell Mr. Crane about any judgments against Shadow?

24 A. Not that I am aware of.

25 Q. And before the note was made, did anyone at

1 Shadow tell Mr. Crane about any personal guaranties that  
2 you or Mr. Jones had not paid on in the past?

3 A. Not that I am aware of.

4 Q. Next I am going to hand you what has been marked  
5 as Exhibit 69, a personal guaranty to Mr. Crane, Bates  
6 No. ACC 85. Do you know what this is?

7 A. Yes. This would go with Exhibit 68.

8 Q. And if you can review for a moment, this document  
9 wasn't provided by the company, but does this appear to be  
10 consistent with the personal guaranty that Mr. Crane had?

11 A. Uh-huh.

12 Q. Is that a yes?

13 A. Yes.

14 Q. All right. Next I am going to hand you what has  
15 been marked as Exhibit 70, a promissory note to Kurt  
16 Moore, Bates No. SHADOW 6942. What is this?

17 A. Kurt Moore is another investor that I do not  
18 know. This was another one of Rick Peterson's. So I  
19 have never spoken to Kurt Moore. I don't know who he  
20 is. It was part of Rick's network. Between Kurt and  
21 Michael Crane, Robbyn and Jason and Reed Hatkoff were  
22 all folks that Rick presented the company to and  
23 presented our executive summary and brought them to the  
24 table.

25 Q. Has this note been paid yet?

1 A. It has not.

2 Q. In the sixth paragraph, the warrants referred to  
3 there, are those again warrants for Shadow units?

4 A. Correct.

5 Q. And is that your signature on the second page?

6 A. Correct.

7 Q. Did anyone other Mr. Peterson communicate with  
8 Mr. Moore about making this note?

9 A. No, not that I am aware of. I know I did not.

10 Q. What documents were provided to Mr. Moore before  
11 this note was made, Shadow documents?

12 A. The executive summary, which was the document  
13 Rick was presenting to everyone.

14 Q. And that's all?

15 A. Uh-huh.

16 Q. Was, before the note was made, was Mr. Moore told  
17 about any previous Shadow defaults on any notes or loans?

18 A. Not that I am aware of.

19 Q. Before it was made, was he told about any  
20 judgments against Shadow?

21 A. Not that I am aware of.

22 Q. And before it was made, was Mr. Moore told about  
23 any personal guaranties that you or Mr. Jones had not paid  
24 on in the past?

25 A. Not being a part of the conversation, I am not

1 aware of any.

2 Q. Next I am going to hand you what has been marked  
3 as Exhibit 71, a personal guaranty with Kurt Moore, Bates  
4 No. SHADOW 6944. What is this?

5 A. This would go with the Exhibit 70, the  
6 promissory note to Kurt Moore.

7 Q. And is this your signature on the second page?

8 A. Correct.

9 Q. Next I am going to hand you what has been marked  
10 as Exhibit 72, a promissory note to Viole Property  
11 Investments, LLC, Bates No. SHADOW 7939. What is this?

12 A. A promissory note from Tim Viole out of  
13 California that was brought to us by one of the board  
14 members. Viole Property Investments is a construction  
15 company in California.

16 Q. Who was it that brought Viole Property  
17 Investments to Shadow?

18 A. A board member, Kevin Senn.

19 Q. The note is for \$1,050,000. Did Viole Property  
20 actually invest that much in cash?

21 A. No, they did not.

22 Q. What does the note reflect then?

23 A. The note reflects an investment of \$350,000.

24 Well, the note, I am sorry, the note does not reflect  
25 that. Yeah, it does. The note reflects that based on

1 page 4. And the suppliers that they are funding went  
2 directly to for production.

3 Q. So this list of figures represents how the cash  
4 was going to be allocated, or how it was going to be used?

5 A. This represents how they paid.

6 Q. How Virole Property paid?

7 A. Yeah. They made these payments to these  
8 creditors --

9 Q. I see.

10 A. -- on behalf of Shadow Beverages.

11 Q. Why is the note amount for 1,050,000?

12 A. That was the agreed to kind of rate based on, I  
13 believe, Virole also being part of Greentech. And when a  
14 Greentech -- at that point, we had a deal on the table  
15 from Greentech getting funded around \$20 million. And  
16 if Tim executed this document and paying his suppliers  
17 directly, they were going to have the right to this  
18 one million fifty at three times from the Greentech  
19 funds coming in.

20 Q. The fact that the promissory note amount was  
21 higher than what they had paid, does that reflect like an  
22 interest payment?

23 A. Interest, yeah. And attached to them are all  
24 the wiring instructions of where the money went to, to  
25 Exhibit 72. This follows the listing on page 4.

1 Q. What was the connection between Virole Property  
2 Investments and Greentech Mining?

3 A. I think the only connection is there is  
4 investors that are in both sides, in Greentech and  
5 Shadow.

6 Q. Okay. But the Virole Property Investments, LLC  
7 entity isn't otherwise connected to Greentech Mining?

8 A. No, not that I am aware of.

9 Q. Not that I am aware of either.

10 A. All these, where Tim resides and where Greentech  
11 and six other Shadow investors all live in the NorCal  
12 area. So you -- from down into LA. So they are all  
13 connected. I don't know connected in investments or  
14 just personal relationships.

15 Q. Connected in terms of personal relationships,  
16 too?

17 A. Yeah, yeah. So I don't know to what extent they  
18 might all have --

19 Q. I see.

20 A. -- investments into different companies  
21 together. But they are pursuing relationships that look  
22 at investing into common places.

23 Q. And who is Tim?

24 A. Tim is the president and owner of Virole  
25 Properties. I have only met him once. He flew over to

1 meet with us and see our business. And I personally  
2 presented to Tim our executive summary of what the  
3 company strategy was and what we were trying to  
4 accomplish in Shadow.

5 Q. And the personal relationships you referred to,  
6 does that mean that Timothy Viole had a personal  
7 relationship with Kevin Senn?

8 A. With either Kevin or one of the other investors  
9 at Greentech.

10 Q. Before the note was made, what Shadow documents  
11 were provided to Viole property investments?

12 A. I just stated that I presented the executive  
13 summary to Tim on his one visit to Phoenix.

14 Q. Anything other than the executive summary?

15 A. Not that I recall.

16 Q. Before the note was made -- sorry.

17 A. I would make a correction. We did review our  
18 balance sheet and our payables. And it is why we  
19 structured the deal the way we did, and him agreeing to  
20 pay directly to the suppliers versus just into Shadow.

21 Q. And before the note was made, were Viole Property  
22 Investments or Timothy Viole told about any previous  
23 Shadow defaults on any notes or loans?

24 A. Not that I am aware.

25 Q. Before the note was made, were they told about

1 any judgments against Shadow?

2 A. Not that I am aware of.

3 Q. And before the note was made --

4 A. I do take that back. I do recall with Tim and  
5 his attorney on the phone, a guy by the name of Mike  
6 Joyce, who is -- they did their due diligence, did ask  
7 the questions regarding the GNC judgment, potentially  
8 the litigation going on with AO, and the settlement  
9 agreement that we had had with Tunnell, because those,  
10 again, were fairly accessible public documents. And  
11 Mike chose, Mike, the gentleman by the name of Mike  
12 Joyce that I remember is his attorney, was doing the due  
13 diligence, as anyone would.

14 Q. Did Viole Property Investments have any business  
15 other than being a vehicle for investments by Timothy  
16 Viole?

17 A. Could you state that question again? I am not  
18 sure what you are asking.

19 MR. KITCHIN: Can you read that back.

20 (The record was read by the reporter as  
21 requested as follows:

22 Question: Did Viole Property Investments  
23 have any business other than being a vehicle for  
24 investments by Timothy Viole?)

25 THE WITNESS: Not that I am aware of. Any

1 investments into businesses that I am associated with?

2 BY MR. KITCHIN:

3 Q. No. I am just trying to figure out if Virole  
4 Property Investments is just a pseudonym under which  
5 Timothy Virole lent money or if it is a company that  
6 actually does business apart from just his own  
7 investments.

8 A. No, I am not aware of that, no.

9 Q. Next I am going to hand you what is marked as  
10 Exhibit 73, a notice of judgment, Bates No. ACC 468. Do  
11 you know what this is?

12 A. This was a supplier of label. Brook & Whittle  
13 is an East Coast supplier of ours, of Shadow's.

14 Q. And this document wasn't provided by Shadow  
15 Beverages, but does this appear to be consistent with the  
16 notice of judgment from that case?

17 A. It was. And this particular creditor was  
18 settled, has been paid.

19 As I mentioned earlier, in early 2015, when we  
20 got a first payment from Mix 1 out of the 1.5 million,  
21 we got a check for about 200,000. I am sure it is  
22 close. But the bank records will show that that was  
23 transferred over to our escrow account with an attorney.  
24 And we settled this judgment for, I want to believe,  
25 \$75,000. And we agreed to settle with, as a partial

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1 settlement, not settle, Reed Hatkoff for 62. And then  
2 the rest of the funds were used for some of the other  
3 vendors and suppliers that we were paying off with part  
4 of the deal from Mix 1.

5 Q. Do you remember in approximately what month in  
6 2015 this was paid?

7 A. It would have been like in March, I mean when  
8 the first payments, March and April, when the first  
9 payments from Mix 1 and the transactions started to  
10 become real and close.

11 Q. Next I am going to hand you what has been marked  
12 as Exhibit 74, a mutual release, Bates No. ACC 973. What  
13 is this?

14 A. We mentioned earlier that, you know, we were  
15 banking at First Fidelity and First Community Financial  
16 was a factor. And they were factoring PepsiCo invoices  
17 for us. And we weren't meeting quite their -- and we  
18 had a nonterm factoring agreement, which was a little  
19 unusual. Most of these factoring agreements would have  
20 a specific term. We had a nonterm agreement with Matt  
21 at this bank. And at this time, our numbers were not  
22 meeting their expectations on how much they would be  
23 doing, so we agreed mutually just to close the account.

24 Q. And this document wasn't provided by Shadow  
25 Beverages, but does this appear to be consistent with the

1 release that you signed, that Shadow signed?

2 A. With Matt, yep.

3 Q. Next I am going to hand you what has been marked  
4 as Exhibit 75, a convertible promissory note to Anthony  
5 and Terri Bouchard, Bates No. SHADOW 6413. What is this?

6 A. I am not sure who Anthony and Terri Bouchard  
7 are, unless they came through as a different name in the  
8 company documents. I would have to go back to the  
9 company documents to -- that appears to be my signature  
10 on the document, but I am not sure who Anthony and Terri  
11 are. And I would have to go back to our investor files  
12 and see if there is a document on this. It is early  
13 March. To grant 3,000 shares of Mix 1 Life, we didn't  
14 even have shares as of March 3rd.

15 Q. So paragraph 4 mentions that will grant 3,000  
16 shares which the maker acquires in its sale to Mix 1.  
17 Does that offer any insight on what this is?

18 A. We didn't have a deal with Mix 1 until later  
19 that month. I mean there was an 8-K on our discussions  
20 of a deal, but we didn't have a deal. So I am not sure  
21 how -- Anthony and Terri Bouchard, I am a little stunned  
22 that I do not know who these folks are.

23 Q. So the top right corner mentions a date of  
24 March 3rd, 2015. And then paragraph 2 says the maturity  
25 date of ten days later on March 13th, 2015. Does that

1 ten-day time frame suggest anything about what this would  
2 be?

3 A. Huh-uh. I will have to investigate that and  
4 provide further clarification on this document.

5 Q. Next I am going to hand you what has been marked  
6 as Exhibit 81, a personal financial statement, Bates No.  
7 ACC 403. What is this?

8 A. Looks like it is a PFS for myself.

9 Q. Was this the personal financial statement that  
10 Rick Peterson was given to give to potential lenders?

11 A. Dated 2013, December. I would believe so.

12 Q. And does this appear to be consistent with a  
13 personal financial statement that you prepared in  
14 December 2013, or prepared to reflect December 2013?

15 A. I would -- yes. It is -- our personal property  
16 is listed. Lenders are listed. Correct.

17 Q. And the signature on the third page, is that  
18 yours?

19 A. Correct.

20 Q. And the initials on each page are your initials?

21 A. Correct.

22 Q. So on the first page on section 3, there is a  
23 list of liabilities. Why don't the liabilities listed  
24 include the personal guaranties on any outstanding Shadow  
25 notes that you had guaranteed?

1 A. I don't believe as of December '13 that, from  
2 this specific date, that there were any. We had already  
3 cleared up the, in 2012, the personal guaranty to  
4 Tunnell. As of 2013, I don't know exactly or recall  
5 which documents we had that had personal guaranties.

6 Q. Do you know who all received this personal  
7 financial statement?

8 A. The only one I do know for sure would be Reed  
9 Hatkoff, because as you look at his security agreement,  
10 what he secured against was a securities agreement at  
11 Ameritrade. And he would have got that off of this  
12 document.

13 Q. Next I am going to hand you what has been marked  
14 as Exhibit 85, a meeting agenda for Shadow Beverages,  
15 Bates No. SHADOW 5886. What is this?

16 A. It looks like it was a quarterly board agenda  
17 for the board.

18 Q. Under the heading of 9:15 a.m., there is a line  
19 for Capital Raise Update. And under that there are three  
20 bullet points. What does the PLA update refer to?

21 A. If you look at one of the Spyglass loans -- if  
22 you would know, there are two loans from Spyglass. The  
23 second one was coming from Spyglass II, is done through  
24 a personal, a PLA through Morgan Stanley, where the  
25 investors of Spyglass had securities and they borrowed

1 against those securities and loaned the money to Shadow  
2 under a PLA agreement.

3 Q. And what does that PLA agreement mean in this  
4 context?

5 A. We were considering -- Eric Reinhard was a board  
6 member and a member of Spyglass, was reviewing the  
7 option for a PLA update, so paid from this Spyglass  
8 Capital Partners operating committee review. So their  
9 operating committee looked at the proposal of a PLA  
10 being put in place to loan Shadow money. And that's  
11 what those discussion points were all about.

12 Q. What is PLA an acronym for here?

13 A. Personal loans, personal loan on assets is what  
14 that means.

15 Q. The third bullet point says other equity updates,  
16 parentheses, Rick Peterson. What would that refer to?

17 A. That would mean that Rick Peterson gave the  
18 board an update at that time on this conference call on  
19 who he was having capital discussions with.

20 Q. And does that include any of the, any individual  
21 investors whose notes we have seen today, or yesterday, or  
22 the previous time?

23 A. It would have included probably a wide list of  
24 his both working on equity -- at the time we were  
25 working with, I forget his name, we spoke about this

1 last time, at GoDaddy, whatever his name is, we were  
2 working with that group in presenting an equity  
3 investment. And we were also looking at financials in  
4 kind of the first six months of capital need and how  
5 that might come in in debt or in equity. And Rick was,  
6 again, leading that, so he was part of that discussion.

7 Q. Next I am going to hand you what has been marked  
8 as Exhibit 86, Shadow board of director meeting minutes  
9 for February 2013, Bates No. SHADOW 5887. On the second  
10 page at the top there is a heading for Capital Raise  
11 Update.

12 What does "George provided and reviewed funding  
13 handout" mean, or what does it refer to?

14 A. I am sorry. I am not following what letter you  
15 mean.

16 Q. Oh, I am sorry. On the second page --

17 A. I am sorry, second page.

18 Q. Capital Raise, the second sentence, what does  
19 that refer to?

20 A. Eric reviewed the PLA. Right? So Eric  
21 Reinhard, who is a board member and part of Spyglass and  
22 he is on the present here at this meeting, he reviewed  
23 the structure of the PLA and how that would work.

24 "George provided and reviewed funding handout.  
25 Continues the search for" -- I, on this date, I would

1 have provided a handout of some sort that spoke to who  
2 we were working with on equity and funding. So  
3 somewhere in these minutes there is -- that document has  
4 to be in the file of what we discussed. Again, it was  
5 just a review.

6 Q. And George here referred to you?

7 A. Yes.

8 Q. Next I am going to hand you what has been marked  
9 as Exhibit 87, Shadow board of directors meeting minutes  
10 for March 2013, Bates No. Shadow 6010. Under Old  
11 Business, the second bulleted section is Capital Funding  
12 Update. Do you see that?

13 A. Uh-huh.

14 Q. The second sentence says George and Rick  
15 Peterson's daily work is focused on capital raise. What  
16 does that refer to?

17 A. That we were having discussions with, you know,  
18 numerous equity groups, family offices on an equity  
19 investment or if we were going to move to a term loan.  
20 So we were just -- that was the work, and we were  
21 talking about the capital raise, what we were trying to  
22 accomplish.

23 "Discussions are favorable to close in next 30  
24 to 60 days," which we knew we had a production line  
25 coming.

1 "New investor Dave Kelly referred contacts,"  
2 which were some of the folks that -- Dave Kelly is  
3 another contact that Rick Peterson brought to the table.  
4 So Dave Kelly could have referred a couple of these  
5 other folks that Rick brought on. I don't know if Dave  
6 Kelly knows Jason or Mike, Michael Crane. I don't know  
7 if they know each other or not.

8 And the next point, lead that has beverage  
9 experience investing, and that was the Behr family,  
10 which Behr paint had contacted us in looking for an  
11 investment.

12 Q. Next I am going to hand you what has been marked  
13 as Exhibit 88, Shadow board meeting minutes for May 2013,  
14 Bates No. SHADOW 6024. Under old business the first  
15 heading is Funding Updates. What do the four bullet  
16 points refer to?

17 A. Those were all equity discussions that we were  
18 having. So Pointe Financial is a local company here.  
19 Michael is his name. But they had an equity interest  
20 for 10 million. Celtic Capital and SunChase Financial  
21 were equity companies that Rick Peterson was working.  
22 I was working specifically with Pointe Financial.

23 Summit Beverage, Tom Carsons, he came into the  
24 office. He is an ex-Dr. Pepper/Cadbury guy that has his  
25 own kind of beverage group. And then, you know, William

1 Blair was, they needed audited financials, so this was  
2 just an update to the board on what we were working on  
3 as it refers to the capital need, which clearly in the  
4 board minutes prior, on Exhibit 87, we communicated to  
5 the board as of March. And then the next board meeting  
6 was May. But the last comments under production review  
7 is:

8           Production reviewed weekly based on forecast and  
9 cash flow. March 31st and weeks after are big weeks.  
10 The need for 1.1 to keep production running.

11           That was the work that the board, Rick Peterson,  
12 myself, we were all working on. We had orders and  
13 business with Sysco that we were trying to keep  
14 production running. So it was clearly communicated to  
15 the board and we were providing the board on updates on  
16 what the financial funding discussions were going on.

17       Q.     I am going to skip Exhibits 89, 90, and 91.

18           Next I am going to hand you what has been marked  
19 as Exhibit 92, Shadow board of directors meeting minutes  
20 for January 2014, Bates No. SHADOW 6157. On the second  
21 page, the first, the first heading is Implications, and  
22 there is a bullet point there: If no additional capital  
23 in next 60 days, tough decisions will be made (Restructure  
24 company? Chapter 11/7 filing? Spyglass to call?)

25           What does that refer to?

1 A. Specifically the whole line, what does that  
2 refer to?

3 Q. Yeah.

4 A. Well, it shows that, you know, we were getting  
5 into crunch time. We know we had orders that we had to  
6 find the working capital for production. And as defined  
7 by the agenda, I took the company, I took the board, as  
8 you can see present, one, two, three, four, five of us  
9 on the board, six with Kathy Reiser, we took them  
10 through funding options.

11 We talked about two long-term and two short-term  
12 bridges, again the call-out for immediate need of  
13 1 million. We were working with Berma and we were in  
14 the underwriter process, IPRO, Diamond Ventures out of  
15 Tucson we were in full discussions with, and then  
16 Greentech.

17 And we basically stated to the board, Rick  
18 Peterson, everybody knew where the company was headed,  
19 that it was, the implications in the next 60 days would  
20 be, if we could not find funding, that we would have to  
21 restructure the company, meaning letting people go or  
22 letting some business go, or Chapter 7 or 11 filing, and  
23 then Spyglass to call, which was, again, they are the  
24 largest equity investors and the note holders of over  
25 two and a half million. So it was -- we needed to have

1 a call with Spyglass to let them know what the status  
2 was and the implications of the funding not coming into  
3 the company.

4 Q. Toward the bottom of the page, there is a heading  
5 that says Other Business. Do you see that?

6 A. Uh-huh.

7 Q. And the first bullet point starts with close  
8 capital solution and ends in the last, the third sentence  
9 says work on new road map. What is the new road map there  
10 referred to?

11 A. The new road map referred to, again, at this  
12 point and up to, as the records show, in '13, we had not  
13 taken any equity partners in. So the new road map was  
14 to look at bringing some debt into the company and  
15 selling off a brand or an asset to cover liabilities.

16 So that new road map that we started, or that I  
17 started working on with the board, was showing them a  
18 debt solution to get us to the end of the year and  
19 having discussions with a couple folks on the purchase  
20 of the asset, which was, our biggest asset was No Fear  
21 at the time. And in the meantime, the work on the new  
22 road map was bringing on some new business that we would  
23 be in more of consulting role to help offset some of the  
24 infrastructure cost. That was the new road map that I  
25 presented to the board.

1 Q. Next I am going to hand you what has been marked  
2 as Exhibit 93, Shadow board meeting minutes for  
3 March 2014, Bates No. SHADOW 6170. And then under Old  
4 Business and then Funding, the second sentence under  
5 Funding says Shadow continues to bootstrap. What does  
6 that refer to?

7 A. Bootstrap was just referring to that we were,  
8 you know, using cash on a daily basis. Money would come  
9 in and money would go out. So bootstrap, I apologize,  
10 is a little bit of a Wyoming term. Being from Wyoming,  
11 we were bootstrapping them. We weren't paying  
12 executives. Myself or anybody else was not getting  
13 paid. We were trying to keep the infrastructure there.  
14 The value program that we had instituted from prior  
15 minutes was having success. And the number one goal was  
16 to refinance current debt and, second, to facilitate  
17 growth.

18 So we knew we were working on -- we had notes  
19 due by March 12th, 2014, some short-term notes. And we  
20 listed all the different continued discussions going on  
21 with capital options, you know, from Berma Capital being  
22 a debt facility to some equity folks. And, again, this  
23 is where Rick and I were spending most of our time at  
24 this point. We were not looking for new business. We  
25 were trying to maintain the business we had because we

1 could not keep up with production with the new business,  
2 or with current business, not new business.

3 MR. KITCHIN: Let's take a break for about five  
4 minutes now.

5 THE WITNESS: Okay.

6 (A recess ensued from 10:31 a.m. to 10:43 a.m.)

7 MR. KITCHIN: Let's go back on the record.

8 BY MR. KITCHIN:

9 Q. Next let's turn back to Exhibit 72, which is the  
10 Viole Property Investments note.

11 A. Okay.

12 Q. And you mentioned that Viole had provided 350,000  
13 in cash and they were going to be repaid 1,050,000. So  
14 their return was going to be \$700,000, correct?

15 A. Yep.

16 Q. Why did that make business sense for Shadow to  
17 pay that much in interest for \$350,000?

18 A. Well, what we were really getting, this was a  
19 critical juncture for our Sysco business. And it was  
20 really kind of predicated that the investment would be  
21 coming from Greentech. Right? So now that that  
22 investment has not happened, of course we worked with  
23 all, primarily all creditors. You know, we have a  
24 settlement agreement for this promissory note that is in  
25 the range of 8 percent interest versus this three times,

1 because the other funding did not come. So that's  
2 really what it was predicated on.

3 Q. But even if the Greentech Mining was anticipated  
4 soon, why spend so much of the Greentech money to get this  
5 350,000?

6 A. Again, it was at a critical time and we had  
7 agreed on a valuation with Greentech at 52 million. And  
8 they were going to be an equity investor. So, you know,  
9 we had already kind of upped the stake a little bit in  
10 what our valuation was at 52 million for the company.  
11 And we would sell them equity at that rate and be able  
12 to -- it would still be a, you know, a survival method  
13 for Shadow at this point. As you can see, as '14  
14 started to close out, it became more and more desperate  
15 how we were going to handle things.

16 Q. But even \$100,000 interest would have been a  
17 pretty good rate for \$350,000 for 60 days. So why so much  
18 more?

19 A. At the time, again, it was just a little bit  
20 under the pressure point of having to deliver a  
21 production inventory to Sysco to keep the contract alive  
22 or we were going to lose that contract. And tying it to  
23 the Greentech availability and based on the valuation we  
24 had already agreed upon, we felt that it was the right  
25 thing for the company to do to save everybody else that

1 we already had tied into it.

2 MR. KITCHIN: Any other questions on this one in  
3 particular? If you want to look at it and come back  
4 later...

5 MR. BELIAK: Yeah, if I could take a look at it.

6 MR. KITCHIN: Sure.

7 BY MR. KITCHIN:

8 Q. Next I am going to hand you what has been marked  
9 as Exhibit 95, an April 14, 2014 letter from Kevin Senn,  
10 Bates No. ACC 8815. What is this?

11 A. This was just a document clarifying my personal  
12 ownership of the 500,000 shares of Greentech.

13 Q. What did you provide in exchange for the 500,000  
14 shares?

15 A. I provided some operational consulting. When we  
16 put the mining, kind of what we referred to as kind of  
17 the test mining up at surface mining, again, that's a  
18 little bit of what I do on the operations side, so I  
19 helped them review the capital equipment needed that we  
20 were going to need, you know, kind of the rate of how  
21 much dirt we could move, what kind of personnel it was  
22 going to take, help them a little bit with easement  
23 rights that had to be secured through property. So it  
24 was just more of a consulting agreement.

25 And then there is also the piece of a personal

1 investment of \$50,000 that I made in 2012 into the mine  
2 itself. But this was kind of validating on my financial  
3 statement that I did own shares of Greentech.

4 Q. Next I am going to hand you what has been marked  
5 as Exhibit 96, a promissory note to Pelican Group, Bates  
6 No. SHADOW 7506. What is this?

7 A. Well, Pelican, this is a note -- I think we  
8 spoke to one like this last time. This was in 2012 that  
9 Pelican helped fund Shadow. Pelican is owned by Richard  
10 Scherer, as you can see, which is an early manager in  
11 the company, one of the founding kind of managers, if  
12 you will. And he had two notes, one at 300, or 250 and  
13 one at 100, where he helped support the company with  
14 operating capital.

15 Q. When did he cease to be a manager?

16 A. Oh, early in 2010, when we restructured the  
17 company and he became just a member.

18 Q. Has this note been paid?

19 A. No.

20 Q. Who communicated with Mr. Scherer about making  
21 this note?

22 A. I did and Sam primarily, but, again, Richard was  
23 very tied to the business. Some of his customers we  
24 were distributing product to. He has been a key member  
25 of the organization for quite awhile, from startup, from

1 inception.

2 Q. At the time this note was made, was Mr. Scherer  
3 aware of any previous notes or loans that Shadow had  
4 defaulted on?

5 A. Yeah. He was aware of, as an example, the  
6 Tunnell judgment and those issues in 2011 and '12. And  
7 he helped negotiate the Spyglass entry and funding. And  
8 he knew that that funding was clearing those judgments  
9 against companies. So he was aware at the time of this  
10 note.

11 Q. Next I am going to hand you what has been marked  
12 as Exhibit 97, a document captioned Promissory Notes Term  
13 Loans, and Bates No. SHADOW 7510. What is this?

14 A. This is just an agreement between Richard and I.  
15 Again, in some consulting work that I do, well, both in  
16 sales and operations, I consult for The Pelican Group  
17 and brought them in some business, which was structured  
18 a little bit on a commissions basis, and agreed to with  
19 Richard on my promissory note that he could hold those  
20 funds due me against this note.

21 Q. So the sales commissions --

22 A. And on the balance sheet, all that we have done  
23 is basically taking the \$100,000 that is owed me and put  
24 that into my name and reduced his note due him.

25 Q. And the sales commissions here referred to your

1 commissions for sales you created for Pelican Group?

2 A. Yeah. So the example is the Family Dollar  
3 business. I mean I think we spoke about The Pelican  
4 Group last time. They are in the vending management  
5 business. But I had a personal relationship with the  
6 Family Dollar executives, and I took Richard that  
7 business for the entire country.

8 Q. Next I am going to hand you what has been marked  
9 as Exhibit 98, a page from a bank account statement, Bates  
10 No. ACC 271. Do you know what account, which account this  
11 is?

12 A. It looks like First Fidelity, but -- no, might  
13 not be. This might be on -- it could be either First  
14 Fidelity or Wells Fargo. I would have to check. I am  
15 surprised it is not labeled at the top.

16 Q. The bottom of the page, the last transaction  
17 listed, there is a June 20th wire transfer debit to Senn  
18 Law PC IOLTA for \$40,000. What is that transaction?

19 A. That's where we were moving money into his, into  
20 an escrow account to -- he was settling debts with  
21 creditors that we had. So it could have been a couple  
22 of trucking companies. There should have been one  
23 before -- one right after this for the \$200,000 that we  
24 spoke about earlier, the 200,000 where we paid Reed  
25 Hatkoff and Brook & Whittle. The money was being

1 transferred to the escrow account. It was -- he was  
2 representing the settlement agreements for us.

3 Q. Is the transaction related at all to any of Rick  
4 Peterson's investments in Shadow?

5 A. None that I am aware of. I would have to go  
6 back to the detail of the QuickBooks entry, which we  
7 would have exactly what that was for. This is just how  
8 the money moved. The entry in QuickBooks would provide  
9 that for us.

10 Q. Next I am going to hand you what has been marked  
11 as Exhibit 99, a letter from Novus Aurum Trust, June 19,  
12 2014, Bates No. SHADOW 7087. What is this?

13 A. Well, this would be an investment that Rick made  
14 into Greentech, which is Novus Trust. And for that they  
15 transferred 100,000 shares into Greentech.

16 Q. Why would Shadow Beverages have this document?

17 A. It was all in just Rick's file. I, as a member  
18 of Greentech, presented Greentech to Rick. Rick spoke  
19 to Matthew Neher, who is the CEO of Greentech. And  
20 apparently it came over to me or faxed over to me and it  
21 was kept in his file.

22 Q. The investment that Rick Peterson made in  
23 Greentech Mining, is that separate from the money he  
24 invested in Shadow Beverages?

25 A. Correct.

1 MR. BELIAK: May I ask a question?

2 MR. KITCHIN: Sure.

3 MR. BELIAK: If we could, go back to Exhibit 72,  
4 please. If you could, please look, I am looking at  
5 Bates No. SHADOW 7951, and it is at the top. It is on  
6 Senn Law letterhead.

7 THE WITNESS: Uh-huh.

8 MR. BELIAK: Okay. If you could, please, read  
9 the sentence below Dear Mr. Martinez.

10 THE WITNESS: Yeah. This letter will confirm  
11 previous conversations wherein Greentech has committed  
12 to funding up to 5 million to Shadow Beverages upon  
13 Greentech's closing of its financing attached hereto as  
14 Exhibit A.

15 MR. BELIAK: Do you have a copy of Exhibit A in  
16 your records?

17 THE WITNESS: Absolutely.

18 MR. BELIAK: Okay. If we could request to get a  
19 copy of that, please.

20 THE WITNESS: Yeah. And that exhibit, as stated  
21 here, Greentech will receive an excess of 300 million in  
22 the next 20 days as a result of the funding from the  
23 SBLC. Terms agreed to between Shadow and Greentech  
24 include the exchange of stock for funding at the then  
25 most recent stock price.

1 MR. BELIAK: Okay. And that \$300 million  
2 funding did not happen?

3 THE WITNESS: Did not an happen, occur.

4 MR. BELIAK: What happened that it was expected  
5 for 21 business days that the deal didn't end up  
6 occurring?

7 THE WITNESS: I know that Greentech group went  
8 to London where the deal was being done. And I don't  
9 know what bank it was that they were basically  
10 collateralizing the 300 billion worth of gold in the  
11 dirt, is how that was being positioned, and why that  
12 didn't occur.

13 I could go back and pull the records and the  
14 e-mails and communication that the investment group sent  
15 out to investors on why it did not close, but at the  
16 time there was an exhibit that Greentech had that had a  
17 deal. And they were working on MT 760s and MT 799s and  
18 the banks were working on getting on those things in  
19 place to get the funding done.

20 MR. BELIAK: So this is dated July 23rd, 2014.  
21 Has a deal since been made on this Greentech mine?

22 THE WITNESS: A deal has not been made. They  
23 have another deal that we believed was going to be  
24 funded by the 1st of December. So it was just a week or  
25 two ago. And that has not closed yet. But we had a

1 conference call last Friday -- and, then, I say we; it  
2 is the CEO and the people that are working the deal --  
3 to the group of investors of us, 20, 21 of us, that they  
4 still feel comfortable that they should be able to close  
5 the deal by the end of the year.

6 MR. BELIAK: How much is that deal supposed to  
7 be for?

8 THE WITNESS: It is a structured deal  
9 differently. Now it is in the 75 million. This was,  
10 again, was paper. Now they are selling the mine itself.

11 MR. BELIAK: Okay. All right. Thank you.

12 BY MR. KITCHIN:

13 Q. Next I am going to hand you what has been marked  
14 as Exhibit 100, a June 20th, 2014 e-mail from George  
15 Martinez, Bates No. SHADOW 7093. What is this?

16 A. Well, this is a different note that Rick made.  
17 And, again, I believe I would have to go back and check  
18 the dates, but it looks like in the middle of the year  
19 when he sold the house and he was making an investment  
20 both into Shadow and Greentech. And we deposited the  
21 check into Greentech, I am sorry, into Shadow and we  
22 sent money over to Greentech.

23 Q. So June 18 was also --

24 A. But I would have to get the QuickBooks entry.  
25 This was my direction to -- Josephine is our controller,

1 so I was giving her direction on how to handle the  
2 deposit that was being made.

3 Q. And the e-mail refers to a June 18 deposit from  
4 Rick Peterson. And June 18 is also the note, the date of  
5 his second note in Exhibit 67. Did he invest \$200,000  
6 total in June of 2014, 100,000 to Shadow and 100,000 to  
7 Greentech?

8 A. You know, he invested 150. So 50 was into  
9 Shadow -- or to Greentech, and 50 was into, I am sorry,  
10 50 into Greentech and 100 into Shadow.

11 Q. So the e-mail instructions mention wiring \$40,000  
12 to Greentech and a \$10,000 check to you. And then  
13 underneath the bank information it says that leaves a  
14 balance of \$50,000 from that deposit from Rick. Wouldn't  
15 that make Rick's total deposit 100,000?

16 A. Not into Shadow.

17 Q. So he gave \$100,000 to Shadow but 50,000 of it  
18 was --

19 A. 50 was a loan to Shadow and the other was the  
20 investment into Greentech.

21 And the reason why 10 was sent to me is I gave  
22 Greentech \$10,000 as the deposit, I believe is what my  
23 records would show, on my personal, because Greentech  
24 was looking for certain funds in a certain window and  
25 Rick agreed to do that kind of when his funds came in.

1 And I put some money in to hold Rick's spot on that 50  
2 grand.

3 Q. If only \$50,000 of Rick Peterson's money was for  
4 a loan to Shadow, then why was his note from Shadow for  
5 100,000?

6 A. June 20th, June 18th. I am not sure. I don't  
7 have the direct answer from that. I would have to  
8 investigate this a little bit further to give you a  
9 better answer. Without having other documents in front  
10 of me I am not sure why those don't match.

11 Q. And if Rick's, if \$50,000 --

12 A. Because Rick was granted, in another document  
13 you just provided, his shares into Greentech. I don't  
14 know what exhibit that was.

15 Q. 99.

16 A. Yeah.

17 Q. So if \$50,000 of Rick Peterson's deposit in  
18 June was for his loan to Shadow, then why does the last  
19 sentence say that the 50,000 will be booked as a loan from  
20 George Martinez to Shadow?

21 A. That, I could show you a debtor's list, and in  
22 QuickBooks we had George Martinez. And in that line  
23 there was myself, Richard Amrozowicz, Rick. And it was  
24 really kind of a line item for all executives that were  
25 working at the time where we were putting money in. So

1 I was just providing direction to Josephine to put it in  
2 that same line item.

3 Q. Why wouldn't Peterson have his own line item for  
4 his investment?

5 A. Richard didn't -- it was just kind of an -- she  
6 had tagged it George Martinez and it was just kind of an  
7 executive. And then within the details of that line  
8 item you would see where that money came from, what  
9 executives. Richard had one for 20. Rick had one for  
10 50. I had probably three or four that kept changing,  
11 you know, from 40 grand to 50 grand, taking some money  
12 back out, putting money back in it.

13 Q. If Shadow was counting on an investment from  
14 Greentech Mining, then why did Greentech need investments  
15 from you and from Richard Peterson?

16 A. To do the deal with the London bank, there was a  
17 fee of 185 grand, or whatever that number was, that they  
18 were trying to finalize and send three people to London  
19 for three days to get that job done. And they were  
20 trying to raise \$250,000. So this was a portion of it.  
21 I spoke to a couple other guys, got a couple Pepsi  
22 executives that invested into it. That was the need of  
23 the cash, for them to go close the deal.

24 Q. Next I am going to hand you what has been marked  
25 as Exhibit 101, a page of check images, Bates No.

1 ACC 8111. And on the left-hand column, the fourth check  
2 from the top, on June 20th for \$10,000, with the memo line  
3 Greentech Rick Peterson payment to GM, is this the check  
4 that you referred to in the e-mail in Exhibits --

5 A. Yes.

6 Q. -- 100?

7 A. It seems to be the dates are right. And the  
8 memo item would refer to that same thing.

9 Q. And --

10 A. And the other one is not a check, right? Oh, it  
11 is a wire. I thought it would be the other one. One  
12 was a wire and one was a check.

13 MR. KITCHIN: And that's all for me for now.

14

15

EXAMINATION

16 BY MR. BELIAK:

17 Q. Mr. Martinez, what is Clarity Coaching and  
18 Consulting, LLC? Do you recognize that name?

19 A. Not at all.

20 Q. Okay. We mentioned --

21 A. Clarity Coaching and Consulting?

22 Q. LLC. I am just trying to determine. I know we  
23 had discussed or we had seen a promissory note for Michael  
24 Crane for 50,000. And I can show you we have, this is  
25 Bates ACC 530.

1           If you look, please, at the highlighted amounts  
2 here, you will see that there is on July 18th a deposit  
3 for 37,000 coming from Clarity Coach and Consulting, and  
4 then 13,000 originating from Michael Crane.

5           A.       Clarity Coaching and Consulting, that must be  
6 tied to Michael Crane on how we brought his 50,000 in,  
7 because those two, Kurt and Michael, came in relatively  
8 that kind of same week. But it looks like he had to do  
9 it from a couple different bank accounts. I don't know  
10 any other Clarity Coaching and Consulting.

11          Q.       Do you recognize the name Bipin, B-I-P-I-N,  
12 Chandra Patel?

13          A.       I am not familiar with that name.

14          Q.       Okay. I would like to show you, this is a wire  
15 transfer in the amount of \$40,000, dated February 20th,  
16 2014. It is Bates ACC 8767. I have highlighted the name,  
17 if you could, if you recognize that name.

18          A.       Do you know where it came from?

19          Q.       Well, it would have been coming into the Wells  
20 Fargo Shadow bank account.

21          A.       Patel, based on the name, again I would have to  
22 research, but I would believe this is an amount from  
23 Daryl DeMillo I spoke to earlier, Daryl DeMillo working  
24 with Catherine with Market Access to India, is the name  
25 of their company.

1 Daryl went back to India and sold a couple homes  
2 that he had to get rid of and was moving money into the  
3 US. And I think, based on Chandra Patel, I know that he  
4 did it in two or three different payments and was moving  
5 money from US into the bank, his bank or family's bank.  
6 And they moved the investment into Shadow. But based on  
7 that name and timing, I would suspect that's where it  
8 came from. I would have to go back and again look  
9 through QuickBooks and it would record where that  
10 40 came from.

11 Q. And you would have QuickBooks access still  
12 covering these time periods we are discussing today?

13 A. We gave you QuickBooks files for 2013 and '14  
14 and '15. So if you had -- or the drive.

15 I think you gave that to me, didn't you?

16 MR. KITCHIN: I don't remember. Thumb drive?

17 THE WITNESS: Yeah.

18 MR. KITCHIN: I don't recall. I think so but I  
19 am not sure. If so, it is because we made a copy of it.

20 THE WITNESS: Yeah, yep. On that thumb drive is  
21 all of our QuickBooks activity from '13 through early  
22 '15 until we sold the company. So any transaction you  
23 can go, is viewable there. And QuickBooks has updated  
24 every year different files of course for every year and  
25 it involves all banks that we participated with. So you

1 will find First Community, First Fidelity, Wells Fargo,  
2 and it is all in QuickBooks.

3 BY MR. BELIAK:

4 Q. Okay.

5 A. But that is the best source and record.

6 Q. Do you know the name Peter Augustine?

7 A. Do you have a location and address, company?

8 Q. Yes. I will show you. I have a copy of a wire  
9 into the Wells Fargo bank account dated May 20th, 2014.  
10 It is an amount of \$25,000. It is Bates ACC 8756. I have  
11 highlighted the name and address.

12 A. Peter Augustine, that name does not ring a bell.  
13 \$25,000, again, we would have to research this  
14 transaction in QuickBooks, but we should be able to go  
15 to May 20th QuickBooks and be able to pull up exactly  
16 where that came in and under what line item and category  
17 and purpose the deposit was made. But the name I do not  
18 know of specifically.

19 Q. Okay. Previously we were discussing PLAs, I  
20 believe back around January 2013. Do you know how much  
21 funds were raised through those PLAs?

22 A. Well, I don't know. I mean I am not a  
23 participant in the PLA. That is Spyglass numbers  
24 through Morgan Stanley. All I know is what the PLA  
25 loaned Shadow, and that was roughly around \$795,000. We

1 had an agreement with Spyglass and those owners to raise  
2 a million dollars. And they, based on -- well, they  
3 originally thought they could bring us, loan to us  
4 around million dollars. Again, I am not that familiar  
5 with PLAs at Morgan Stanley, but based on the type of  
6 securities you have, they can only loan up to 60,  
7 85 percent or whatever the numbers are. And the owners,  
8 which again are all Spyglass, Pepsi, I would say Pepsi  
9 bottlers or Pepsi owners, their securities, what was  
10 allowed by Morgan Stanley only ended up to 795,000.

11 They made an investment. The first guy in, we  
12 borrowed 100 grand. And then I don't know if it was two  
13 more payments but it got up to 795. And that same --  
14 and the documentation also in the Mix 1 transaction  
15 agreement, because that PLA loan from Spyglass, or is  
16 identified as Spyglass II, was transferred over to  
17 Mix 1. So Spyglass II loans, we spoke about that on the  
18 record last time, Spyglass I and Spyglass II,  
19 Spyglass II is all through the PLA at Morgan Stanley.

20 Q. I would like to show you --

21 A. So I don't know if I answered your question.  
22 Sorry you asked me?

23 Q. No, no.

24 A. Okay.

25 Q. And I think based on your answer, hopefully I

1 would like to show you three wire transfers. First is  
2 Bates ACC 6713 and 6115 from Morgan Stanley in the amount  
3 of \$400,000, if you would be able to confirm if that  
4 amount is part of the PLA.

5 A. The date is 1/16/13. That would be part of the  
6 PLA.

7 Q. The next document is ACC 6725. The wire date is  
8 January 31st, 2013. The transfer amount is \$100,000. If  
9 you could, confirm if that is also funds from the PLA.

10 A. That would also be funds from the PLA.

11 Q. And the third wire transfer is dated  
12 February 7th, 2013 from Morgan Stanley to Shadow Beverages  
13 in the amount of 191,000, Bates ACC 6776. If you would  
14 confirm, is that also funds from the PLA?

15 A. 2/7, 1/16, 1/31 was the first -- no, 1/16, 1/31  
16 and 2/7, those would all be from the PLA from Morgan  
17 Stanley, as all the owners of their securities were  
18 working with Morgan Stanley to see how much that loan  
19 amount would be based on the type of security they were  
20 holding.

21 Q. Okay. Thank you.

22 We might have to break out the magnifying glass  
23 now. I would like to review some deposits made into the  
24 Shadow Beverages accounts with you. The first is Bates  
25 No. ACC 6949. It was deposited into the account

1 April 18th, 2013, which was \$50,000 from L&L Partnership.

2 Do you recognize the signature on that check?

3 A. Uh-huh.

4 Q. And that's from George Martinez?

5 A. Yes, it is.

6 Q. What were the terms on that? Well, I guess I  
7 should ask first. What were those funds to be used for?

8 A. Just operating capital. We were trying probably  
9 at that time to make payroll. Or it was just operating  
10 capital out of a partnership that -- L&L is for Lucio  
11 and Lisa, my wife, in Wyoming, where we were from. And  
12 we had a horse business there until the end of 2000 -- I  
13 think we really basically had that business and bank  
14 account sometime in '13, fourth quarter of '13. But  
15 that was just me putting money to keep the business  
16 going.

17 Q. Okay. The next document is a copy of a check.  
18 It is Bates ACC 6952. The check is also from L&L  
19 Partnership to Shadow Beverages. The check date and the  
20 deposit date is April 23rd, 2013. Do you recognize that  
21 check?

22 A. Yep. That's the same bank, Platte Valley Bank  
23 from Torrington, Wyoming.

24 Q. What kind of documents would have been kept  
25 showing the terms of the loan or how that money was to be

1 repaid?

2 A. It was my personal money being put into the  
3 account to, again, cover operating needs for the week,  
4 the day, or supplier.

5 We didn't have -- I did not produce documents  
6 every time I put some money in. The QuickBooks files  
7 will show, again, this line item, George Martinez  
8 moving, putting money in. And when we had some money  
9 come back, there were times when I took some money back  
10 that I put in to cover payroll. I couldn't afford to be  
11 gone that long other than being at the business, so I  
12 had to move the money back into the other business. But  
13 the QuickBooks would show every transaction and date of  
14 money in and out under my name in that account.

15 Q. Okay. The next check is, it is also a check made  
16 out to Shadow Beverages from L&L Partnership for \$95,000.  
17 It is dated December 27, 2013. It is Bates ACC 7658.

18 Are you able to read what is written in the memo  
19 line of the check there? This is probably where the  
20 magnifying glass would come in.

21 A. Well, it is my handwriting, which is as bad as  
22 it could be. It says product, slash, No Fear brand.

23 Q. What would that be referring to?

24 A. It means we were producing No Fear and we needed  
25 operating capital or some, at the time, some supplier

1 needed to be paid and I had to move some money to get  
2 that accounted for.

3 Q. And how were you then to receive payment back for  
4 these funds that you put in?

5 A. Well, we did it a couple ways. We had a, and,  
6 again, we presented that as documents, our debt holders  
7 and every list of debt holders, and my name is on there.  
8 And my rate of interest was at 5 percent. And there was  
9 a lot of times I didn't charge interest if it was only  
10 two or three weeks that the money was just being moved  
11 over because we needed to handle something. Then I put  
12 the money back in my other business account.

13 Q. Okay.

14 A. And keep in mind this whole time I was not being  
15 paid as an executive for running the company. So we  
16 were filtering money in as best we could to keep things  
17 going.

18 Q. When you say this whole time, did you receive  
19 compensation at all throughout your time working at  
20 Shadow?

21 A. You know, we started the company in 2008. And  
22 there was two times that would have been maybe for three  
23 or four months that the executives did take  
24 compensation. And through our board and compensation  
25 committee, we agreed nobody would make more than 80,000

1 a year. So it was just to cover living expenses. And  
2 over the course, you know, I am going to give you round  
3 numbers, but over the course from 2008 to 2015, there  
4 was probably six months where we took a paycheck at that  
5 rate of \$80,000 a year. And then we went down to, you  
6 know, we couldn't afford to pay executives so we  
7 cancelled executive pay.

8 Q. I would like to show you, this is a check made  
9 from an account entitled L. George Martinez or Lisa K.  
10 Martinez made to Shadow Beverages. It is dated  
11 December 18th, 2014 in the amount of \$9,000. And if you  
12 could, please, read what it says in the memo.

13 A. It just says a loan. And this one I  
14 specifically remember. We took that out of our personal  
15 account here for Blue Cross Blue Shield had a -- we had  
16 a payment due for employee insurance. And we had  
17 deducted the insurance from the employees' paycheck.  
18 But we didn't have the funds, the company didn't have  
19 the funds to make the payment, so I mailed the payment  
20 personally so that the insurance would be paid for all  
21 employees.

22 Q. All right. The next check is also from L. George  
23 Martinez and Lisa K. Martinez. It is in the amount of  
24 \$10,000 to Shadow Beverages, dated January 6, 2014, Bates  
25 ACC 8514. If you could, please, read what the memo states

1 there.

2 A. It says investment. And at that time, first of  
3 the year, my wife received a bonus check, and we were  
4 making an investment into the business so we put  
5 10 grand into Shadow.

6 Q. And what kind of documents were written up around  
7 that?

8 A. We -- again, it was not -- we didn't have  
9 documents when it was me personally trying to fund the  
10 business and keep it going. It was I put the money in  
11 and then, again, you would see sometimes where there was  
12 money taken out.

13 Q. So I know it says investment. Would you consider  
14 that to be an investment or a loan?

15 A. It would be really a loan because we were  
16 putting this all into the loan bucket into QuickBooks.

17 Q. When putting money into Shadow, how did you  
18 determine whether the money came from L&L Partnership or  
19 from your personal account?

20 A. Well, I mentioned earlier that we closed the L&L  
21 Partnership account, that business. It was a -- L&L  
22 Partnership was a horse business. And we closed that.  
23 So that bank account was closed. So you see kind of  
24 after that time frame that bank was closed. So any  
25 personal money I put in came from my personal account

1 here in Wells Fargo here in Arizona.

2 Q. Okay. The next check I would like you to please  
3 take a look at is from Bates ACC 6886. I have highlighted  
4 the amount here. It is a check made from L. George  
5 Martinez or Lisa K. Martinez, the date on the check is  
6 March 3rd, 2013 in the amount of \$100,000. If you are  
7 able to, read what is written in the check memo, please.

8 A. It says business transfer.

9 Q. Do you know what that would be for?

10 A. Again, it was money that I was putting into the  
11 company. But I don't know exactly the term business  
12 transfer, what that refers to. We can look that up at  
13 QuickBooks. Again, it would show exactly what line item  
14 that was put under.

15 Q. You mentioned that between 2008 and 2015 there  
16 were only a couple periods of time where the executive  
17 members received compensation, correct?

18 A. Correct.

19 Q. Do you recall if during the period January 2013  
20 through around June 2013 if that was part of those months  
21 when you would have?

22 A. I don't recall specifically. But you could do  
23 the research. It wouldn't seem like that would be one  
24 of those time frames.

25 Q. All right. So I would like to please show you,

1 this one is going to be tough to see, but this is Bates  
2 ACC 6753. It is the fourth check down. It looks like it  
3 is made out to George Martinez in the amount of \$2,706.88.  
4 The date is January 2nd, 2013. Do you see that?

5 A. Uh-huh.

6 Q. I don't know if you are able to read the date on  
7 the check. And this might be where you need the  
8 magnifying glass.

9 A. It looks like 11/30/2012.

10 Q. It also says, it says it is payroll check number,  
11 correct? At the -- toward the top right of the check  
12 image itself, it should be right above where it says pay  
13 date.

14 A. Okay. Payroll check number, yep.

15 Q. So this check would have been for compensation  
16 for work performed?

17 A. Well, now that I look at this sheet, it would  
18 have been because you can see on all this there is  
19 Richard Amrozowicz, who is an executive; the check  
20 before that, Sam Jones, who is an executive; myself;  
21 Richard Peterson, who was an executive; and then another  
22 one for Sam Jones, which has a different date, 12/14, so  
23 the second pay period. So this would have been one of  
24 the times. Earlier you said 2013. And this is not  
25 2013. This is 2012.

1 Q. Well, it is, I believe it is, statement date  
2 looks like it wasn't actually cashed until January of  
3 2013.

4 A. That could be right. The check is dated  
5 11/10/2012.

6 Q. Okay.

7 A. Correct. So this looks like this is one of the  
8 times that executives were being paid based on this  
9 listing you have here of all the executives are on  
10 there --

11 Q. Okay. Great.

12 A. -- including myself.

13 Q. Thank you.

14 I have some questions surrounding some series of  
15 withdrawals coming off of, out of the Wells Fargo bank  
16 account. And this covers a period starting back in  
17 February 2014 all the way up through March of 2015. And  
18 before we have to get into each of these documents, I will  
19 just show you one and maybe you can explain what these,  
20 what this particular entry means.

21 I am looking at Bates ACC 519. It is from the  
22 Shadow Wells Fargo bank account. I have highlighted, it  
23 is a posting date of February 26, amount of 2500. If you  
24 could, please, read what the description is here.

25 A. It is called Chase ePay. So I have a credit

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1 card, a Chase credit card, that is under my name that  
2 the company used for, say, Kathy Reiser our director of  
3 administration, Josephine used, and we had some of our  
4 field folks using, so for travel for some of the sales  
5 folks. And that has a \$22,000 limit on it. And we  
6 would book a lot of expense.

7 So, again, if you go to QuickBooks, and you can  
8 see expenses being paid by credit card, and the credit  
9 card was 2040, we all know that was the name of the  
10 credit card that we used to either book travel expense  
11 for somebody that needed to go somewhere, fuel expense,  
12 you know, a payment to our domain site that required a  
13 credit card. Anything like that, that was paid on the  
14 credit card. And then at any time there was enough cash  
15 or if the balance got too high on the credit card or  
16 there was no credit limit, we were at our limit, then we  
17 would make a payment to Easy, Chase Easy Pay, just  
18 online going into the Chase credit and make a payment  
19 out of the Shadow bank account for all of those  
20 expenses.

21 If you go to QuickBooks, and you will find the  
22 expense item, all those expense reports were under my  
23 name because it was my credit card, and it will show the  
24 payments being made out of the bank account just by a  
25 Chase ePay, where we were paying the credit card down so

1 that somebody could travel or we could buy something or  
2 make another payment.

3 But Chase ePay is a credit card under my name  
4 that has every transaction. That credit card was only  
5 used for Shadow business. It wasn't used for any  
6 personal business. So everything listed there is Shadow  
7 expenses on it. And it is submitted with expense  
8 reports. When you go to QuickBooks, you will see  
9 expense reports and you will see all those line items,  
10 you know, from \$5 for Pay Pal for the rights to have Pay  
11 Pal open, to a plane ticket for a salesperson, or for  
12 Chevron gas for one of the sales guys to be putting gas  
13 in. But that's what we would use the credit card for.

14 Q. Did other employees have access to a physical  
15 credit card --

16 A. Yes.

17 Q. -- with Chase? How many employees?

18 A. Just one. That would have been Kathy Reiser.  
19 So Kathy, director of administration, had the credit  
20 card locked in a box. But she was authorized to give it  
21 to Josephine and/or Kathy Baker, the accountant and  
22 controller. If something online needed to be paid, you  
23 know, any one of those services, like I mentioned, our  
24 domain or our website had to be paid 130 bucks a month,  
25 they would be authorized to use that credit card from

1 Kathy.

2 So not all charges, I would say probably, you  
3 know, less than 20 percent of the charges were ever done  
4 by me personally. They were mostly done by Kathy, who  
5 was running the business and had the credit card and  
6 making payments and managing where we had credit allowed  
7 to use for credit card payments.

8 Q. Why did you have a credit card in your personal  
9 name as opposed to having one for the business?

10 A. We had one, American Express, with the business.  
11 With our judgment with Brent Tunnell and our D&B score  
12 went down so low, we couldn't get a -- American Express  
13 cancelled our credit card which we were using. And you  
14 can, again, if you look at QuickBooks back into 2010,  
15 2011, we had a business account credit card with  
16 American Express. And we were cancelled. And the only  
17 other option for, you know, there is just a need for  
18 credit cards to run a business, and the only option was  
19 mine.

20 Q. I would like you to please take a look at, this  
21 is a copy of an outgoing wire transfer from Shadow  
22 Beverages to L&L Partnership. Transfer amount is \$50,000,  
23 dated January 17th, 2014. It is Bates ACC 7736. Do you  
24 recall what that amount is for?

25 A. Yeah. I actually remember this too well. You

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1 saw earlier a check for \$95,000 that I had put in at the  
2 end of the year.

3 Q. Yes.

4 A. And I basically out of this business account was  
5 using some credit at that account at Platte Valley Bank  
6 in Torrington. And I put the \$95,000 in. And when we  
7 got some funding in or receivables, whatever it was,  
8 that loan amount needed to be paid back. So we made a  
9 payment of 50 grand back at L&L Partnership at the  
10 Platte Valley Bank in Wyoming as quickly as possible.

11 95,000 was a lot for me to just cover on my own  
12 for a period of time. I had to use the line of credit  
13 at the bank that I had.

14 Q. Okay. The next check I would like you to please  
15 take a look at is a check dated January 27th -- I am  
16 sorry, the posting date is January 27th, 2014 -- for a  
17 check written by Shadow Beverages on January 23rd, 2014 to  
18 L&L Partnership for \$50,000. The Bates is ACC 7760. If  
19 you could, please, explain what that check is for.

20 A. Based on the dates you gave, which would match  
21 this, this paid back the \$95,000, plus the having to  
22 leverage my line of credit for the 95,000. So this  
23 100,000 covered that loan amount.

24 And, again, you would see that in QuickBooks it  
25 would show the \$95,000 paid and \$5,000 was the cost of

1 money. So it would be under partial interest that we  
2 had to pay to the bank and then the processing of the --  
3 it was very similar to a home equity loan that I had to  
4 process to borrow the money.

5 Q. The next check I would like to ask you about is a  
6 check to L. George Martinez. It is dated June 7th, 2013,  
7 from Shadow Beverages and Snacks. It is Bates ACC 7135.  
8 If you could, please, read for me what the check memo says  
9 there. Again, I would need a magnifying glass; maybe you  
10 are able to read it.

11 A. Yep. So this, it was a return of another  
12 deposit I made. In the memo says Q1-2013 interest and  
13 notes paid of 10K principal amount. So it was money  
14 that I put into the company to cover something. Looked  
15 like -- I am not sure at this time. It was written  
16 right back to me, so I am not sure if I put it back into  
17 the L&L Partnership account. But it was for 10 grand  
18 that I loaned the company. So it could have been any  
19 one of those other checks that you showed as deposits  
20 being made. And that was just to pay back.

21 Q. Okay. Thank you.

22 A. Uh-huh.

23 Q. Were there any other --

24 A. And that was a little bit of -- that's the  
25 definition of bootstrap.

1 Q. Yeah.

2 A. So, I am sorry. And I know that term came out  
3 in Wyoming. That was bootstrapping. We were moving  
4 money from my personal business to my personal account  
5 into Shadow to cover it until we had enough revenue to  
6 pay those loans back. And it was money I was moving  
7 around to handle, to keep the business going.

8 Q. On the First Fidelity account, besides for  
9 yourself, were there any other authorized signers?

10 A. Yes. That actually, from inception with first  
11 Fidelity and Rick Baker, that relationship came about  
12 through Ryan Weissmueller, who, if you go back through  
13 the records of the company, was the CFO at inception.  
14 And Ryan knew Rick, and they had done some other local  
15 business.

16 So he went to First Fidelity and Community Bank,  
17 that I had no relationship with here. So Ryan at one  
18 point was the only signer. And then you would go  
19 through the bank records of cards, you know, Sam Jones  
20 was a signer at one point, Richard Amrozowicz. We  
21 brought in a CFO, Bob Korte, who we spoke about last  
22 time on record, from CKS Financial. He took over the  
23 bank account, I would say, through '13, end of '13  
24 through '14, which is just controls needed and me  
25 financing it. We took everybody off but me. And then I

1 think the controller, Josephine, at one time had  
2 authorization for signing checks. But as we got towards  
3 the end, and I know '14, the only signature authorized  
4 was me managing the funds.

5 Q. Would that also be the same with respect to the  
6 Wells Fargo accounts?

7 A. Yes. But to be clear, so for signature cards on  
8 a check, for wiring instructions or wiring, moving  
9 money, Josephine, our controller, had authorization with  
10 Kathy Reiser. So we could only move money when there  
11 were two accounts plugged in. So we had the Wells Fargo  
12 kind of online setup where we could deposit checks right  
13 there at the office through the scanner. And we had to  
14 have two codes to wire money. And we could move money  
15 or spend money by Josephine using her code and Kathy  
16 using her code at the computer at the same time. So  
17 that would authorize a wire. I also had a code, but  
18 primarily the wires happened between those two at the  
19 office all the time. So they also had authorization for  
20 money to move, to answer the question, versus just the  
21 signature on the check.

22 MR. BELIAK: Okay. Thank you. I think that's  
23 all the questions I have.

24

25

## 1 FURTHER EXAMINATION

2 BY MR. KITCHIN:

3 Q. A few more. Daryl DeMillo, was the money he gave  
4 to Shadow an investment from him?

5 A. It was a term loan.

6 Q. Was he expecting to make a return from the  
7 loan --

8 A. Uh-huh.

9 Q. -- a profit?

10 A. Yes.

11 Q. Thank you.

12 We saw some board minutes from 2013 and 2014  
13 about updating the board on capital raising. Before then,  
14 was the board always receiving updates about the company's  
15 fundraising efforts?16 A. Yeah. I would say when, you know, third and  
17 fourth quarter of '11, we had the capital infusion from  
18 Spyglass. And we had their loan, the loan in place. So  
19 we entered into 2012 when the capital wasn't that big of  
20 a deal. Right?21 We were looking for the growing business. We  
22 had built up formulas. We had built up brands. We had  
23 done that, what we referred to as development work. And  
24 that's what we used a lot of money from the Spyglass  
25 investment. It was all development work. And as the

1 business started to grow and we started to get  
2 additional business like Sysco, additional Pepsi  
3 distributors on board like PepsiCo in the north, in the  
4 northwest, then operating and working capital became an  
5 issue. And that's when we started to focus on that in  
6 '13 and going -- we kind of bridged from the company  
7 where it started, you know, when we put a million  
8 dollars in, a couple guys, everybody put some money in,  
9 and then we took the next step to a larger raise when we  
10 valued Shadow at \$40 million. And that is the  
11 investments the Pepsi folks made based on that  
12 investment rate or valuation rate. We were now moving  
13 to the next step, which was now we needed operating  
14 capital. We had finished the development work. We  
15 raised the money for the development work and now we are  
16 looking for operating capital.

17 And that argument became with the board, like  
18 any company that's growing, does operating capital,  
19 should it come from equity or should it come from debt.  
20 And, you know, business and financial people give you  
21 all kinds of different answers where that operating  
22 capital should come from. So we always had shareholders  
23 that did not want to dilute the company any more from an  
24 equity standpoint and we had board members that said we  
25 had to go find a debt solution versus an equity capital

1 solution.

2           So that's why that discussion you see in the  
3 board minutes. Those things were ongoing. The board  
4 knew what we were trying to accomplish. We were a  
5 little bit between is it equity, is it debt, what is the  
6 right thing to do, will debt, a bridge of debt get us to  
7 the next equity component. And, again, that's what we  
8 believe we executed.

9           We had, though we were late and we communicated  
10 that we could not make some payments in time because the  
11 equity component didn't really come until we finalized  
12 this deal with Mix 1, when we finalized the deal with  
13 Mix 1 for \$12.2 million on just the asset of No Fear  
14 itself, that's when we believed now we have been able to  
15 get the equity side to clear all the debt that the  
16 company owed.

17           And then that's when you get into, and I think  
18 last time we spoke, the transaction agreement between  
19 Mix 1 and Shadow and how that was put together and how  
20 that would relieve all the debt owed by everybody over  
21 to everybody from Shadow. And the \$1.5 million in  
22 payables, which is a lot of this 50,000, you know,  
23 100,000 in production capital that we needed, and then  
24 the rest of the transaction at Mix 1 was designed to be  
25 in stocks so that an equity holder in a private company

1 received public shares of a public company, even though  
2 it had a six-month hold on it. Then it gave them  
3 liquidity that they, everybody wants in an investment  
4 depending on what your personal situation is, but we  
5 felt all those benefits in that transaction gave them  
6 liquidity and also allowed us to take care of all the  
7 debt at the same time.

8 Q. Last month we looked at some notes made to  
9 individuals in 2009 and '10 and '11. Was the board aware  
10 of those notes at the time?

11 A. Yeah, because the board was aware that those  
12 early notes were all paid off with the investment of  
13 Spyglass. So when Spyglass made their investment, they  
14 came in and, of course, through due diligence and  
15 looking at all our records, they saw all our debt. And  
16 the debt referred to all those notes that you just  
17 referred to. So they knew that the equity coming in  
18 was, there was a portion that had to relieve us from  
19 debt and then there was a portion that was going to be  
20 development capital.

21 So when I talk about that, you know, equity  
22 coming in, it was, it had to do both. It relieved us of  
23 some early debt that we had and then it provided us the  
24 development capital to continue to work on the brands we  
25 were working on.

1 Q. Could you also provide or Shadow provide the  
2 checks and bank statements that would document for us the  
3 note holders paid from Spyglass in 2011, just so we can  
4 confirm those?

5 You mentioned capital, when Spyglass Capital got  
6 the money, you were then able to pay off all the  
7 outstanding note holders at that point. For some of those  
8 we actually have the payment record, but for some we  
9 don't. Is it possible for you to find the bank statements  
10 that would show us those payment records just so we can  
11 confirm?

12 A. Oh, absolutely. I mean, one -- we could refer  
13 to it in two different ways. Bank statements would show  
14 that. Our balance sheet and tax filings of what our  
15 assets and debts were with Henry & Horne would all show  
16 that. That's on QuickBooks. And those files are all  
17 saved and preserved. So all those documents absolutely  
18 can be produced.

19 Q. Okay, thanks. Because I think we don't have them  
20 back that far currently.

21 A. Because --

22 Q. I don't think we asked for them.

23 A. Right, because you asked for '13. So without  
24 trying to overload you with 80 boxes of stuff that we  
25 brought over the first time, yeah, easy enough to get

1 those documents, all recorded. And, again, the best  
2 source of information is QuickBooks, but the bank  
3 statements and everything is there.

4 MR. KITCHIN: The bank statements would help  
5 just so we have some third party's documentation of it.

6 Mike, do you have any questions?

7 MR. BROKAW: I do not.

8 BY MR. KITCHIN:

9 Q. So at the end typically your attorney would be  
10 able to ask you questions to clarify or add anything.  
11 Since you don't have one, you are free to speak free form  
12 if you think you need to clarify or something. You don't  
13 have to. There is no pressure to. I am just letting you  
14 know you have an opportunity if you want.

15 A. No. I think, you know, where the company is  
16 today, you know, and the inquiry on compliance and, you  
17 know, were we doing the right things, you know, the  
18 inquiry is really predicated on timing in my opinion.  
19 Right? Because -- and rightfully so.

20 We did a deal and we told everybody. And again,  
21 we looked at some settlement agreements that we had  
22 already put together that as of April 1. The settlement  
23 agreements were all going to be in place and all  
24 creditors had the rights to, you know, the asset or the  
25 either stock or cash that we received from Mix 1.

1           Where things continued to go wrong was Mix 1 has  
2 still today not finalized the transaction agreement on a  
3 cash side or stock side. So that has caused us even  
4 more issues. Right?

5           So we got a group of creditors that have also,  
6 you know, pushed for involuntary. We are working  
7 through that now. And Mix 1, while the relationship is  
8 still fairly good, we talk about what is going on and  
9 their funding and their attempt to sell and merge with  
10 another public company. That would add value to the  
11 stock and provide them some cash to finish the  
12 transaction. You know, we are in hopes and we have been  
13 in hopes that, you know, in 30 days we could have  
14 everybody completely covered off because Mix 1 comes to  
15 us and says, okay, we got our money, now I can pay you  
16 for what you gave us, right, which is our asset.

17           And Shadow today is an empty shell. You and I  
18 have talked about that. We are not operating. The bank  
19 account has been at zero for eight months. Things like,  
20 you know, the domain and websites and other licenses I  
21 have been paying out of my own pocket to keep the shell  
22 running, or else it would have all collapsed by now. So  
23 I have been paying that out of my own pocket. But our  
24 Wells Fargo and all the other banks, there are no  
25 transactions. We are not paying anybody. We don't have

1 any source of revenue. So it has been zeroed out and it  
2 has been that way since April 1.

3 So everything that you received was through  
4 March 31st, I believe is what you asked for.

5 Q. That sounds right.

6 A. And that was really the end of all transactions.

7 So moving forward, we haven't paid anybody  
8 because we haven't collected the money. We have small  
9 transactions going on, just stuff that I have been  
10 paying. And it is, you know, a few thousand to keep the  
11 business name and domain and websites and licenses and  
12 all those things in order. And, you know, we have a  
13 meeting, official meeting with the trustee tomorrow, or  
14 I do.

15 They have given us 28 days to provide some  
16 documents. As of Friday we got notice that there has  
17 been a trustee assigned. I reached out to the trustee  
18 on Monday and said why wait 28 days, we should start  
19 now, I need to know what you need and I can bring  
20 anything you need and we can start the work now. So  
21 Maureen is the trustee. And we meet tomorrow for the  
22 first time. And we will be producing all these  
23 documents and our schedules for the court.

24 And we have involved the Mix 1 folks because  
25 they are going to be part of it because they, they are

1 the big receivable on the other side of the ledger to  
2 take care of all the debt on the left side of the  
3 ledger. And once that receivable is completed, then we  
4 will be able to, you know, handle all the debt and  
5 creditors based on, you know, a lot of documents we  
6 reviewed today and others that we haven't.

7 But you have documentation of what all those  
8 payables are and what those schedules would look like.  
9 Nothing is going to change. It is going to be kind of a  
10 repeat of everything we produced for you to the court.  
11 It is what it is. Right? So...

12 And thank you for your time. And, you know,  
13 from the very beginning, thanks for your patience. I  
14 know it is -- we started these discussions, I think, in  
15 June maybe when you and I first started getting on the  
16 phone and saying, hey, we need to sit down. And, you  
17 know, you have been very understanding what we are going  
18 through and allowing us time and, you know, flexibility  
19 and reschedule and come in and handle this. So I  
20 appreciate that.

21 Q. Sure.

22 A. Thank you all for your time and effort.  
23 Everybody has a busy schedule. This is important and it  
24 is critical that things are done the right way. So I  
25 respect your positions and what you guys do. And we

1 feel that, you know, we have the end in sight. It is  
2 just not here yet. And then we will get everything  
3 handled.

4 MR. KITCHIN: Thank you.

5 We can go off the record.

6 (The examination under oath was concluded at  
7 11:55 a.m.)

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1 STATE OF ARIZONA )  
2 COUNTY OF MARICOPA )

3 BE IT KNOWN that the foregoing proceedings were  
4 taken before me; that the witness before testifying was  
5 duly sworn by me to testify to the whole truth; that the  
6 foregoing pages are a full, true, and accurate record of  
7 the proceedings all done to the best of my skill and  
8 ability; that the proceedings were taken down by me in  
9 shorthand and thereafter reduced to print under my  
10 direction.

11 I CERTIFY that I am in no way related to any of  
12 the parties hereto nor am I in any way interested in the  
13 outcome hereof.

- 14  Review and signature was requested.
- 15  Review and signature was waived.
- 16  Review and signature was not required.

17 I CERTIFY that I have complied with the ethical  
18 obligations set forth in ACJA 7-206(F)(3) and ACJA 7-206  
19 (J)(1)(g)(1) and (2). Dated at Phoenix, Arizona,  
20 this 14th day of December, 2015.

*Colette E. Ross*

\_\_\_\_\_  
Colette E. Ross  
Certified Reporter  
Arizona CR No. 50658

21 I CERTIFY that Coash & Coash, Inc., has complied  
22 with the ethical obligations set forth in ACJA 7-206  
23 (J)(1)(g)(1) through (6).

*Coash & Coash*

\_\_\_\_\_  
COASH & COASH, INC.  
Registered Reporting Firm  
Arizona RRF No. R1036

**Remote Deposit** **Credit**

Shadow Beverages & Snacks LLC  
 Shadow Beverages & Snacks LLC  
 1060 W University Drive Suite 114  
 Scottsdale, AZ 85281  
 1100

Date: 1/14/2011  
 Items: 3  
 Amount: \$100,077.46  
 Batch ID: 13327494  
 Account ID: 15240 92794  
 Acct Num: 5031

Check: 0 Amount: \$100,077.46 Date: 1/14/2011  
 Run: 95, Batch: 3, Seq: 117, Source: Histor

**Credit**

Check: 0 Amount: \$100,077.46 Date: 1/14/2011  
 Run: 95, Batch: 3, Seq: 117, Source: Histor

ROBERT J. GERVASI  
 STACY GERVASI  
 4986

1-14-11 DATE

PAY TO THE ORDER OF Shadow Bev + Snacks LLC \$ 50,000.00  
 Fifty Thousand 00/100.00 DOLLARS

Arizona Federal

Check: 0 Amount: \$50,000.00 Date: 1/14/2011  
 Run: 95, Batch: 3, Seq: 118, Source: Histor

For Deposit Only  
 Shadow Beverages & Snacks LLC  
 First Fidelity Bank - OK  
 1/14/2011

Check: 0 Amount: \$50,000.00 Date: 1/14/2011  
 Run: 95, Batch: 3, Seq: 118, Source: Histor

GARY VAN KLEDONK  
 MICHELLE VAN KLEDONK  
 4334

1-13-11 DATE

PAY TO THE ORDER OF Shadow Beverages & Snacks LLC \$ 50,000.00  
 Fifty Thousand 00/100.00 DOLLARS

Arizona Federal

Check: 0 Amount: \$50,000.00 Date: 1/14/2011  
 Run: 95, Batch: 3, Seq: 119, Source: Histor

For Deposit Only  
 Shadow Beverages & Snacks LLC  
 First Fidelity Bank - OK  
 1/14/2011

Check: 0 Amount: \$50,000.00 Date: 1/14/2011  
 Run: 95, Batch: 3, Seq: 119, Source: Histor

13507

ACME VENDING INC  
 41 527 1221

7000 FARGO BLVD WA  
 PHOENIX AZ 85016

Seventy-Seven and 46/100 Dollars

DATE: Jan 17, 2011 AMOUNT: \*\*\*\*\*577.46

Shadow Beverages & Snacks LLC  
 1860 W UNIVERSITY DRIVE SUITE 114  
 SCOTTSDALE AZ 85281

Check: 13507 Amount: \$77.46 Date: 1/14/2011  
 Run: 95, Batch: 3, Seq: 120, Source: Histor

For Deposit Only  
 Shadow Beverages & Snacks LLC  
 First Fidelity Bank - OK  
 1/14/2011

Check: 13507 Amount: \$77.46 Date: 1/14/2011  
 Run: 95, Batch: 3, Seq: 120, Source: Histor





shadow  
beverages and snacks

May 1, 2014

Re: Amendment to Loan Agreement

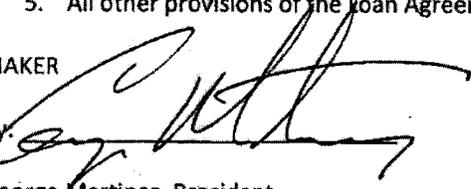
Recitals:

1. Shadow Beverages and Snacks, LLC ("Maker") entered into a Loan Agreement dated December 6, 2013 with Catherine Leyen and Don Johnson (Ravenstead Enterprises, LLC) ("Holder") in the amount of \$25,000.00
2. The Loan Agreement had a maturity date of around March 1, 2014.
3. No principal has been paid on the Loan Agreement and the entire \$25,000.00 remains outstanding.
4. No interest has been paid and the entire interest amount of \$5,000.00 remains outstanding.
5. Maker and Holder agreed to extend the outstanding principal of \$25,000.00 and interest of \$5,000.00 to the Maturity Date of May 1, 2014.
6. Now, Maker and Holder now desire to extend the principal of \$25,000 and the interest due of \$11,000 to August 31, 2014.

Therefore:

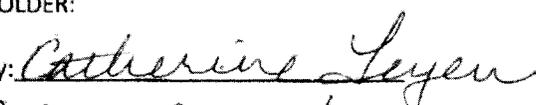
1. The Maturity Date is revised to August 31, 2014.
2. Additional Interest in the amount of \$6,000.00 will be paid at Maturity Date.
3. In addition to the interest earned on the principal amount as stated in this agreement, the lender will receive warrants for this agreement. Warrants granted to the lender will be 10,000 shares at price of \$4.20 per share. Warrants will have a 5 year exercise period.
4. Total amount due at maturity date is \$43,200.00 to satisfy principal and interest.
5. All other provisions of the loan Agreement dated December 6, 2013 shall remain unchanged.

MAKER

By: 

George Martinez, President  
Shadow Beverages and Snacks, LLC, an Arizona Limited Liability Company

HOLDER:

By:   
May 9, 2014

4650 E. Cotton Center Blvd. Ste. 240 Phoenix, AZ 85040



# SHADOW BEVERAGES AND SNACKS

Business Model and Opportunity Assessment

*December 2013*





Shadow was founded in 2008 by George Martinez and Sam Jones, Beverage Executives with broad experience from the Pepsi System. The vision since inception has been to be an accelerator of beverage and snack products in the “Better for You” and nutritional categories.

Shadow, headquartered in Phoenix, AZ, has built a base infrastructure to support brand incubation and growth through its network of distributors across the country. While having a firm belief that the optimal go-to-market method is direct store delivery (DSD), they have incorporated a direct to retailer (DTR) alternative to establish a hybrid distribution model. The direct delivery method is driven by national retailers and allows for national distribution quickly by utilizing retailer’s warehouse delivery systems.

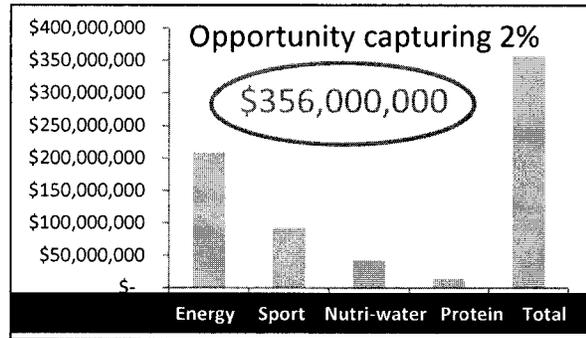
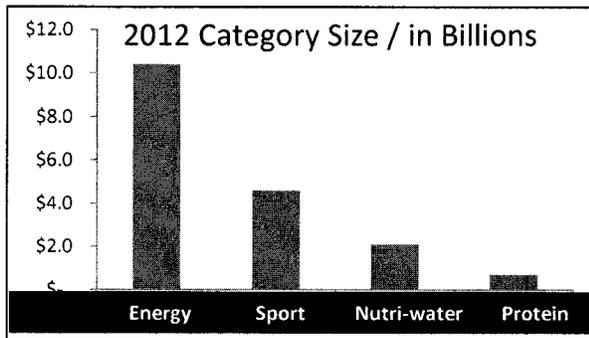
As the initial portfolio of brands was being developed, Shadow began the process of identifying and attracting experienced beverage experts from across all functional disciplines. Today the organization has 30 employees and a leadership team with a combined 300 years of beverage experience.

The Shadow brand portfolio competes effectively in four categories with a combined industry scale of approximately \$17 billion in sales. The categories are large, growing and filled with continuous innovation that will enable a pipeline of growth for years to come. The categories include Sports Nutrition, Enhanced Water, Protein Nutrition and Energy.

## **THE MARKETPLACE**

The U.S. Liquid Refreshment Beverage (LRB) industry is the largest and one of the most vibrant consumer products goods industries with annual volume of 10 billion cases and retail revenue of \$75 billion. The industry is comprised of Carbonated Soft Drinks (CSD) which represents 35% of industry revenue and Non-Carbonated Beverages (NCB) which total 65% of the industry. Over recent years, the NCB business has seen consistent 4-6% growth while CSD’s have been down (3%-5%). Total industry revenues have been growing in the 3-4% range.

The NCB business is made up of several categories including Energy, Sports, Enhanced Water, Protein and Tea beverages. Aside from the Sports category, these categories have developed and have rapidly grown over the past 10 years. The emergence of these categories has been fueled by consumers transitioning out of CSD’s and into these more functional beverage categories that provide a greater variety of beverage benefits. These key categories provide the opportunity for new and emerging brands. Shadow has built a portfolio of brands that target the opportunity of two percent in each of these growing categories.



The Energy category is growing rapidly, 19% YTD 2012, and is the second largest LRB category at \$10 billion. Key competitors in the category include Monster Beverages, Rockstar, PepsiCo and Red Bull. Growth will be fueled by consumers who continue to transition out of CSD's as they seek alternative beverages driven by category innovation.

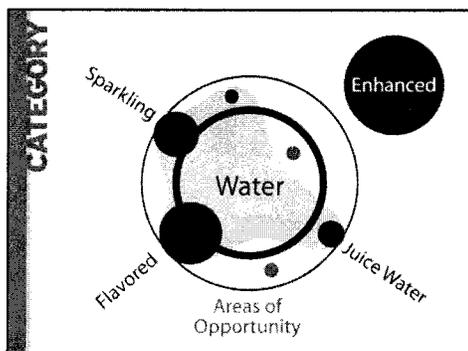
The Sports category has been the leading functional beverage category in the industry with total revenue of \$4.6 billion and growing 7% in 2012. Key competitors include category leader Gatorade (PEP) and PowerAde (KO). Continued consumer health and wellness trends will deliver category expansion in the mid-single digits.

The Enhanced Water category has rapidly developed over the past 10 years growing to \$2.1 billion in revenue with 2012 YTD growth of 3%. Key competitors include Vitamin Water (KO) and Sobe Life Water (PEP). Category growth will be robust behind functional innovation, flavor expansion and reduced calorie offerings.

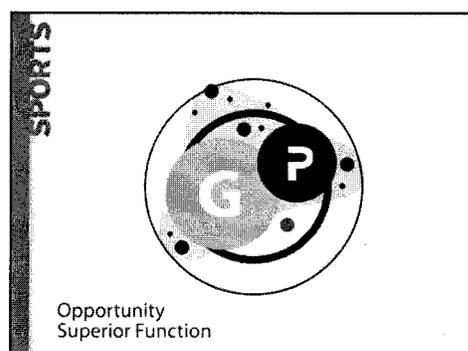
The Protein category is experiencing rapid growth driven by health and wellness trends and the consumer adoption of the Protein category. Over the past five years, the category has grown to \$0.7 billion in revenue and 2012 growth rates are exceeding 25%. The major competitor in the category is Muscle Milk (CytoSport). Category growth will continue in the 20% range driven by multiple new entries and continued household penetration.

**OUR BRAND STRATEGY**

Products exist to expand choice, brands exist to simplify choice. Shadow has developed brands through licensing agreements that support the consumer choice and what it stands for. The strategy involves a clear understanding of how brands and categories create opportunity. Duplication in categories is abundant and leads to failure. Finding the opportunity within the category that speaks to consumers understanding and confidence delivers results.

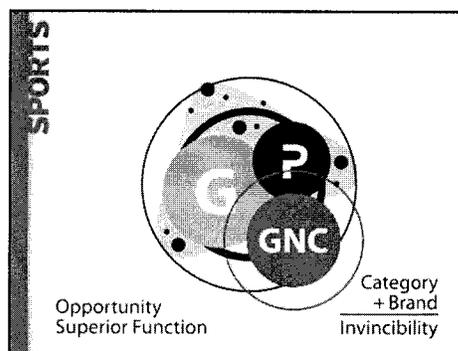


2



Once the opportunity in the category is identified, a brand is needed to speak to the consumer. Brand and category relevance are the ultimate combination. Existing brands that are trusted, credible and understood can leverage the opportunity.

The GNC Beverages participate within segments of growing categories that provide consumers with a point of difference. Superior functionality is a segment that has no competition and one that consumers understand. The GNC brand holds the trust and credibility of consumers in the nutritional space. Category and brand strategies build successful products.



**OUR BRAND STORY TODAY**

Shadow’s portfolio of products target the emerging and evolving categories of non-alcoholic beverages. The focus is on growth and innovation through white space opportunities and functionality. Shadow’s brands exist in high growth categories and leverage the consumer demand for health, nutrition and functional ingredients. Our brands are delivering incremental volume and margin growth for our distributors while enhancing category margins for customers. That win-win formula provides Shadow with volume, revenue and industry level gross profit.

**GNC BEVERAGES**



**Categories – *Sport Nutrition, Nutritional Water, and Protein Nutrition***  
**Consumer Positioning – *Nutrition Based, Performance Driven***  
**Brand Performance Drivers – *Consumer Trusted, Credibility in Nutrition***

- Five-year licensing agreement with five-year renewal based on performance
- Agreement includes rights to all RTD’s categories for further expansion
- InterBev “Best Functional Beverage of the Year” Award in October 2012

## NO FEAR ENERGY



IT'S AN ATTITUDE  
IT'S A LIFESTYLE  
IT'S A STATE OF MIND

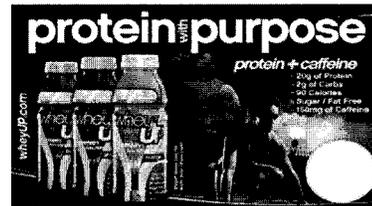
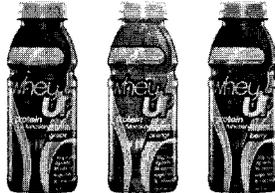
**Category** – *Energy Drinks*

**Consumer Positioning** – *Youthful and Super Aggressive*

**Brand Performance Drivers** – *Exploding Category and Monster Fighter*

- Ten-year licensing agreement with brand owner, IBML
- Rights to develop other RTD categories
- Trademark is expanding in mainstream apparel retailers under IBML
- Previously a multi-million case brand in the Pepsi System

## WheyUP PROTEIN



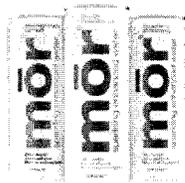
**Category** – *Water Based Protein*

**Consumer Positioning** – *Serious about Fitness and Health Focused*

**Brand Performance Drivers** – *Combines Energy and Protein Category Growth*

- Acquired Trademark and formula in 2011
- Water based product / new segment in the protein category
- Fitness focused / pre-loading protein prior to a workout

## MOR



No sugar. No caffeine.  
**mōr** taste.

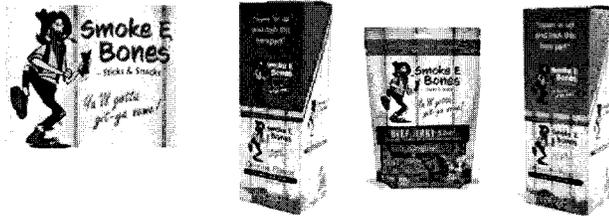
**Category** – *Sparkling Enhanced Water*

**Consumer positioning** – *Healthy Carbonated Beverage with Functionality*

**Brand Performance Drivers** – *ABA Compliant / USDA Certification*

- JV agreement with mōr Beverages Company
- Distribution agreement with Pepsi Beverages Company
- Functional beverage with a focus on the education, health and business channels

## SMOKE E. BONES



**Categories** – *Meat Snacks, Sticks and Bites*

**Consumer positioning** – *Value Priced / Dual Impulse Merchandising*

**Brand Performance Drivers** – *Bottler Focused, Leverage Distribution Partnership*

- JV agreement / 20% equity with performance
- Independent Pepsi Bottlers distribution agreement
- Currently under name change

## FAVEO



**Category** – *Hangover Relief*

**Consumer positioning** – *Lifestyle and Wellness*

**Brand Performance Drivers** – *New Category with Retailer Interest*

- JV agreement / 20% equity with performance
- Launch markets of Phoenix, Las Vegas, Miami and Savannah
- Food Service and Retail channel opportunity

## INNOVATION PIPELINE

Shadow is currently in discussions with other brands that are leading the development of “Better for You Products”. Listed below are brands as prioritized for 2014:

**IMPERIAL PROTEINS:** The IPRO process produces an equal amount of SuperJuice – one gallon of SuperJuice per one pound of flour. This juice is an ideal 100% all-natural drink supplement. This juice may be quickly included in one of our current brands and/or has the potential to create a brand of its own.

**POP ALL NATURAL SODA:** The POP brand leverages the power of celebrity social networks and communicates the great tasting all natural soft-drink to aspiring consumers. Launch markets include Los Angeles, New York and Miami.

**CHERRISH:** A beverage that leverages the anti-oxidant power of the Montmorency Cherry. Currently this brand is authorized by the NFL, MLB and major colleges for their athletes. Shadow will take distribution to major retailers across the country.

## **OUR COMPANY STORY FOR TOMORROW**

We have assembled a seasoned management team and are setting the table for robust growth. The future requires us to have clear functional platforms that together build a roadmap to success. Our roadmap incorporates distinct strategies for manufacturing, sales and marketing, distribution and customer service. Each platform requires strategic investments that work in harmony to deliver the attached proforma.

### **MANUFACTURING**

Our formulation for the GNC, No Fear, and WheyUP brands are proprietary to Shadow Beverages and have been developed in conjunction with Wild Flavors, our flavor house supplier. The mōr, Faveo and Smoke E. Bones brands are not proprietary, but each is owned on a percentage basis with the founders, outside investors and Shadow Beverages. These Joint Venture agreements require that the brands bring with them the needed capital for the first two years of expenses and allow for Shadow to share in the profit margins.

Shadow uses co-packers to bottle and can their products and has entered into signed agreements with each strategically selected co-packer. In turn, Shadow requires all co-packers to sign our co-packer governance agreement which includes our production specification manual. This manual is provided to each co-packer before the start of production and is used as the foundation for our manufacturing relationship. Our agreements cover operating governance, tolling fees, yield analysis, forecasts, product quality testing, indemnification and terms.

In order of priority, our manufacturing strategy is one that emphasizes quality first and then prioritizes capability, capacity, location, cost and availability. Developing a network of co-packers based on the sales and distribution of each brand plays an integral role. The geographical alignment is necessary to deliver great customer service and minimize shipping cost. There will be times when we deviate from this strategy, but will take place only if there is a capacity issue for one of our portfolio drinks or a capability issue with one of our current co-packers.

Utilizing a partners manufacturing, warehouse or purchasing power is also a Shadow strategy. Key customers have manufacturing capacity that is underutilized and Shadow will take advantage of that scenario. Generally, this will lead to lower tolling fees and improved customer service. Some key partners have the ability to become “concentrate partners” versus just co-packers, which becomes a strategic advantage to Shadow and the partner. Shadow then sells the concentrate and the partner controls the entire manufacturing and purchasing process. This is advantageous to Shadow as it reduces working capital requirements by 30% - 40% and reduces raw material costs by tying into the partner’s supply chain purchasing power.

Shadow has established a raw material supplier chain that partners with the top innovators in the industry. Wild Flavors, Flavor Infusion, Graham Packaging, Ball Corp, Brooke and Whittle and CSI are just a few of the partners where Shadow has developed great working relationships.

## MARKETING APPROACH

The development of consumer trial and repeat are fundamental marketing deliverables for the Shadow brands. Since these brands are new entries to key growth categories, our initial marketing strategy calls for targeted grass roots programs, sampling, web and social media to generate trial and develop repeat purchases that build consumer loyalty. The combination of these activities will complement our ability to gain distribution, grow categories and build volume and revenue for Shadow brands that can be invested in future brand development.

### **Grass Roots Marketing**

- Sampling to targeted consumers at retail and events to develop trial
- Continuity programs that reward repeat purchases and loyalty
- Print advertising to educate targeted consumers

### **Web and Social Media**

- Brand.com Homepages for each Shadow brand
- Facebook page for brand interaction by targeted consumers
- Development of consumer data base

## DISTRIBUTION AND CUSTOMERS

Distribution for Shadow Brands is a hybrid between Direct Store Delivery (DSD) and Direct to Retailer (DTR). Brands may be one or the other, or a combination of both depending on the consumer the brand is targeting.

There are current DSD distribution agreements in place with 18 independent Pepsi Bottlers and Pepsi Beverages Company (a division of PepsiCo) for the No Fear, mōr and Smoke E Bones brands. A network of independent distributors compliments this group across the country and their agreement may include the GNC and WheyUP brands. We will continue to expand our DSD network to grow distribution and are currently in contract discussions with 15 distributors that will grow our network in 2014.

Our current DTR agreements with national customers have secured shelf space for 2104 while including promotional activity for each brand with each national retailer. Current national retailers include:



As 2014 approaches, we are in final distribution discussions with the following retailers for one or more of the Shadow Beverages Brands:



7



## **INFRASTRUCTURE AND CUSTOMER SERVICE**

Shadow currently distributes products in 24 states across the U.S. through its network of DSD distributors. Within each distributor territory we support our brands with field sales personnel dedicated to that distributor. They are involved with customer presentations, selling, and execution with each distributor. They provide focus from the distributor on our brands. In addition to the field sales teams, we have a national account team supporting distributors and selling to all national retailers. Our sales reach is across all channels of business with a focus on supporting our distributor partners. Included in the organization is the support of logistics, supply chain, administration, and financial controls.

## **EXECUTIVE AND SENIOR MANAGEMENT TEAM**

The Shadow management team has more than 300 combined years of cross functional experience in the consumer products industry. The team is excited about the prospects for growth and is committed to do what it takes to win in the face of tough competitors, sophisticated customers, and an ever-evolving consumer dynamic. We have attracted industry leaders that are hungry for an entrepreneurial opportunity and value our high risk, high reward compensation approach. Running lean and rewarding for performance will allow us to develop a talented management team without over investing in G & A.

### **Executive Team**

#### **Eric Reinhard / CEO**

- 28 years; President of Pepsi Cola Bottlers Association
- General Manager of Pepsi Bottling Group

#### **George Martinez / President & COO**

- 20 year Pepsi career
- Sales, Operations and Executive Leadership

#### **Bob Shafer / Chief Marketing Officer**

- 28 years of Executive Leadership roles at Pepsi
- VP of Marketing and VP of Retail Sales at PBG

### **National Sales and Distribution Management Team**

#### **Bonnie Lowe / Division Vice President East**

- 18 years beverage sales National Account level
- Called on Drug, Mass, Grocery for PepsiCo

#### **Jeff Boucher / VP of National Sales**

- 25 years beverage knowledge/experience
- Pepsi National Account Sales Leadership

#### **Scott Pearce / Director of National Sales**

- 24 years convenience store sales and mgmt. experience
- 7-eleven Franchisee, ampm Field Marketing Mgr.

### **Finance and Administration Team**

#### **Doug Iannarino / CFO - Consultant**

- 28 years of Beverage Finance Management
- VP of Finance with PBG Mid-Atlantic BU

#### **Kathy Reiser / Director of Administration**

- 10 years of beverage sales and administration
- HR and Corporate Reporting experience

#### **Josephine Dizon / Controller**

- 24 years of Controllershship experience
- Manufacturing, Transportation and Service Industries

#### **Rick Peterson / SVP Capital Acquisition**

- 32 years in Consumer Product and Beverage industry
- Executive leadership at PepsiCo, PBG and Sara Lee

### **Supply Chain and Manufacturing Logistics Team**

#### **Richard Amrozowicz / VP of Supply Chain**

- 25 year Pepsi career, Field, HQ and Int'l experience
- Operations, Logistics, Sales, Marketing and Finance

#### **Allen Warner / Director of Supply Chain**

- 25 years of Supply Chain management
- Managed 22 Pepsi facilities across multiple states

**Our Team...Experienced, Knowledgeable, Nimble and Proven**

## **THREE YEAR FINANCIAL PROJECTIONS**

FINANCIAL RESULTS / PROJECTIONS (in thousands) with current brands:

Year	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>
Revenue	3,978	5,923	17,834	29,754	51,115
Expense	3,543	3,391	4,772	5,671	7,435
Net Profit	(3,387)	(1,568)	732	2,998	7,619

FINANCIAL PROJECTIONS (in thousands) with addition to IPRO:

Year	<u>2014</u>	<u>2015</u>	<u>2016</u>
Revenue	19,622	34,860	63,216
Expense	6,885	8,262	10,327
Net Profit	310	4,538	9,928

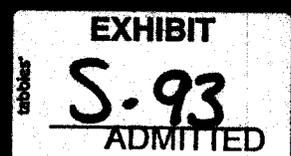
## **LONG-TERM AND EXIT STRATEGIES**

1. Increase sales thru distribution and marketing of current brand portfolio, and/or increase brands and leverage infrastructure to drive margin and revenue.
2. Sell one or multiple brands to companies that are looking for young emerging brands in the beverage industry. Likely candidates are PepsiCo, Coca Cola, Dr Pepper Snapple Group, or Nestle. These companies today are looking for growing brands that offset declines in their current portfolios.
3. Develop an IPO to create significant capital to compete as an independent beverage and snack wholesaler.

# SHADOW BEVERAGES AND SNACKS

Business Model and Opportunity Assessment

*March 2014*





Shadow was founded in 2008 by George Martinez and Sam Jones, Beverage Executives with broad experience from the Pepsi System. The vision since inception has been to be an accelerator of beverage and snack products in the “Better for You” and nutritional categories.

Shadow, headquartered in Phoenix, AZ, has built a base infrastructure to support brand incubation and growth through its network of distributors across the country. While having a firm belief that the optimal go-to-market method is direct store delivery (DSD), they have incorporated a direct to retailer (DTR) alternative to establish a hybrid distribution model. The direct delivery method is driven by national retailers and allows for national distribution quickly by utilizing retailer’s warehouse delivery systems.

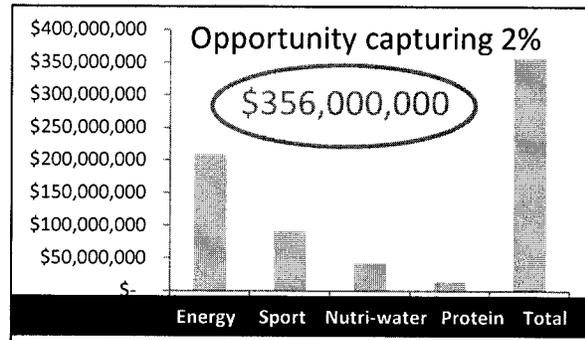
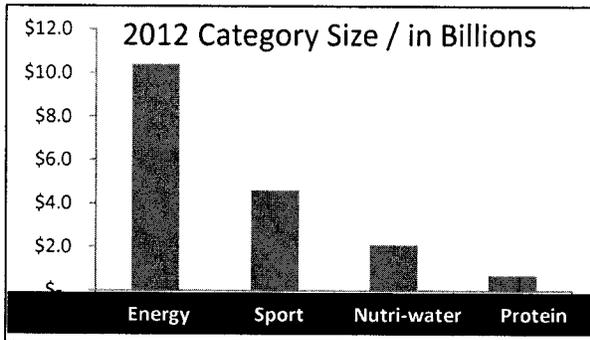
As the initial portfolio of brands was being developed, Shadow began the process of identifying and attracting experienced beverage experts from across all functional disciplines. Today the organization has 30 employees and a leadership team with a combined 300 years of beverage experience.

The Shadow brand portfolio competes effectively in four categories with a combined industry scale of approximately \$17 billion in sales. The categories are large, growing and filled with continuous innovation that will enable a pipeline of growth for years to come. The categories include Sports Nutrition, Enhanced Water, Protein Nutrition and Energy.

### **THE MARKETPLACE**

The U.S. Liquid Refreshment Beverage (LRB) industry is the largest and one of the most vibrant consumer products goods industries with annual volume of 10 billion cases and retail revenue of \$75 billion. The industry is comprised of Carbonated Soft Drinks (CSD) which represents 35% of industry revenue and Non-Carbonated Beverages (NCB) which total 65% of the industry. Over recent years, the NCB business has seen consistent 4-6% growth while CSD’s have been down (3%-5%). Total industry revenues have been growing in the 3-4% range.

The NCB business is made up of several categories including Energy, Sports, Enhanced Water, Protein and Tea beverages. Aside from the Sports category, these categories have developed and have rapidly grown over the past 10 years. The emergence of these categories has been fueled by consumers transitioning out of CSD’s and into these more functional beverage categories that provide a greater variety of beverage benefits. These key categories provide the opportunity for new and emerging brands. Shadow has built a portfolio of brands that target the opportunity of two percent in each of these growing categories.



The Energy category is growing rapidly, 19% YTD 2012, and is the second largest LRB category at \$10 billion. Key competitors in the category include Monster Beverages, Rockstar, PepsiCo and Red Bull. Growth will be fueled by consumers who continue to transition out of CSD's as they seek alternative beverages driven by category innovation.

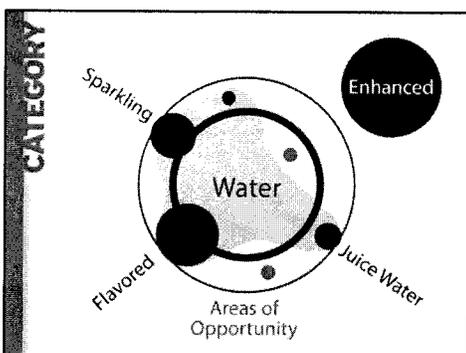
The Sports category has been the leading functional beverage category in the industry with total revenue of \$4.6 billion and growing 7% in 2012. Key competitors include category leader Gatorade (PEP) and PowerAde (KO). Continued consumer health and wellness trends will deliver category expansion in the mid-single digits.

The Enhanced Water category has rapidly developed over the past 10 years growing to \$2.1 billion in revenue with 2012 YTD growth of 3%. Key competitors include Vitamin Water (KO) and Sobe Life Water (PEP). Category growth will be robust behind functional innovation, flavor expansion and reduced calorie offerings.

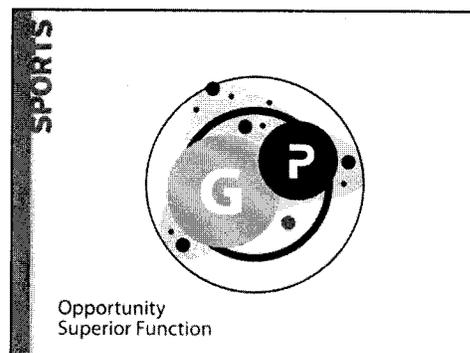
The Protein category is experiencing rapid growth driven by health and wellness trends and the consumer adoption of the Protein category. Over the past five years, the category has grown to \$0.7 billion in revenue and 2012 growth rates are exceeding 25%. The major competitor in the category is Muscle Milk (CytoSport). Category growth will continue in the 20% range driven by multiple new entries and continued household penetration.

**OUR BRAND STRATEGY**

Products exist to expand choice, brands exist to simplify choice. Shadow has developed brands through licensing agreements that support the consumer choice and what it stands for. The strategy involves a clear understanding of how brands and categories create opportunity. Duplication in categories is abundant and leads to failure. Finding the opportunity within the category that speaks to consumers understanding and confidence delivers results.

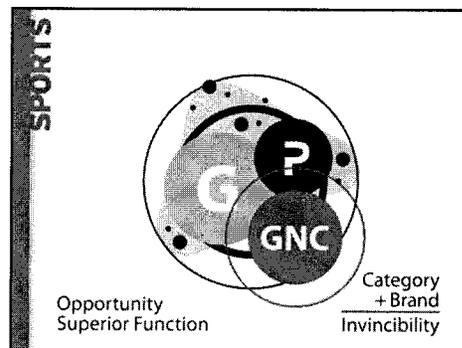


2



Once the opportunity in the category is identified, a brand is needed to speak to the consumer. Brand and category relevance are the ultimate combination. Existing brands that are trusted, credible and understood can leverage the opportunity.

The GNC Beverages participate within segments of growing categories that provide consumers with a point of difference. Superior functionality is a segment that has no competition and one that consumers understand. The GNC brand holds the trust and credibility of consumers in the nutritional space. Category and brand strategies build successful products.



### OUR BRAND STORY TODAY

Shadow's portfolio of products target the emerging and evolving categories of non-alcoholic beverages. The focus is on growth and innovation through white space opportunities and functionality. Shadow's brands exist in high growth categories and leverage the consumer demand for health, nutrition and functional ingredients. Our brands are delivering incremental volume and margin growth for our distributors while enhancing category margins for customers. That win-win formula provides Shadow with volume, revenue and industry level gross profit.

### GNC BEVERAGES



**Categories – *Sport Nutrition, Nutritional Water, and Protein Nutrition***

**Consumer Positioning – *Nutrition Based, Performance Driven***

**Brand Performance Drivers – *Consumer Trusted, Credibility in Nutrition***

- Currently under discussion with GNC to continue agreement
- Agreement includes rights to all RTD's categories for further expansion
- InterBev "Best Functional Beverage of the Year" Award in October 2012

## NO FEAR ENERGY



IT'S AN ATTITUDE  
IT'S A LIFESTYLE  
IT'S A STATE OF MIND

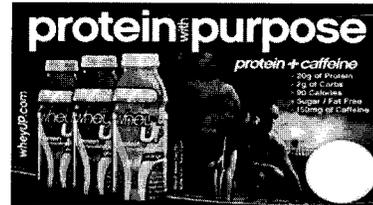
**Category** – *Energy Drinks*

**Consumer Positioning** – *Youthful and Super Aggressive*

**Brand Performance Drivers** – *Exploding Category and Monster Fighter*

- Ten-year licensing agreement with brand owner, IBML
- Rights to develop other RTD categories
- Trademark is expanding in mainstream apparel retailers under IBML
- Previously a multi-million case brand in the Pepsi System

## WheyUP PROTEIN



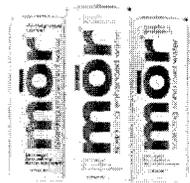
**Category** – *Water Based Protein*

**Consumer Positioning** – *Serious about Fitness and Health Focused*

**Brand Performance Drivers** – *Combines Energy and Protein Category Growth*

- Acquired Trademark and formula in 2011
- Water based product / new segment in the protein category
- Fitness focused / pre-loading protein prior to a workout

## MOR



No sugar. No caffeine.  
**mör taste.**

**Category** – *Sparkling Enhanced Water*

**Consumer positioning** – *Healthy Carbonated Beverage with Functionality*

**Brand Performance Drivers** – *ABA Compliant / USDA Certification*

- JV agreement with mör Beverages Company
- Distribution agreement with Pepsi Beverages Company
- Functional beverage with a focus on the education, health and business channels

## HUNGRY MCGEE



**Categories** – *Meat Snacks, Sticks and Bites*

**Consumer positioning** – *Value Priced / Dual Impulse Merchandising*

**Brand Performance Drivers** – *Bottler Focused, Leverage Distribution Partnership*

- JV agreement
- Independent Pepsi Bottlers distribution agreement
- DTR broker agreement

## FAVEO



**Category** – *Hangover Relief*

**Consumer positioning** – *Lifestyle and Wellness*

**Brand Performance Drivers** – *New Category with Retailer Interest*

- JV agreement / 20% equity with performance
- Launch markets of Phoenix and Las Vegas
- Food Service and Retail channel opportunity

## INNOVATION PIPELINE

Shadow is currently in discussions with other brands that are leading the development of “Better for You Products”. Listed below are brands as prioritized for 2014:

**IMPERIAL PROTEINS:** The IPRO process produces an equal amount of SuperJuice – one gallon of SuperJuice per one pound of flour. This juice is an ideal 100% all-natural drink supplement. This juice may be quickly included in one of our current brands and/or has the potential to create a brand of its own.

**POP ALL NATURAL SODA:** The POP brand leverages the power of celebrity social networks and communicates the great tasting all natural soft-drink to aspiring consumers. Launch markets include Los Angeles, New York and Miami.

**CHERRISH:** A beverage that leverages the anti-oxidant power of the Montmorency Cherry. Currently this brand is authorized by the NFL, MLB and major colleges for their athletes. Shadow will take distribution to major retailers across the country.

## **OUR COMPANY STORY FOR TOMORROW**

We have assembled a seasoned management team and are setting the table for robust growth. The future requires us to have clear functional platforms that together build a roadmap to success. Our roadmap incorporates distinct strategies for manufacturing, sales and marketing, distribution and customer service. Each platform requires strategic investments that work in harmony to deliver the attached proforma.

### **MANUFACTURING**

Our formulation for the GNC, No Fear, and WheyUP brands are proprietary to Shadow Beverages and have been developed in conjunction with Wild Flavors, our flavor house supplier. The mōr, Faveo and Hungry McGee brands are not proprietary, but each is owned on a percentage basis with the founders, outside investors and Shadow Beverages. These Joint Venture agreements require that the brands bring with them the needed capital for the first two years of expenses and allow for Shadow to share in the profit margins.

Shadow uses co-packers to bottle and can their products and has entered into signed agreements with each strategically selected co-packer. In turn, Shadow requires all co-packers to sign our co-packer governance agreement which includes our production specification manual. This manual is provided to each co-packer before the start of production and is used as the foundation for our manufacturing relationship. Our agreements cover operating governance, tolling fees, yield analysis, forecasts, product quality testing, indemnification and terms.

In order of priority, our manufacturing strategy is one that emphasizes quality first and then prioritizes capability, capacity, location, cost and availability. Developing a network of co-packers based on the sales and distribution of each brand plays an integral role. The geographical alignment is necessary to deliver great customer service and minimize shipping cost. There will be times when we deviate from this strategy, but will take place only if there is a capacity issue for one of our portfolio drinks or a capability issue with one of our current co-packers.

Utilizing a partners manufacturing, warehouse or purchasing power is also a Shadow strategy. Key customers have manufacturing capacity that is underutilized and Shadow will take advantage of that scenario. Generally, this will lead to lower tolling fees and improved customer service. Some key partners have the ability to become “concentrate partners” versus just co-packers, which becomes a strategic advantage to Shadow and the partner. Shadow then sells the concentrate and the partner controls the entire manufacturing and purchasing process. This is advantageous to Shadow as it reduces working capital requirements by 30% - 40% and reduces raw material costs by tying into the partner’s supply chain purchasing power.

Shadow has established a raw material supplier chain that partners with the top innovators in the industry. Wild Flavors, Flavor Infusion, Graham Packaging, Ball Corp, Brooke and Whittle and CSI are just a few of the partners where Shadow has developed great working relationships.

## MARKETING APPROACH

The development of consumer trial and repeat are fundamental marketing deliverables for the Shadow brands. Since these brands are new entries to key growth categories, our initial marketing strategy calls for targeted grass roots programs, sampling, web and social media to generate trial and develop repeat purchases that build consumer loyalty. The combination of these activities will complement our ability to gain distribution, grow categories and build volume and revenue for Shadow brands that can be invested in future brand development.

### **Grass Roots Marketing**

- Sampling to targeted consumers at retail and events to develop trial
- Continuity programs that reward repeat purchases and loyalty
- Print advertising to educate targeted consumers

### **Web and Social Media**

- Brand.com Homepages for each Shadow brand
- Facebook page for brand interaction by targeted consumers
- Development of consumer data base

## DISTRIBUTION AND CUSTOMERS

Distribution for Shadow Brands is a hybrid between Direct Store Delivery (DSD) and Direct to Retailer (DTR). Brands may be one or the other, or a combination of both depending on the consumer the brand is targeting.

There are current DSD distribution agreements in place with 18 independent Pepsi Bottlers and Pepsi Beverages Company (a division of PepsiCo) for the No Fear, mōr and Smoke E Bones brands. A network of independent distributors compliments this group across the country and their agreement may include the GNC and WheyUP brands. We will continue to expand our DSD network to grow distribution and are currently in contract discussions with 15 distributors that will grow our network in 2014.

Our current DTR agreements with national customers have secured shelf space for 2104 while including promotional activity for each brand with each national retailer. Current national retailers include:



As 2014 approaches, we are in final distribution discussions with the following retailers for one or more of the Shadow Beverages Brands:



7



## INFRASTRUCTURE AND CUSTOMER SERVICE

Shadow currently distributes products in 24 states across the U.S. through its network of DSD distributors. Within each distributor territory we support our brands with field sales personnel dedicated to that distributor. They are involved with customer presentations, selling, and execution with each distributor. They provide focus from the distributor on our brands. In addition to the field sales teams, we have a national account team supporting distributors and selling to all national retailers. Our sales reach is across all channels of business with a focus on supporting our distributor partners. Included in the organization is the support of logistics, supply chain, administration, and financial controls.

## EXECUTIVE AND SENIOR MANAGEMENT TEAM

The Shadow management team has more than 300 combined years of cross functional experience in the consumer products industry. The team is excited about the prospects for growth and is committed to do what it takes to win in the face of tough competitors, sophisticated customers, and an ever-evolving consumer dynamic. We have attracted industry leaders that are hungry for an entrepreneurial opportunity and value our high risk, high reward compensation approach. Running lean and rewarding for performance will allow us to develop a talented management team without over investing in G & A.

### Executive Team

#### **Eric Reinhard / CEO**

- 28 years; President of Pepsi Cola Bottlers Association
- General Manager of Pepsi Bottling Group

#### **George Martinez / President & COO**

- 20 year Pepsi career
- Sales, Operations and Executive Leadership

#### **Bob Shafer / Chief Marketing Officer**

- 28 years of Executive Leadership roles at Pepsi
- VP of Marketing and VP of Retail Sales at PBG

### National Sales and Distribution Management Team

#### **Bonnie Lowe / Division Vice President East**

- 18 years beverage sales National Account level
- Called on Drug, Mass, Grocery for PepsiCo

#### **Jeff Boucher / VP of National Sales**

- 25 years beverage knowledge/experience
- Pepsi National Account Sales Leadership

#### **Scott Pearce / Director of National Sales**

- 24 years convenience store sales and mgmt. experience
- 7-eleven Franchisee, ampm Field Marketing Mgr.

### Finance and Administration Team

#### **Doug Iannarino / CFO - Consultant**

- 28 years of Beverage Finance Management
- VP of Finance with PBG Mid-Atlantic BU

#### **Kathy Reiser / Director of Administration**

- 10 years of beverage sales and administration
- HR and Corporate Reporting experience

#### **Josephine Dizon / Controller**

- 24 years of Controllershship experience
- Manufacturing, Transportation and Service Industries

#### **Rick Peterson / SVP Capital Acquisition**

- 32 years in Consumer Product and Beverage industry
- Executive leadership at PepsiCo, PBG and Sara Lee

### Supply Chain and Manufacturing Logistics Team

#### **Richard Amrozowicz / VP of Supply Chain**

- 25 year Pepsi career, Field, HQ and Int'l experience
- Operations, Logistics, Sales, Marketing and Finance

#### **Allen Warner / Director of Supply Chain**

- 25 years of Supply Chain management
- Managed 22 Pepsi facilities across multiple states

**Our Team...Experienced, Knowledgeable, Nimble and Proven**

## **THREE YEAR FINANCIAL PROJECTIONS**

FINANCIAL RESULTS / PROJECTIONS (in thousands) with current brands:

Year	2012	2013	2014	2015	2016
Revenue	3,978	5,923	13,209	23,235	28,034
COGS	3,822	4,100	7,484	13,372	16,156
Expense	3,543	3,391	2,921	3,378	3,642
Net Profit	(3,387)	(1,568)	3,023	6,715	8,478

FINANCIAL PROJECTIONS (in thousands) with addition to IPRO:

Year	2012	2013	2014	2015	2016
Revenue			13,707	34,860	93,216
COGS			7,584	19,521	42,961
Expense			3,021	4,880	10,327
Net Profit			3,223	10,459	39,928

## **LONG-TERM AND EXIT STRATEGIES**

1. Increase sales thru distribution and marketing of current brand portfolio, and/or increase brands and leverage infrastructure to drive margin and revenue.
2. Sell one or multiple brands to companies that are looking for young emerging brands in the beverage industry. Likely candidates are PepsiCo, Coca Cola, Dr Pepper Snapple Group, or Nestle. These companies today are looking for growing brands that offset declines in their current portfolios.
3. Develop an IPO to create significant capital to compete as an independent beverage and snack wholesaler.

**George Martinez**

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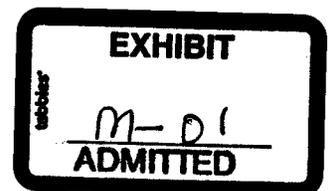
**From:** Michelle Van Kilsdonk  
**Sent:** Monday, March 03, 2014 4:16 PM  
**To:** George Martinez  
**Cc:** Kathy Reiser  
**Subject:** Notice

Hi George,

I wanted to let you know that I just spoke with Kathy about my resignation from Shadow Beverages and Snacks effective 3/14/2014. This decision has been difficult for me to make. I am very grateful for the opportunity you gave me this last year to be part of the Shadow team. Perhaps on Wednesday I can have a couple minutes of your time.

Thank you,

*Michelle*



*M-01*

*Stacey / Michelle*

Shadow Beverages & Snacks LLC  
 Transaction List by Vendor  
 January through December 2014

9:13 AM  
 06/11/2016

Michelle Van Klisdonk

Type	Date	Num	Memo	Account	Debit	Credit
Bill Pmt -Check	01/09/2014	5172		First Fidelity Checking 6031	50.00	
Bill Pmt -Check	01/21/2014	5214		First Fidelity Checking 6031	82.04	
Bill Pmt -Check	03/13/2014	5279		First Fidelity Checking 6031	50.00	
Bill Pmt -Check	04/17/2014	5345		First Fidelity Checking 6031	50.00	

**Shadow Beverages & Snacks LLC**  
**Transaction List by Vendor**  
 January through December 2013

Michelle Van Kilsdonk

9:11 AM  
 06/11/2015

Type	Date	Num	Memo	Account	Debit	Credit
Bill Pmt -Check	04/29/2013	4551		First Fidelity Checking 6031		50.00
Bill Pmt -Check	05/22/2013	4622		First Fidelity Checking 6031		181.90
Bill Pmt -Check	05/29/2013	4644	VOID:	First Fidelity Checking 6031	0.00	
Bill Pmt -Check	06/14/2013	4701		First Fidelity Checking 6031		50.00
Bill Pmt -Check	07/19/2013	4807		First Fidelity Checking 6031		50.00
Bill Pmt -Check	08/22/2013	4881		First Fidelity Checking 6031		50.00
Bill Pmt -Check	10/22/2013	5015		First Fidelity Checking 6031		50.00
Bill Pmt -Check	10/28/2013	5051		First Fidelity Checking 6031		94.40
Bill Pmt -Check	11/26/2013	5121		First Fidelity Checking 6031		50.00

**George Martinez**

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**From:** Darrell DeMello <ddemello@scyfix.com>  
**Sent:** Thursday, December 05, 2013 6:54 PM  
**To:** George Martinez  
**Cc:** catherine@marketaccessindia.net  
**Subject:** Money for No Fear

George,

What time on Friday do you want to do this?

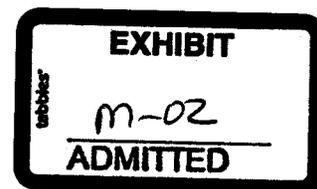
I was told by Kathy Reiser that your Controller had got the AMEX system set up.

Also Catherine will have to bring a personal check or is it preferable for her to bring a Banker's Check?

Have not had a call from either Priscilla or Gnoc today, other than the morning call with Priscilla, that I shared with you.

Let me know.

Darrell



*G M - 102*

*C Leyer*

## George Martinez

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**From:** Wilson, Sarah Icet <Sarah.Wilson@huschblackwell.com>  
**Sent:** Thursday, December 05, 2013 3:58 PM  
**To:** Kathy Reiser  
**Cc:** George Martinez; Walters, Richard  
**Subject:** RE: Shadow - Loan document update  
**Attachments:** SPH-2107114-1-Loan Agreement - Shadow Beverage (No Fear Production Short Term Loan).DOC

Kathy,

A draft of the Loan Agreement based on the terms that you sent to Richard is attached for your review. Please let me know if you have any changes or if there are any additional terms that we should include in the agreement.

Thanks,  
Sarah

**Sarah Icet Wilson**  
**Attorney**  
Direct: 417.268.4018  
[Sarah.Wilson@huschblackwell.com](mailto:Sarah.Wilson@huschblackwell.com)

**From:** Walters, Richard  
**Sent:** Thursday, December 05, 2013 12:05 PM  
**To:** 'Kathy Reiser'  
**Cc:** George Martinez; Wilson, Sarah Icet  
**Subject:** RE: Shadow - Loan document update

Hi Kathy, sorry I am on a conference call. We are working on the document and will get you a draft as soon as possible.

**Richard E. Walters**  
**Partner**  
Direct: 417.268.4065  
[Richard.Walters@huschblackwell.com](mailto:Richard.Walters@huschblackwell.com)

**From:** Kathy Reiser [<mailto:kathyr@shadowbev.com>]  
**Sent:** Thursday, December 05, 2013 12:02 PM  
**To:** Walters, Richard  
**Cc:** George Martinez  
**Subject:** Shadow - Loan document update

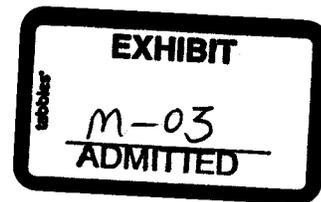
Hi Richard,

I just left you a voicemail regarding the status of loan document needed based on the email I sent yesterday. In talking with George today, he communicated that we have a couple parties that are ready to move on this.

Are you able to provide a version of this to me today?

Thank you,

**Kathy Reiser**  
*Director of Administration*



GM -03

Richard Walters

## LOAN AGREEMENT

THIS LOAN AGREEMENT (this "Agreement") is made and entered into this \_\_\_ day of December, 2013, by and between SHADOW BEVERAGES AND SNACKS, LLC, an Arizona limited liability company ("Borrower"), with an address of 4650 E. Cotton Center Blvd., Suite 240, Phoenix, Arizona 85040, and \_\_\_\_\_, a \_\_\_\_\_ ("Lender"), with an address of \_\_\_\_\_.

1. The Loan and Promissory Note. Subject to the terms and conditions hereof, the Lender agrees to extend a single advance loan to the Borrower in the principal amount of TWO HUNDRED THOUSAND AND 00/100 DOLLARS (\$200,000.00) (the "Loan"). The Loan shall be used by the Borrower for the purposes as described in Section 2 of this Agreement. The Loan shall be evidenced by a Promissory Note of the Borrower in a form mutually agreed upon by the parties.
2. Use of Loan Proceeds. Borrower shall use the proceeds of the Loan for the sole purpose of producing forty thousand (40,000) 12-count cases containing sixteen (16) ounce cans of No Fear energy drinks (each a "Case"). Specifically, the Loan will be used for payment to Wild Flavor House Concentrate for the brand concentrate required to produce fifty thousand (50,000) cases of product and for two (2) twenty thousand (20,000) case production runs by PNB Production. Borrower shall not use the proceeds of the Loan for any other purpose without the advance written approval of Lender.
3. Loan Consideration. As consideration for the Loan, the Lender shall receive one dollar (\$1.00) for each Case that Borrower sells until the Loan is repaid (the "Loan Consideration"). Borrower shall pay the applicable Loan Consideration to Lender with each Loan Payment (as defined below).
4. Security Interest. As security for the Loan, the Borrower hereby assigns and grants to the Lender a security interest in all of the Borrower's rights to the accounts receivable on the Cases until the Loan is paid in full.
5. Loan and Loan Consideration Payments. Commencing two (2) weeks after Borrower's initial receipt of proceeds from its sale of the Cases ("Sale Proceeds") Borrower shall begin repaying the Loan and paying the Loan Consideration in bi-monthly installments as follows: (i) First, Borrower shall pay to Lender the applicable Loan Consideration based on the number of Cases sold during the prior two (2) weeks, and (ii) Second, Borrower shall pay to Lender an amount equal to the Sale Proceeds from the prior two (2) weeks less the Loan Consideration paid. Borrower shall continue making such payments until the Loan is paid in full.
6. Notice. All notices, requests, demands, claims and other communications hereunder shall be in writing and sent by registered or certified mail, postage prepaid, addressed to the party intended to be notified, at the addresses set forth above. Either party may, at any time, or from time to time, notify the other in writing of a substitute address for that above set forth and, thereafter, notices shall be directed to the substitute address. Notice given as aforesaid shall be sufficient service thereof and shall be deemed given as of the day received, as evidenced by the return receipt of the registered or certified mail,
7. Miscellaneous. In all respects, including all matters of construction, validity and performance, this Agreement shall be governed by, and construed and enforced in accordance with the internal laws of the State of \_\_\_\_\_ applicable to contracts made and performed in that state (without regard to the choice of law or conflicts of law provisions thereof). This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective successors and assigns. The Borrower shall, upon the Lender's request, execute and deliver to the Lender such other documents, certificates, instruments and other writings and take such other actions as may be necessary or desirable in order to consummate, implement or further validate the transactions contemplated by this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Loan Agreement to be duly executed by their duly authorized officers the day and year first above written.

LENDER:

\_\_\_\_\_,  
a \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

BORROWER:

SHADOW BEVERAGES AND SNACKS, LLC,  
an Arizona limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

George Martinez

**From:** Schmidt, Gordon W. <GSchmidt@mcguirewoods.com>  
**Sent:** Friday, February 14, 2014 8:08 AM  
**To:** George Martinez  
**Subject:** GNC

George,

I know we have traded emails and attempted phone calls over the past few weeks but we have not spoken in while. GNC is still willing to amicably resolve the outstanding debt on the following basis:

Shadow Beverages promptly pays GNC \$400,000, then GNC will forego the remaining \$1,000,000 on the judgment it has against Shadow Beverages and it will have the court docket so reflect. GNC is not interested in the recipes or formulas that Shadow Beverages has developed and it has no objection if Shadow Beverages sells the formulas or recipes to others.

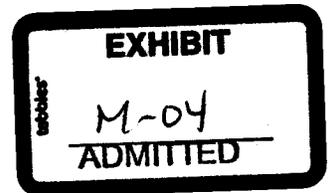
Please let me know that this is acceptable and when GNC can expect to receive a bank check. In the alternative, GNC will proceed to collect on the judgment through the legal process.

If you have decided to retain an attorney, please have him or her contact me.

I hope this resolves amicably.

Regards,  
Gordon

Gordon W. Schmidt, Esq.  
McGuireWoods LLP  
625 Liberty Avenue, 23rd Floor  
Pittsburgh, PA 15222  
412.667.7946 (Direct Line)  
412.667.7955 (Fax)  
[gschmidt@mcguirewoods.com](mailto:gschmidt@mcguirewoods.com)  
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GM-04  
GNC

**George Martinez**

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**From:** Tom Dowd <Tom-Dowd@gnc-hq.com>  
**Sent:** Tuesday, November 19, 2013 1:26 PM  
**To:** George Martinez  
**Cc:** Rob Schwartz; Beth Johns; Michael Ford  
**Subject:** RE: Information

George ,

I am going to follow the lead of IMG and watch as this plays out.

Good luck to you and the Shadow team and I'm sorry and upset this did not work out for many reasons.

Tom

[Tom-Dowd@GNC-HQ.com](mailto:Tom-Dowd@GNC-HQ.com)

Executive Vice President, Chief Merchandising Officer &  
General Manager

Shop @ Over 7700 Worldwide Locations & @ GNC.Com  
Office # 412-288-4623

*"Business has only two basic functions-marketing and innovation."*

**Peter Drucker**

"I take responsibility to provide outstanding customer service and I take pride in exceeding my customer's expectations. I will take every opportunity to fulfill their needs and to help them live a better life with GNC."

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**From:** George Martinez [<mailto:georgem@shadowbev.com>]

**Sent:** Monday, November 18, 2013 3:46 PM

**To:** Tom Dowd

**Subject:** Information

Tom,

Thanks again for the discussion on Friday. I really appreciate you taking the time to review this situation so we can determine next steps.

Our executive team would love nothing more than to continue this process and journey of building the GNC Trademark in beverages. Unfortunately we cannot continue under the current agreement. The attached document will provide context on our thinking and a recommendation on how we keep moving forward.

As I mentioned during our call, Eric and I would be more than welcome to come visit you and discuss the next steps if your calendar allows. Please let me know if you would like to have this discussion in person or on the phone. We hope to resolve this in one direction or another quickly as we need to have discussions with retailers on winding down the program or how we introduce Shakes. I apologize in advance to the short fuse on this decision.

**George Martinez**

President / Co-Founder

## George Martinez

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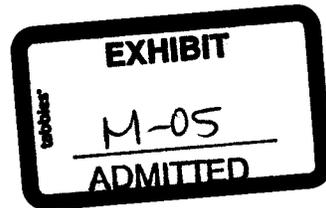
**From:** Rick Peterson  
**Sent:** Thursday, October 18, 2012 3:06 PM  
**To:** George Martinez; Sam Jones; Eric Reinhard (eric.reinhard@pcba.net) (eric.reinhard@pcba.net)  
**Subject:** FW: Broker-Dealer Issuers  
**Attachments:** Acquiring Financing\_Legal Considerations in Capital Raising (Douglas M. Berman)-c.pdf; DPW broker-dealerreg.pli.sep10-c.pdf

Gentlemen--I discussed the dealer-broker issue raised at Tuesday's call with CM with a good friend and expert attorney on the subject and he responded with the following attachments.

Doug additionally assured me that as long as only officers of the company solicit potential investors on a one on one basis, we are well within SEC guidelines for providing warrants/equity in our company. Hence, no need to have every individual run through CM for approval. My take on that is, although they likely have our best interest in mind, it is not necessary.

Hope this helps.

Rick Peterson  
Executive Vice President  
Shadow Beverages and Snacks  
(O) 480-371-1022  
Cell 214-729-2570



**From:** Doug Berman [mailto:doug@dougbermanlaw.com]  
**Sent:** Thursday, October 18, 2012 2:55 PM  
**To:** Rick Peterson  
**Subject:** Broker-Dealer Issuers

As we discussed, attached are some materials on the issue we discussed. The attached documents are rather long, but the portions that interest you are not, and I indicated the page numbers.

- The SEC's guide to broker-dealer registration (<http://www.sec.gov/divisions/marketreg/bdguide.htm>) (see section II.D.5)
- A paper put I together for a conference regarding private financing issues (see "Issuers and associated persons" on page 6)
- A paper by another law firm that goes into the issue in more depth (see "Associated Persons of Issuers on page 26)

Let me know if you need anything else.

-Doug

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Douglas M. Berman  
Law Office of Douglas M. Berman, PLLC  
4925 Greenville Ave., Suite 200  
Dallas, Texas 75206  
Phone: (214) 562-7069

*CM - 05*

*Rick Peterson*

## George Martinez

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**From:** Rick Peterson  
**Sent:** Tuesday, October 15, 2013 4:30 PM  
**To:** George Martinez  
**Subject:** Capital updates

George—Here's my pipeline I'm working on short term (\$2.5MM) and longer term (\$10MM): all of these replace most of the others from my last update that are largely no longer in play.

- **Conference call at 7 am Tomorrow with Tim Hamick**: individual investor who will also have his business partner on this call. Seeking \$2.5MM
- **Conference call at 9 am tomorrow with Ben Moody/Jabier Arbeloa**: Ben owns Pan American Financial and has done over \$1B in transaction like ours. Seeking both \$2.5MM and \$10MM
- **Sherbrooke Capital**. Have sent Kerry Muse 2 e-mails and a voice mail regarding their interest. They were one of the first investors in Izze Beverages and have a history of making investments in unprofitable companies in the healthy/better for you space.
- **Nutrition Capital Network**—An investors panel. Can submit Free application to group for presentation October 28-29 in San Francisco at which time there is a \$1500 fee to present. I have not submitted our overview.
- **Circle Up**—(Ben Lee) This is a crowd funding group that funds many beverage and snack opportunities. Process seems too long for our current needs
- **Books-A-Million**—Have e-mailed them in hopes of starting a conversation as immediate investors. My source told me that they make \$2.5MM in loans/investments.
- **Silverwood Partners**—sent e-mail with overview and waiting response. Calling tomorrow to follow up.
- **Investors Circle**—Sent e-mail to gauge interest
- **Commerce Street Capital**—Dewitt Ray and Nolan Smith I have been working with for several weeks and they have sourced 2 possible and immediate sources of capital. Sending current capital and future forecast as soon as I receive their signed NDA. Everything there will be in motion by tomorrow.
- **Tom Keffer**—Friend, personal and corporate investor. He's evaluating the opportunity. Call with him tomorrow.
- **Doug Harlan** of Harlan family bakeries and **Todd Goergen** of Ropart Family office have not responded to any e-mails or phone calls placed.
- **Matt Eby**—Tengram Capital is evaluating the opportunity. Follow up call forthcoming.
- **Ted Kramer**—HKW, INC said it was not a fit for his fund.

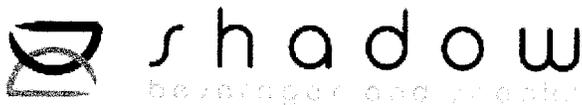
These are what I'm working on the balance of the week trying to get any group or individual across the capital goal line.

Rick Peterson  
Executive Vice President  
Shadow Beverages and Snacks  
(O) 480-371-1022  
Cell 214-729-2570

**From:** George Martinez  
**Sent:** Monday, October 14, 2013 5:49 PM  
**To:** Rick Peterson  
**Subject:** updates

Rick,  
Do you have any updates for me on the capital raise? Short term is the priority.

**George Martinez**  
President / Co-Founder



4650 E. Cotton Center Blvd. Suite 240  
Phoenix, AZ 85040  
480-371-1011

## **George Martinez**

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**From:** Rick Peterson  
**Sent:** Monday, September 24, 2012 8:50 AM  
**To:** George Martinez  
**Subject:** Short term capital raise  
**Attachments:** Short list 9.21.12 for loan offer.docx

George---Here is a short list of the folks that I have deemed to be interested in our short term capital raise. I believe on this list, Dusty Stanfield who represents 200 NFL players holds the most promise. Dusty and I spoke last Thursday and he brought up an issue of banded substances and the NFL's negative impression of GNC that apparently has some of these banded substances in their products.

I explained that we are merely licensing the name and that Shadow beverages is the maker, marketer and distributor of these RTD's not GNC. I believe this issue can be overcome and get us closer to several players investing in the short term. I also suggested to Dusty that a group of players could form an LLC and take an equity stake in Shadow with a \$10MM investment. He was not opposed to that opportunity.

Let me know if you have any questions. I'm confident I will find the balance of what we need in Short term capital, my goal being another \$2.5MM within the network I have this opportunity out to. The road never ends, it may just T....

Thanks,

Rick Peterson  
Executive Vice President  
Shadow Beverages and Snacks  
(O) 480-371-1022  
Cell 214-729-2570

## **Short term loan—Short list**

9/21/12

- Wil Florin—One of Florida's largest PI attorney has presentation and a call from me. Wil knows other high net worth folks and does a great deal of work with Athletes. He and I played college soccer and toured Europe together playing for an over 30 US men's team.
- Todd Stottlemire- Todd lives in Scottsdale and ended his professional baseball career with the D-Backs. I had presented this to him in May and have circled back with him and to see if he would present this to other athletes. Wil, Todd and I have some history together.
- Tom Colvin---Tom is a good friend and has company has funded other beverage companies. He is also pitching this to his cousin, Tyler Colvin who plays for the Rockies.
- B.J. Smith—He has pitched it to a number of his folks including his wealthy sister but has not generated any interest.
- Phillip Vergas—His firm finds unique funding opportunities. He was pitching our offering to some Europeans and Chinese. I have called, e-mailed and text him for 2 weeks without a reponse.
- Vann Phillips—He has pitched this to several original Dr. Pepper franchisees without any takers. I have e-mails and calls into him for an update on his progress.
- John Tolson—John knows a number of professional athletes as he used to be the chaplain for 4 professional teams most recently the Cowboys. I have pitched a donation event to him if he can bring in a football player or 3
- Toby Watson—Assists in managing Debbie King's \$30MM fund. Spoke to him 9/21 and he may have an answer for me on \$300K next week
- Jeff Peterson—He is the managing director of AG Hill Partners, Margaret Hunt Hills fund. Too early stage for them. 9/21
- Steve Dalrymple—Alternative Investment resources. He has pitched this to his group in Chicago, Texas Commerce Bank and a hedge Fund. No takers 9/19
- Kyle Goss—Elm Park Capital management in Dallas. Their firm's smallest deal is \$10MM but they only do debt, no equity. 9/14
- Steve Hunnicutt—Dallas Attorney with a broad network has it out to several of his gas and oil clients.
- Jeff Thomas--Morgan Stanley Houston office. Has it out to several of his high net worth clients outside of his formal MSSB business as of 9/20
- David Harris—owns a PHX based investment house. Has it out to several of his clients. 9/14/12
- Austin Feldman—PHX entrepreneur has the deal out to several of his high net worth guys 9/20

- Steven Fisher--Briar Capital in Dallas. Has the NDA and waiting for its return. They do asset based lending. All in fees would top out at 12% and we fit into their criteria for lending. Process takes 30 days from start to finish.
- Ken Holden—Holden and Parker accounting in Dallas. Has it out to an attorney who's client was interested in investing. 9/19, 9/21
- Dusty Stanfield—Houston based sport agent. Has offer, overview and successes. Is reviewing it with some of his guys. Represents 200 NFL players. Spoke to him 9/20 and circling back week of 9/24.
- Peter Dauterman—Pegasus Funds. met with him in Dallas in July. Has 3-4 folks interested in learning more after I circled back with him 9/19. Call on 9/24 with him for specifics.
- Tom Dietrich—PHX attorney. Having lunch on 9/24 to follow up on his folks that expressed an interest in learning more.
- John Van Amburgh---Community Trust Bank in Dallas. Met with in Dallas in July and August, Has it out to a couple of high net worth families he knows. 9/19
- Dominic Celico—Moses Anshell Advertising. Had lunch 9/12 and presented overview. He is presenting to his principals and other in PHX next week 9/24
- Brad Burr—PHX based insurance broker. Has it out to several of his clients 9/20 met for lunch.
- Brad Manhoff---PHX based Mortgage lender with a wide network. Has it out to several folks week of 9/10. Circling back week of 9/24
- Kurt Mangum—Leads a group of PHX based former NFL players and their investments. Got offer 9/14 and left messages week of 9/17 and circling back 9/24
- Phil Singleton—PHX financial advisor. Phil sent it to a client of his in Maryland who is to be calling week of 9/24.
- Dr. David and Barbara Adelson—PHX head of Children's Hospitals. I proposed a cents per case funding for their children's hospital if they would invest week of 9/17
- Bob Crum—PHX based commercial realtor. Is presenting it to a couple of his wealthy clients. Got offer 9/18. Circling back week of 9/24
- Earl Herrington---Elk River Investments in Flower Mound, TX and John Pearson looked at our investment but elected to purchase another restaurant and strip center 9/10/12
- Sue Lipton—Dick Vitale's agent. Sue and I spoke 9/24 and have sent her our presentation regarding any of the 10 folks she represents being investors.

## George Martinez

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**From:** Rick Peterson  
**Sent:** Thursday, November 15, 2012 8:25 AM  
**To:** George Martinez  
**Subject:** RE: Updates

George—I have 6 folks that are on the fence that I am trying to diligently move to action. I have 3 more appointments today including a lunch where I am asking a close friend with the money to invest to do it as a short term favor for me. Same thing tomorrow afternoon, I have a meeting with a good long time friend who has told me 3 times, "I'm not investing in anything except myself and my project because every time I do I get burned." I'm asking he and his brother to kick in \$500K as a favor to me.

25-30 others are in some stage of "looking at the deal" so I'm not spending any time against those folks.

I won't know anything about Kevin Kolb until next week but will see if I can push Dusty to get him to commit by week's end, before he meets our team next Monday or Tuesday.

My focus remains pushing as hard as I can to get anyone across the goal line.

I fully understand the sense of urgency and have every oar in the water and using my personal relationships to get funding which is a very dangerous tactic for me.

I promise, You will be the first person to know when I get someone to action and funding.

Rick Peterson  
Executive Vice President  
Shadow Beverages and Snacks  
(O) 480-371-1022

-----Original Message-----

**From:** George Martinez  
**Sent:** Thursday, November 15, 2012 8:58 AM  
**To:** Rick Peterson  
**Subject:** Updates

What updates do you have as of today ?

## George Martinez

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**From:** Rick Peterson  
**Sent:** Thursday, April 24, 2014 7:42 PM  
**To:** George Martinez  
**Subject:** RE: Long term capital

I'll see what day works for them next week and get them in here to start the process.

Your agreement, by verbiage, appears to be good. There was one spot that had one too many zero's in the total committed dollars.

I'm going to share it with several folks tomorrow and banking friends to see what can be done to collateralize it. I assume that's still your desire?

Rick

Sent from my Samsung smartphone on AT&T

----- Original message -----

**Subject:** RE: Long term capital  
**From:** George Martinez <[georgem@shadowbev.com](mailto:georgem@shadowbev.com)>  
**To:** Rick Peterson <[Rick.Peterson@shadowbev.com](mailto:Rick.Peterson@shadowbev.com)>  
**CC:**

Monday thru Thursday are good. I am out of the office on Friday.

George

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**From:** Rick Peterson  
**Sent:** Thursday, April 24, 2014 10:35 AM  
**To:** George Martinez  
**Subject:** Long term capital

George---I have a group interested in coming in next week to discuss long term capital of \$20MM. They have the ability/desire to discuss straight debt, Debt and equity or equity.

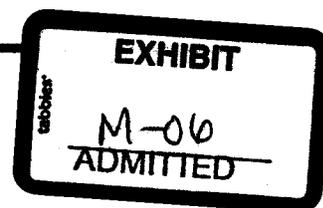
What days look best for your schedule next week?

I also have 2 other long term capital groups that want to come in and discuss the same the week of 1<sup>st</sup> or 2<sup>nd</sup> week of May.

Can you get Sam to execute the Reed Hatkoff documents so I can return them to him this week?

**George Martinez**

**From:** Kathy Reiser  
**Sent:** Tuesday, March 31, 2015 8:27 AM  
**To:** George Martinez  
**Subject:** Press Release



## **Mix1 Life Inc. Closes Acquisition of Nationally Recognized Energy Drink "No Fear"**

### Acquisition Significantly Expands mix1's Target Market

SCOTTSDALE, AZ, March 31, 2015 /PRNewswire/ - mix1 Life, Inc., (MIXX) announced today that the Company completed the acquisition of the "No Fear" beverage license asset from Shadow Beverages and Snacks LLC, which includes the "No Fear" beverage license, operating system, and sales support behind its current distribution network. The Company is paying approximately \$12.2 million in a combination of restricted common stock, cash, and debt for the license and related assets. The beverage license "No Fear" generated approximately \$4.3 million in revenue for the trailing twelve months ended December 31, 2014.

No Fear is an energy drink distributed primarily through a Direct Store Delivery ("DSD") network, which includes many of the independent Pepsi Bottlers. Recently, the brand has expanded nationally in the food service channel through an agreement with a national distributor.

"This acquisition and resulting combination of two nationally recognized brands, 'No Fear' energy drink and our existing 'mix1' protein drink, will significantly increase the size of our addressable target market and improve national expansion opportunities for these brands by leveraging the strengths of both assets", said Cameron Robb, CEO at mix1. "In addition, we will be able to more efficiently leverage our selling and operating systems from the combined entities."

George Martinez, President and Founder of Shadow Beverages, stated, "We are very excited to join the mix1 team and bring our many years of operational, marketing and sales network experience to the Company. We believe the combined experience of the two companies will accelerate the growth of both brands."

The expanded mix 1 management team has deep roots in the beverage industry with experience across all functions, including many years of experience expanding major brands through leading distributors and retailers. At the same time, the team has an entrepreneurial spirit that supports a company that is focused on accelerating the growth of its brand partners. The Company understands that the business starts with understanding the demands of its customers, and it is a business that is done one transaction at a time at store level.

### About Shadow Beverages and Snacks, LLC

Shadow Beverages and Snacks, located in Phoenix, Arizona, is a world class accelerator of beverage and snack products. With a team of experienced beverage experts across all disciplines, Shadow has developed an infrastructure to support brand building and brand development. Shadow's mission is to work with its' Brand Partners to create customized brand strategies to build brand reach and drive market success.

To learn more about Shadow, visit our website at [www.shadowbev.com](http://www.shadowbev.com). For more information on mix1 and this transaction, visit [www.mix1life.com](http://www.mix1life.com) or read the 8k at [www.sec.gov](http://www.sec.gov)

### About Mix1 Life, Inc.

Mix1 Life, Inc., ("MIXX" or "mix1"), is the innovator and distributor of mix1 natural nutritional products. Here at Mix1 the philosophy is pretty simple: we only create products with natural, high-quality ingredients that are truly functional. We believe natural products are better than artificial ones and are the key to leading a healthy balanced life. As a company we want to improve people's lives by promoting active lifestyles and overall health. Mix1 has the perfect mix to fit your life and schedule. Never again will you miss getting the necessary nutrients because you were too busy to eat. We strive to help you make healthy choices during your busy day in order to help you feel your best not only today, but every day.

For more information on mix1, visit [www.mix1life.com](http://www.mix1life.com)

*GM - 06*  
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