

ORIGINAL



BEFORE THE ARIZONA CORPORATION COMMISSION

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AZ CORP COMMISSION  
DOCKET CONTROL

2016 JUL 8 PM 2 35

COMMISSIONERS

DOUG LITTLE - Chairman  
BOB STUMP  
BOB BURNS  
TOM FORESE  
ANDY TOBIN

In the matter of:  
USA BARCELONA REALTY ADVISORS,  
LLC, an Arizona limited liability company,  
USA BARCELONA HOTEL LAND COMPANY  
I, LLC, an Arizona limited liability company,  
RICHARD C. HARKINS, an unmarried man,  
ROBERT J. KERRIGAN (CRD no. 268516) an  
unmarried man,  
GEORGE T. SIMMONS and JANET B.  
SIMMONS, husband and wife,  
BRUCE L. ORR and SUSAN C. ORR, husband  
and wife,  
Respondents.

DOCKET NO. S-20938A-15-0308

**SECURITIES DIVISION'S POST-  
HEARING BRIEF**

Arizona Corporation Commission

**DOCKETED**

JUL 8 2016

DOCKETED BY

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") submits its post-hearing brief as follows:

**I. PROCEDURAL HISTORY**

On August 26, 2015, the Division filed a Temporary Order to Cease and Desist and Notice of Opportunity for Hearing ("T.O. and Notice") against USA Barcelona Realty Advisors, LLC, USA Barcelona Hotel Land Company I, LLC, Richard C. Harkins, Robert J. Kerrigan, George T. Simmons and Janet B. Simmons, husband and wife, and Bruce Orr, in which the Division alleged violations of the Arizona Securities Act ("Act") in connection with the offer and sale of securities in the form of promissory notes and investment contracts. The Respondents all filed Answers to the T.O. and Notice.

1 On October 14, 2015, Administrative Law Judge Mark Preny (“ALJ Preny”) issued the Third  
2 Procedural Order scheduling the hearing to begin on March 7, 2016. On December 29, 2015, the  
3 Division, Richard C. Harkins, Robert J. Kerrigan, George T. Simmons, and Janet B. Simmons filed a  
4 stipulation seeking to continue the hearing. On January 20, 2016, ALJ Preny issued the Fifth  
5 Procedural Order scheduling the hearing to begin on May 9, 2016.

6 On January 25, 2016, the Division filed an Amended Temporary Order to Cease and Desist  
7 and Notice of Opportunity for Hearing (“Amended T.O. and Notice”). Among other changes, the  
8 Amended T.O. and Notice added Susan S. Orr as a Respondent. Respondents Richard C. Harkins,  
9 Robert J. Kerrigan, George T. Simmons, and Janet B. Simmons filed Answers to the Amended T.O.  
10 and Notice.

11 The administrative hearing began on May 9, 2016, and ended on May 19, 2016.<sup>1</sup>

## 12 **II. JURISDICTION**

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

## 15 **III. FACTS**

16 Based on the evidence in the record, the Commission can find the following facts.

### 17 **A. Respondents**

18 1. USA Barcelona Realty Advisors, LLC (“Barcelona Advisors”) is a limited liability  
19 company that was organized under the laws of the state of Arizona in November 2010.<sup>2</sup> Barcelona  
20 Advisors’ office was in Scottsdale, Arizona.<sup>3</sup> Barcelona Advisors was originally named Barcelona  
21 Administration Company, LLC before amending its name on April 12, 2013.<sup>4</sup> Barcelona Advisors  
22 has not been registered by the Commission as a securities salesman or dealer.<sup>5</sup> Barcelona Advisors’  
23

24 \_\_\_\_\_  
25 <sup>1</sup> Citations to the hearing transcript are cited a T.[page]. Line numbers are indicated by a colon, e.g. T.101:3–5.  
Citations to the hearing exhibits are cited as the exhibits numbers, e.g. S-1.

26 <sup>2</sup> S-3a

<sup>3</sup> T.764:3–7

<sup>4</sup> S-3a

<sup>5</sup> S-1b

1 securities have not been registered by the Commission.<sup>6</sup> There is no evidence that Barcelona Advisors  
2 has ever made a Form D notice filing with the Commission.

3 2. USA Barcelona Hotel Land Company I, LLC (“Barcelona Land Company”) is a  
4 limited liability company that was organized under the laws of the state of Arizona in January 2014.<sup>7</sup>  
5 Barcelona Land Company has not been registered by the Commission as a securities salesman or  
6 dealer.<sup>8</sup>

7 3. Since October 2012, Richard C. Harkins (“Harkins”) has been a resident of the state  
8 of Arizona.<sup>9</sup> Since November 28, 2012, Harkins has been an unmarried man. Harkins has not been  
9 registered by the Commission as a securities salesman or dealer.<sup>10</sup>

10 4. From at least October 2012 until August 2015, Robert J. Kerrigan (“Kerrigan”) was  
11 an unmarried man, a resident of the state of Arizona, registered by the Commission as a securities  
12 salesman with CRD no. 268516, and registered in Arizona with First Financial Equity Corporation  
13 (“FFEC”), a securities dealer with CRD no. 16507.<sup>11</sup>

14 5. Since October 2012, George T. Simmons (“Simmons”) has been a married man and a  
15 resident of the state of Arizona.<sup>12</sup> Simmons has not been registered by the Commission as a securities  
16 salesman or dealer.<sup>13</sup> Simmons usually goes by the name Tom Simmons.<sup>14</sup>

17 6. Since October 2012, Bruce L. Orr (“Orr”) has been a married man and a resident of  
18 the state of California.<sup>15</sup> Orr has not been registered by the Commission as a securities salesman or  
19 dealer.<sup>16</sup>

20 7. Since October 2012, Janet B. Simmons has been the spouse of George T. Simmons,  
21 and Susan S. Orr has been the spouse of Bruce L. Orr (Janet B. Simmons and Susan S. Orr may be

22 <sup>6</sup> T.842:13-15; S-5 at ACC7207; S-57 at ACC729; S-58 at ACC5715

23 <sup>7</sup> S-4

<sup>8</sup> Barcelona admitted it has not been registered in its October 2, 2015, Answer to the T.O. and Notice at ¶ 7

<sup>9</sup> Harkins admitted his residence in his October 2, 2015, Answer to the T.O. and Notice at ¶ 2

24 <sup>10</sup> S-1a

<sup>11</sup> S-2a; S-2b; Kerrigan admitted these facts in his September 29, 2015, Answer at ¶ 3

25 <sup>12</sup> Simmons admitted these facts in his October 2, 2015, Answer at ¶ 4

<sup>13</sup> Simmons admitted these facts in his October 2, 2015, Answer at ¶ 4

26 <sup>14</sup> T.1130:23–T.1131:2

<sup>15</sup> S-136 p.6:17–24, p.13:22–14:4

<sup>16</sup> S-136 p.6:17–24, p.13:5–14

1 referred to as “Respondent Spouses”).<sup>17</sup> Respondent Spouses are joined in this action under A.R.S. §  
2 44-2031(C) solely for purposes of determining the liabilities of their marital communities.

3 8. Harkins, Kerrigan, Simmons, Orr, Barcelona Advisors, and Barcelona Land Company  
4 may be referred to as “Respondents.”

5 **B. Control of Barcelona Advisors and Barcelona Land Company**

6 9. Since October 2012, Harkins has been the President of Barcelona Advisors.<sup>18</sup>  
7 According to the company’s operating agreements, as President Harkins has had complete authority  
8 and exclusive control to conduct any business on behalf of the Company in the sole and absolute  
9 discretion of the President except for an enumerated list of “Major Decisions” which require approval  
10 by a majority of four Executive Members,<sup>19</sup> namely Harkins, Kerrigan, Simmons, and Orr.<sup>20</sup> The  
11 first operating agreement (“First Operating Agreement”) was in effect from October 18, 2012, to  
12 April 25, 2013, and the second operating agreement (“Second Operating Agreement”) was in effect  
13 since April 25, 2013 (collectively “the Operating Agreements”).<sup>21</sup> These Operating Agreements were  
14 each in effect during their respective timeframes.<sup>22</sup>

15 10. Simmons was Executive Vice President and Chief Operating Officer of Barcelona  
16 Advisors.<sup>23</sup> As an officer of Barcelona Advisors, Simmons had “all specific rights and powers  
17 required for or appropriate to the management of the Company’s business, affairs and purposes ...”  
18 including the power to operate and manage the company’s interests and execute agreements.<sup>24</sup>

19 11. From at least February 1, 2013,<sup>25</sup> to at least August 8, 2014, Harkins, Kerrigan,  
20 Simmons, and Orr were Executive Members of Barcelona Advisors.<sup>26</sup> A majority of the Executive

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22 <sup>17</sup> S-76 p.18:10–18; S-136 p.13:22–14:4

23 <sup>18</sup> S-57 at ACC737. The position was previously known as Manager. See S-5 at ACC7214

24 <sup>19</sup> Some Barcelona Advisors documents use the terms “Executive Members” and “Executive Committee”  
interchangeably. See S-57 at ACC737. Various witnesses used both terms. For clarity, references to membership in the  
“Executive Committee” will be referred to as being an “Executive Member.”

25 <sup>20</sup> S-5 at ACC7214–7215, 7268–7269; S-57 at ACC737–738, 790–792

26 <sup>21</sup> S-5 at ACC7261; S-57 at ACC782

<sup>22</sup> T.931:20–T.932:5

<sup>23</sup> T.1186:4–6

<sup>24</sup> S-57 at ACC790-791

<sup>25</sup> S-5 at ACC7203, 7229

<sup>26</sup> S-67 at ACC5499; S-30 at ACC6360.

1 Members must approve Barcelona Advisors' "Major Decisions," including decisions to incur liability  
2 for borrowed money, issue any note, or admit new company members.<sup>27</sup>

3 12. According to Barcelona Advisors' own offering memorandum, "as a result of the  
4 members' limited voting rights, the Executive Members have control of the company through their  
5 exclusive power to approve all 'Major Decisions.'"<sup>28</sup>

6 13. Barcelona Advisors' non-executive members cannot take part in the control of  
7 management of the company's business except to require majority-in-interest approval for actions  
8 that would materially diminish their membership interests and to remove Executive Members for  
9 cause by a majority-in-interest vote.<sup>29</sup>

10 14. According to a Barcelona Advisors' corporate filing on April 12, 2013, Harkins,  
11 Kerrigan, Simmons, and Orr were all limited liability company Managers of Barcelona Advisors,  
12 and management of Barcelona Advisors was vested in those four Managers.<sup>30</sup> It also stated that  
13 Harkins and Simmons each owned a 20% or greater interest in Barcelona Advisors.<sup>31</sup> This corporate  
14 filing was accurate.<sup>32</sup>

15 15. Since January 2014, Harkins has been the President of Barcelona Land Company.<sup>33</sup>  
16 As President, Harkins has the power to oversee the day-to-day activities of the company and make  
17 all decisions other than an enumerated list of "Major Decisions" that require approval by the  
18 company's manager, which is USA Barcelona Hotel Holding Company, LLC.<sup>34</sup> From at least April  
19 2014 to at least August 2014, Harkins was the President of USA Barcelona Hotel Holding Company,  
20 LLC.<sup>35</sup>

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22  
23 <sup>27</sup> S-5 at ACC7268-7269; S-57 at ACC791-792

24 <sup>28</sup> S-57 at ACC789

25 <sup>29</sup> S-5 at ACC7266; S-57 at ACC787-790

26 <sup>30</sup> S-3b

<sup>31</sup> S-3b p.3

<sup>32</sup> T.911:7-T.913:7

<sup>33</sup> S-59 at ACC5902, 5909

<sup>34</sup> S-59 at ACC5909, 5917

<sup>35</sup> S-59 PPM at ACC5875

1           16.     From at least April 2014 to at least August 2014, Simmons was the Executive Vice  
2 President of Barcelona Land Company and the Executive Vice President of Barcelona Land  
3 Company's manager.<sup>36</sup> As an officer of Barcelona Land Company, Simmons had the power to  
4 perform normal business functions and otherwise operate and manage the company's business, to  
5 keep all books, accounts, and other records of the company, to enforce obligations of third parties to  
6 the company, pay all debts and other obligations of the company, and to execute agreements in  
7 connection with the company's assets.<sup>37</sup>

8           **C. 12-6-12 Offering**

9           17.     From at least October 12, 2012, to November 25, 2013, Barcelona Advisors offered  
10 and sold promissory notes and investment contracts in the form of limited liability company  
11 membership units ("LLC membership units") in Barcelona Advisors within and from Arizona with  
12 its 12-6-12 offering ("12-6-12 Offering"). The "12-6-12" name referred to the terms of the notes,  
13 which offered 12% annual interest on the notes, paid quarterly, and a maturity date of December 31,  
14 2014, with a 6% bonus payment at the end of 2013 and a 12% bonus payment at the end of 2014  
15 ("12-6-12 Notes").<sup>38</sup>

16           18.     Barcelona Advisors' stated business plan during the 12-6-12 Offering was to act as  
17 the advisor to a series of private funds that would raise capital to acquire apartments and hotels.<sup>39</sup>

18           19.     Barcelona Advisors issued to investors in the 12-6-12 Offering promissory notes  
19 containing the same terms with respect to interest, maturity date, and bonus payments, except that  
20 one note included an optional earlier maturity date.<sup>40</sup> Barcelona Advisors also issued subscription  
21 agreements reflecting LLC membership units in Barcelona Advisors.<sup>41</sup>

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23  
24  

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<sup>36</sup> S-59 PPM at ACC5875, 5917

<sup>37</sup> S-59 at ACC5909

<sup>38</sup> S-5 at ACC7213; S-57 at ACC736

<sup>39</sup> S-5 at ACC7217; S-57 at ACC740

<sup>40</sup> S-184

<sup>41</sup> S-33 at ACC821-907, 966-971



1 an accredited investor.<sup>54</sup> The October 2012 PPM that Ms. Bair received probably included a  
2 biography of Harkins similar to the biographies in the February 2013 PPM and the April 2013 PPM.<sup>55</sup>

### 3 **Rodney and Melissa Eaves**

4 25. Rodney and Melissa Eaves invested \$250,000 in the 12-6-12 Offering on March 13,  
5 2013.<sup>56</sup> Mr. Eaves testified that he first learned about the 12-6-12 Offering in December 2012 from  
6 Kerrigan, who had been their investment advisor for 12 years.<sup>57</sup> Kerrigan gave Mr. Eaves a printed  
7 copy of a January 11, 2013, e-mail from Harkins that listed Simmons as an Executive Member and  
8 included biographies of Harkins, Simmons, and Orr.<sup>58</sup> At the same time, Kerrigan invited Mr. Eaves  
9 to a meeting held on approximately January 15, 2013, at Talking Stick Resort in Scottsdale,  
10 Arizona.<sup>59</sup>

11 26. Mr. Eaves attended the January 2013 meeting, which was a Barcelona Advisors  
12 business meeting and was also attended by Harkins, Simmons, and Orr as well as others.<sup>60</sup> Mr. Eaves'  
13 understanding from the meeting and from the written biographies he received from Kerrigan was  
14 that Harkins and Simmons were both Executive Members of Barcelona Advisors and that Simmons  
15 also had a role similar to that of a vice president of operations.<sup>61</sup>

16 27. In February 2013, before his March investment, Mr. Eaves received the February  
17 2013 PPM.<sup>62</sup> The February 2013 PPM stated that Harkins, Kerrigan, Simmons, and Orr were all  
18 Executive Members of Barcelona Advisors.<sup>63</sup>

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21  
22 <sup>54</sup> S-32 p.74:24–p.75:1

<sup>55</sup> S-32 p.60:16–p.61:4

23 <sup>56</sup> S-31b; S-33; S-38

24 <sup>57</sup> T.190:3–T.191:15; S-98 p.36:18–20, p.59:7–12

<sup>58</sup> T.195:25–T.196:20; S-170

<sup>59</sup> T.196:14–T.197:1

25 <sup>60</sup> T.197:2–24. Simmons denied that he attended this meeting. See T.1138:2–18. Orr does not recall Simmons  
attending. See T.719:18–T.720:14

26 <sup>61</sup> T.198:14–T.199:3

<sup>62</sup> T.193:12–T.194:1; T.1064:18–T.1065:1

<sup>63</sup> S-5 at ACC7229–7230





1 long.<sup>87</sup> Mr. Woods did not speak to anyone else from Barcelona Advisors about investing.<sup>88</sup> Mr.  
2 Woods was in Arizona when he invested.<sup>89</sup>

3 34. Mr. Woods also received a document similar to the April 2013 PPM, which he  
4 referred to as a “prospectus,” and Harkins’ testimony that investors received the most recent version  
5 of the PPM confirms that the April 2013 PPM is probably the exact document that Mr. Woods  
6 received.<sup>90</sup>

### 7 **Kathleen Carolin**

8 35. Kathleen Carolin invested \$25,000 in the 12-6-12 Offering on July 5, 2013.<sup>91</sup> She  
9 testified that she learned about the investment opportunity while in Arizona from Kerrigan, whom  
10 she was dating at the time.<sup>92</sup> Kerrigan recommended to her that it was a good investment with a high  
11 interest rate that could increase her retirement savings.<sup>93</sup> She trusted Kerrigan’s recommendation  
12 because of his long history of investment experience.<sup>94</sup> She considered it to be an investment.<sup>95</sup>

13 36. Ms. Carolin made a second \$25,000 investment in the 12-6-12 Offering on July 30,  
14 2013.<sup>96</sup> She invested the second time because she had become friends with many of Barcelona  
15 Advisors’ principals and because Ms. Burleson’s investments gave her confidence.<sup>97</sup> Ms. Carolin’s  
16 motivation for both investments was to earn money for her retirement, and she was in Arizona at the  
17 time of both investments.<sup>98</sup> The loss of her investments caused her financial hardship because it  
18 forced her to sell her home and cut her retirement funds in half.<sup>99</sup>

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21 <sup>87</sup> T.662:16–21

22 <sup>88</sup> T.663:9–11

23 <sup>89</sup> T.663:15–16

24 <sup>90</sup> T.667:24–T.668:7; T.1064:18–T.1065:1; S-32 p.61:5–9; S-57

25 <sup>91</sup> S-10; S-31b; S-40

26 <sup>92</sup> T.426:10–17; T.426:24–T.427:2; S-98 p.29:25–p.30:5

<sup>93</sup> T.426:20–T.427:7; S-98 p.169:18–p.170:4

<sup>94</sup> T.428:6–11

<sup>95</sup> T.426:7–9

<sup>96</sup> S-31b; S-34; S-43

<sup>97</sup> T.438:24–T.439:5

<sup>98</sup> T.439:9–14

<sup>99</sup> T.448:7–11

1           37.     At the time of both of her investments, Ms. Carolin's net worth was less than  
2 \$1,000,000 and her annual income was less than \$200,000.<sup>100</sup> Ms. Carolin and Kerrigan had been  
3 dating for five years, and Kerrigan had some knowledge of her finances.<sup>101</sup> At the time she invested,  
4 Ms. Carolin's investment experience was limited to having a 401(k) plan, and she had never invested  
5 in something like Barcelona Advisors before.<sup>102</sup>

6           38.     Harkins gave Ms. Carolin the subscription agreement for her first investment.<sup>103</sup>  
7 Harkins met with Ms. Carolin at a restaurant to discuss her first subscription agreement.<sup>104</sup> She did  
8 not read the subscription agreement carefully because she trusted Kerrigan's recommendation that  
9 this was a good investment.<sup>105</sup> During the meeting, Harkins told Ms. Carolin that she needed to check  
10 one of the lines on the accredited investor questionnaire of her subscription agreement because she  
11 needed to qualify in order to invest, and she responded that she did not meet any of those  
12 qualifications.<sup>106</sup> She believed that Harkins wanted her to check one of those lines.<sup>107</sup> Although the  
13 copy of Ms. Carolin's first subscription agreement in the record is marked with an "x" on a line  
14 indicating having an annual income over \$200,000, Ms. Carolin did not mark that line.<sup>108</sup> She  
15 believed that she was allowed to invest despite not meeting the qualifications because she was a  
16 friend.<sup>109</sup>

17           39.     Similarly, although the copy of Ms. Carolin's second subscription agreement in the  
18 record is also marked with an "x" on a line indicating having an annual income over \$200,000, she  
19 did not mark that line.<sup>110</sup> She does not know who did mark it.<sup>111</sup>

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22 <sup>100</sup> T.431:19-T.432:9

<sup>101</sup> T.432:13-22; S-98 p.49:10-p.50:19

<sup>102</sup> T.445:13-20

<sup>103</sup> T.431:17-18

<sup>104</sup> T.433:20-24

<sup>105</sup> T.469:19-T.470:8

<sup>106</sup> T.432:23-T.433:17; S-10 at ACC881

<sup>107</sup> T.474:15-21

<sup>108</sup> S-10 at ACC881; T.432:23-T.433

<sup>109</sup> T.472:22-T.473:4

<sup>110</sup> T.472:22-T.473:4

<sup>111</sup> T.436:3-4



1 **Nancy Chaimson**

2 43. Nancy Chaimson invested \$50,000 in the 12-6-12 Offering on November 25, 2013.<sup>126</sup>  
 3 Ms. Chaimson was a friend that Kerrigan met through a singles group, and he told her about  
 4 Barcelona Advisors' business plan and the 12-6-12 Offering.<sup>127</sup> Kerrigan gave Ms. Chaimson a  
 5 subscription agreement and recommended that she invest.<sup>128</sup>

6 44. Kerrigan testified in his examination under oath ("EUO") that he believed Ms.  
 7 Chaimson's net worth at the time she invested was over \$500,000.<sup>129</sup> Kerrigan claimed at the hearing  
 8 that he did not know what Ms. Chaimson's net worth had been, but estimated that it was over  
 9 \$1,000,000 and qualified her to invest.<sup>130</sup> However, his net worth estimate at the hearing included  
 10 the value of Ms. Chaimson's home because he noted in support of his estimate that, "I knew she was  
 11 living in a home that I think was debt free."<sup>131</sup> Kerrigan did not know Ms. Chaimson's annual income  
 12 and only estimated that it was over \$100,000.<sup>132</sup>

13 45. These eight investors invested a total of \$970,000 in the 12-6-12 Offering.<sup>133</sup>

14 46. To date, investors in the 12-6-12 Offering have received a return of \$86,876 in interest  
 15 payments, but none have received a refund of their principal investments.<sup>134</sup>

16 **E. Additional Eaves Notes**

17 47. After investing twice in the 12-6-12 Offering, married investors Rodney and Melissa  
 18 Eaves made four more investments under different terms in Barcelona Advisors' notes and rights to  
 19 purchase investment contracts in the form of LLC membership units (collectively, the "Additional  
 20 Eaves Notes").

21  
 22  
 23 <sup>126</sup> S-13; S-31b; S-47

24 <sup>127</sup> T.1029:14-T.1030:7; S-98 p.29:25-p.30:6, p.56:7-20

25 <sup>128</sup> T.1029:14-T.1030:14; S-98 p.169:18-p.170:4

26 <sup>129</sup> S.98 p.56:21-p.57:8

<sup>130</sup> T.1030:15-T.1031:2

<sup>131</sup> T.1020:15-20

<sup>132</sup> T.1031:8-13

<sup>133</sup> S-31b

<sup>134</sup> S-31a p.3; S-31b

1           48.     Mr. and Mrs. Eaves made their third investment on December 30, 2013.<sup>135</sup> They  
2 invested \$125,000 for rights to purchase LLC membership units in Barcelona Advisors at an  
3 unspecified price and a promissory note issued by Barcelona Advisors with 12% annual interest and  
4 a maturity date of March 31, 2014.<sup>136</sup>

5           49.     Mr. Eaves made this third investment because Kerrigan told him that Barcelona  
6 Advisors was not raising money as fast as expected and that the company needed the money as a  
7 bridge until anticipated future capital arrived.<sup>137</sup> Mr. Eaves wanted to protect the \$500,000 he had  
8 already invested by keeping the company afloat until new capital arrived.<sup>138</sup>

9           50.     Mr. and Mrs. Eaves made their fourth investment on February 28, 2014.<sup>139</sup> They  
10 invested \$125,000 for rights to purchase LLC membership units in Barcelona Advisors at an  
11 unspecified price and a promissory note issued by Barcelona Advisors with 12% annual interest and  
12 a maturity date of May 31, 2014.<sup>140</sup>

13           51.     Mr. Eaves made this fourth investment at Simmons' request. On approximately  
14 February 27 or 28, 2014, he received a telephone call from Simmons during the mid-morning.<sup>141</sup>  
15 Simmons told Mr. Eaves more capital was still expected to arrive, and Simmons asked if Mr. Eaves  
16 could invest another \$125,000.<sup>142</sup> Mr. Eaves told Simmons he would consider it.<sup>143</sup> Mr. Eaves  
17 specifically recalled where he was, driving at the intersection of Hayden Road and Chaparral Road,  
18 when he received the call from Simmons.<sup>144</sup> When Simmons' counsel suggested on cross  
19 examination that Mr. Eaves merely "believed" that Simmons had called him, Mr. Eaves affirmed  
20 that, "I don't believe he called me; he did call me. I absolutely knew exactly where I was at the time  
21 he called me."<sup>145</sup>

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22 <sup>135</sup> S-31b; S-53

23 <sup>136</sup> S-31b; S-53

24 <sup>137</sup> T.282:6-20

25 <sup>138</sup> T.282:24-T.283:18

26 <sup>139</sup> S-31b; S-54

<sup>140</sup> S-31b; S-54

<sup>141</sup> T.287:16-22; T.290:1-6

<sup>142</sup> T.287:16-22; T.288:17-23

<sup>143</sup> T.288:24-T.289:1

<sup>144</sup> T.286:21-T.287:16

<sup>145</sup> T.346:18-T.347:2

1           52.     Mr. Eaves made a fifth investment on July 14, 2014.<sup>146</sup> He invested \$15,000 for a  
2 promissory note issued by Barcelona Advisors with 8% annual interest and a maturity date of  
3 October 14, 2014.<sup>147</sup>

4           53.     Mr. Eaves made his fifth investment at Harkins' request.<sup>148</sup> Mr. Eaves attended a  
5 roundtable discussion in the Barcelona Advisors conference room with Harkins, Kerrigan, and  
6 Simmons.<sup>149</sup> They discussed who could provide funds to pay some Barcelona Advisors bills, and  
7 after some discussion, Harkins asked Mr. Eaves to provide those funds.<sup>150</sup> Mr. Eaves wrote a check  
8 and gave it to Harkins.<sup>151</sup>

9           54.     Mr. Eaves made a sixth investment on July 31, 2014.<sup>152</sup> He invested \$15,000 for a  
10 promissory note issued by Barcelona Advisors with 10% annual interest and a maturity date of  
11 August 15, 2014.<sup>153</sup>

12           55.     Mr. Eaves made his sixth investment under the same circumstances as the fifth. He  
13 attended a similar meeting with Harkins, Kerrigan, and Simmons, again in the Barcelona Advisors  
14 conference room.<sup>154</sup> They discussed the company's bills and who could help with them, and Harkins  
15 eventually asked Mr. Eaves for more funds.<sup>155</sup> Mr. Eaves again wrote a check and gave it to  
16 Harkins.<sup>156</sup>

17           56.     For all of the Additional Eaves Investments, Mr. Eaves continued to rely on the  
18 information he received in the February 2013 PPM that he previously received.<sup>157</sup>

19           57.     The notes and rights to purchase LLC membership units of the Additional Eaves  
20 Notes were not registered by the Commission.<sup>158</sup>

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21 <sup>146</sup> S-31b; S-55

22 <sup>147</sup> S-31b; S-55; S-168

23 <sup>148</sup> T.289:23-25

24 <sup>149</sup> T.290:7-24

25 <sup>150</sup> T.290:20-T.291:3

26 <sup>151</sup> T.292:25-T.293:6; S-168

<sup>152</sup> S-31b; S-56

<sup>153</sup> S-31b; S-56; S-167

<sup>154</sup> T.293:23-T.294:18

<sup>155</sup> T.293:23-T.294:18

<sup>156</sup> T.296:12-T.297:24; S-167

<sup>157</sup> T.297:24-T.298:2; T.870:12-19

<sup>158</sup> S-1b

1           58.     Mr. and Mrs. Eaves did not receive any principal or interest payments for any of the  
2 Additional Eaves Investments.<sup>159</sup>

3           59.     Mr. and Mrs. Eaves invested a total of \$280,000 in the Additional Eaves Notes as  
4 well as \$500,000 in the 12-6-12 Offering.<sup>160</sup> The loss of this amount was about 40% of their entire  
5 net worth.<sup>161</sup> It caused additional financial hardship because Mr. Eaves had his own small business  
6 that he did not have enough capital to support because of the loss of his Barcelona Advisors  
7 investments.<sup>162</sup>

8           60.     On May 12, 2014, between his fourth and fifth investments, Mr. Eaves became an  
9 independent contractor for Barcelona Advisors, and he researched potential real estate properties for  
10 the company.<sup>163</sup>

11           61.     Later, on August 8, 2014, Mr. Eaves briefly became an Executive Member of  
12 Barcelona Advisors, replacing Orr.<sup>164</sup> Mr. Eaves had already made his final investment on July 31,  
13 2014, before he became an Executive Member.<sup>165</sup> He did not have any management responsibilities  
14 at Barcelona Advisors until he became an Executive Member.<sup>166</sup>

15           **F. 10-5-10 Offering**

16           62.     Since at least December 23, 2013, Barcelona Advisors offered and sold promissory  
17 notes within and from Arizona with its 10-5-10 offering (“10-5-10 Offering”). The “10-5-10” name  
18 referred to the terms of the notes, which offered 10% annual interest on the notes, paid quarterly, and  
19 a maturity date of December 31, 2015, with a 5% bonus payment at the end of 2014 and a 10% bonus  
20 payment at the end of 2015 (“10-5-10 Notes”).<sup>167</sup> The 10-5-10 Offering was very similar to the 12-  
21  
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23 <sup>159</sup> T.298:3–T.303:22

24 <sup>160</sup> S-31b

25 <sup>161</sup> T.209:15–19

26 <sup>162</sup> T.309:20–T.310:8

<sup>163</sup> T.310:13–T.311:3

<sup>164</sup> T.311:4–14; T.326:1–5; S-30 at ACC6360

<sup>165</sup> T.311:15–19; S-31b

<sup>166</sup> T.311:20–23

<sup>167</sup> S-58 at ACC5179

1 6-12 offering, and Barcelona Advisors decided to “just change the terms to 10-5-10” to make it less  
2 generous.<sup>168</sup>

3 63. Barcelona Advisors’ stated business plan during the 10-5-10 Offering was to be the  
4 advisor to a series of funds that would develop or acquire hotels and other real estate.<sup>169</sup> The plan  
5 changed from acquiring hotels to also developing hotels because the salesman for the real estate  
6 acquisition fund did not secure any capital.<sup>170</sup>

7 64. Barcelona Advisors issued to investors in the 10-5-10 Offering promissory notes  
8 containing the same terms with respect to interest, maturity date, and bonus payments.

9 65. Harkins signed both of the notes and one of the subscription agreements for the 10-5-  
10 10 Offering.<sup>171</sup> Simmons signed the other 10-5-10 Offering subscription agreement.<sup>172</sup>

11 66. On December 31, 2013, Harkins, Kerrigan, Simmons, Orr, and Barcelona Advisors  
12 sent a letter to existing Barcelona Advisors investors explaining that to fund working capital  
13 requirements Barcelona Advisors had released a new “\$1MM offering featuring 10% annual interest  
14 for 2 years, with a 5% premium paid 12/31/2014 and a 10% premium paid 12/31/2015.”<sup>173</sup> Harkins,  
15 Kerrigan, and Simmons signed this letter, and Orr authorized Simmons to sign on his behalf as an  
16 Executive Member after Simmons paraphrased the letter for him.<sup>174</sup>

17 67. Barcelona Advisors prepared a PPM dated January 1, 2014, describing the \$1,000,000  
18 10-5-10 Offering (“January 2014 PPM”).<sup>175</sup> Harkins was the primary drafter of the January 2014  
19 PPM.<sup>176</sup>

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23 <sup>168</sup> T.809:3–10

24 <sup>169</sup> S-58 at ACC5720

25 <sup>170</sup> T.809:10–13

26 <sup>171</sup> S-32 p.58:8–17; S-35; S-48; S-51

<sup>172</sup> S-36 at ACC980–986; S-32 p.55:16–25

<sup>173</sup> S-65; S-66; S-32 p.1145:21–p.115:7

<sup>174</sup> S-65; S-66; T.740:8–T.741:22

<sup>175</sup> S-58

<sup>176</sup> S-32 p.86:18–20; S-58

1 **G. 10-5-10 Investors**

2 **Pam Stewart**

3 68. Pam Stewart invested \$100,000 in the 10-5-10 Offering on April 3, 2014.<sup>177</sup> She  
4 learned about the investment opportunity from Kerrigan, who had been her broker for over 16  
5 years.<sup>178</sup> Kerrigan contacted Mrs. Stewart in approximately February 2014 and told her he had a  
6 good, low-risk opportunity for her.<sup>179</sup> Kerrigan knew that Mrs. Stewart had a very low risk tolerance  
7 as an investor, and it was important to Mrs. Stewart to hear that this was a low-risk investment.<sup>180</sup>  
8 Kerrigan recommended that she invest, and she trusted his recommendation.<sup>181</sup>

9 69. Mrs. Stewart met with Kerrigan at a Scottsdale, Arizona, restaurant where he gave  
10 her a subscription agreement, which she and her husband signed.<sup>182</sup> She noticed that the subscription  
11 agreement referred to high risk and asked Kerrigan about this, but he said it was not a high risk  
12 investment.<sup>183</sup> Kerrigan also gave her a packet of advertising materials.<sup>184</sup> She did not speak with  
13 anyone else from Barcelona Advisors before she invested.<sup>185</sup>

14 70. Mrs. Stewart considered this to be an investment, and she invested because it appeared  
15 to be very profitable.<sup>186</sup> She paid for the investment using a retirement account with FFEC,  
16 Kerrigan's dealer, and she assumed that FFEC had vetted the investment.<sup>187</sup> The loss of her  
17 investment has caused her significant financial hardship, including a \$35,000 tax liability from  
18 paying for the investment from a retirement account.<sup>188</sup>

19  
20  
21  
22 <sup>177</sup> S-31b; S-35; S-48; S-148

<sup>178</sup> T.222:20–T.233:6

<sup>179</sup> T.222:20–3; T.224:2–5

<sup>180</sup> T.223:21–22; T.224:6–13

<sup>181</sup> T.225:1–5

<sup>182</sup> T.223:14–16; T.225:10–T.227:22

<sup>183</sup> T.245:9–22; S-35 at ACC993

<sup>184</sup> T.269:16–24; S-174

<sup>185</sup> T.225:6–9

<sup>186</sup> T.222:14–16; T.223:22–T.224:1; T.228:15–16

<sup>187</sup> T.227:23–T.228:14

<sup>188</sup> T.233:722

**Richard Andrade**

1  
2 71. Richard Andrade invested \$50,000 in the 10-5-10 Offering on April 16, 2014.<sup>189</sup> Mr.  
3 Andrade first heard that there was an investment opportunity in approximately November 2013 from  
4 his investment advisor, Jim Wilkerson (“Wilkerson”).<sup>190</sup> Wilkerson told him that Simmons, a former  
5 work colleague of Mr. Andrade, had an investment opportunity, and asked him if he would like to  
6 have a lunch meeting with Simmons to discuss the opportunity.<sup>191</sup> Wilkerson also told him the  
7 investment was a simple concept of investing principal, earning interest, then receiving the principal  
8 back and that it involved hotels.<sup>192</sup> Mr. Andrade does not recall receiving any documents from  
9 Wilkerson or Barcelona Advisors at the time.<sup>193</sup>

10 72. Mr. Andrade’s lunch meeting with Simmons occurred on December 23, 2013, at a  
11 restaurant in Scottsdale, Arizona.<sup>194</sup> Before this meeting, Mr. Andrade had not seen Simmons since  
12 the mid-1980s when they both worked at Intel Corporation.<sup>195</sup> Wilkerson also attended the lunch  
13 meeting with Mr. Andrade and Simmons.<sup>196</sup> During the meeting, Simmons discussed several  
14 businesses that he had successfully run since leaving Intel Corporation, which Mr. Andrade  
15 interpreted as Simmons vouching for the Barcelona Advisors opportunity and the value Simmons  
16 would bring to it.<sup>197</sup> Simmons told Mr. Andrade that Barcelona Advisors was an investment to build  
17 business-oriented hotels, and Simmons said this was an area of high growth that had a good  
18 opportunity for success.<sup>198</sup> Simmons also said that Barcelona Advisors was managed by Harkins,  
19 whom he said had a long, successful history in real estate businesses, which Mr. Andrade interpreted  
20 as Simmons signaling his confidence in Harkins.<sup>199</sup> Simmons said it was a good investment based  
21

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22 <sup>189</sup> S-31b; S-36; S-49; S-50; S-148

23 <sup>190</sup> T.377:4-18; T.420:10-11

24 <sup>191</sup> T.377:4-14; T.420:3-9

25 <sup>192</sup> T.277:22-T.378:2; T.404:15-23

26 <sup>193</sup> T.404:15-T.405:3

<sup>194</sup> T.378:13-23

<sup>195</sup> T.376:20-25; T.378:24-T.379:2

<sup>196</sup> T.405:9-T.406:3

<sup>197</sup> T.379:3-22

<sup>198</sup> T.379:23-T.380:3

<sup>199</sup> T.380:10-20; S-171

1 on the track record of the individuals involved, and he asked Mr. Andrade to invest.<sup>200</sup> Simmons also  
2 discussed having a follow-up meeting with Mr. Andrade in 2014.<sup>201</sup>

3 73. Following the lunch meeting, Simmons sent Mr. Andrade a follow-up e-mail on  
4 January 7, 2014, from a Barcelona Advisors e-mail address.<sup>202</sup> In the e-mail, Simmons invited Mr.  
5 Andrade to visit the Barcelona Advisors office to meet the team and “discuss our current capital  
6 raise.”<sup>203</sup> Mr. Andrade replied by e-mail the same day, said he was not available, and said, “Sorry,  
7 but I’m not in a position to make an investment at this time.”<sup>204</sup> That statement was Mr. Andrade’s  
8 response to Simmons’ request for an investment during the lunch meeting.<sup>205</sup>

9 74. In approximately late March 2014, Wilkerson stopped working as an investment  
10 advisor and joined Barcelona Advisors to find investors.<sup>206</sup>

11 75. Mr. Andrade eventually decided to invest in Barcelona Advisors, and he did so in  
12 April 2014 while in Arizona.<sup>207</sup> He decided to invest because of the high interest rate that Barcelona  
13 Advisors offered, and he considered it to be an investment.<sup>208</sup> He did not speak with anyone else  
14 from Barcelona Advisors before investing.<sup>209</sup> Before investing, Mr. Andrade had received the  
15 January 2014 PPM.<sup>210</sup>

16 76. Simmons signed Mr. Andrade’s subscription agreement for his investment.<sup>211</sup> Before  
17 signing it, Simmons called Harkins, who was away from the office, and asked for authorization to  
18 sign the subscription agreement.<sup>212</sup> It was unnecessary for Simmons to seek that authorization  
19  
20

21 <sup>200</sup> T.381:2-7; T.382:2-5; T.387:15-17

22 <sup>201</sup> T.387:1-4

23 <sup>202</sup> T.382:15-T.383:3

24 <sup>203</sup> S-171

25 <sup>204</sup> S-171

26 <sup>205</sup> T.387:7-17

<sup>206</sup> T.406:14-T.407:15

<sup>207</sup> T.388:44-17

<sup>208</sup> T.376:8-19; T.388:18-23

<sup>209</sup> T.377:1-3

<sup>210</sup> T.384:6-14; T.416:11-14

<sup>211</sup> S-76 p.46:18-p.48:2; S-77 at ACC986

<sup>212</sup> S-76 p.46:18-p.48:2

1 because he was already an authorized signatory for Barcelona Advisors, but Harkins told Simmons  
2 he could sign Andrade's subscription agreement if Andrade was a qualified investor.<sup>213</sup>

3 77. Mr. Andrade considers Simmons to be the person who introduced him to the  
4 investment and considers Wilkerson to have just made an introduction.<sup>214</sup>

5 78. The loss of his investment has caused Mr. Andrade financial hardship because it was  
6 almost twice as much as his current annual income, and it has reduced his retirement funds.<sup>215</sup>

7 79. Mrs. Stewart and Mr. Andrade's investment funds were used, in part, to make delayed  
8 payments that had been due on December 31, 2013, to investors in the 12-6-12 Offering.<sup>216</sup> On April  
9 16, 2014, thirteen days after Mrs. Stewart invested and the same day that Mr. Andrade invested, the  
10 Executive Members sent a letter to prior investors announcing that delayed payments on the 12-6-12  
11 Notes would be paid.<sup>217</sup>

12 80. Mrs. Stewart and Mr. Andrade invested a total of \$150,000 in the 10-5-10 Offering.<sup>218</sup>

13 81. They have not received any principal or interest payments for their investments.<sup>219</sup>

14 **H. May 2014 PPM**

15 82. Barcelona Land Company prepared an offering of LLC membership units and sought  
16 securities dealers to sell the offering.<sup>220</sup>

17 83. Barcelona Land Company prepared a PPM for the offering dated May 5, 2014 ("May  
18 2014 PPM").<sup>221</sup> The May 2014 PPM offered Barcelona Land Company membership interests with a  
19 total offering of \$10,000,000.<sup>222</sup> The May 2014 PPM forecasted 214% returns over four years.<sup>223</sup>  
20 Harkins was the primary drafter of the May 2014 PPM.<sup>224</sup>

21 \_\_\_\_\_  
22 <sup>213</sup> T.874:8-17

<sup>214</sup> T.420:1-9

<sup>215</sup> T.401:15-22

<sup>216</sup> S-26; S-27; S-32 p.91:11-p.92:20; S-65; S-98 p.138:13-23

<sup>217</sup> S-26; S-27

<sup>218</sup> S-31b

<sup>219</sup> T.228:17-19; T.397:9-14

<sup>220</sup> S-32 p.95:12-18

<sup>221</sup> S-59

<sup>222</sup> S-59 at ACC5818

<sup>223</sup> S-59 at ACC5831

<sup>224</sup> S-32 p.35:22-p.36:6

1           84.     Barcelona Land Company's stated business plan was to complete the entitlement of  
2 land parcels and sell the parcels to other entities that would build select service hotels on them.<sup>225</sup>

3           **I. June 2014 Offering and Investor**

4           85.     From at least June 11, 2014,<sup>226</sup> to June 16, 2014<sup>227</sup>, Harkins, Simmons, Barcelona  
5 Advisors, and Barcelona Land Company offered and sold a combination of promissory notes issued  
6 by Barcelona Advisors and investment contracts in the form of LLC membership units in Barcelona  
7 Advisors within and from Arizona (collectively the "June 2014 Offering").

8           86.     Harkins sent a letter dated June 11, 2014, ("June 2014 Offer Letter") and signed by  
9 Harkins to all existing investors in Barcelona Advisors.<sup>228</sup> The June 2014 Offer Letter offered  
10 promissory notes with a total offering of \$150,000, 10% annual interest, a 3% bonus, and a ninety  
11 day maturity date.<sup>229</sup> The June 2014 Offer Letter also offered LLC membership units in Barcelona  
12 Advisors based on the amount of the promissory notes.<sup>230</sup>

13           87.     All offerees of the June 2014 Offering had previously invested in the 12-6-12 Offering  
14 or the 10-5-10 Offering.<sup>231</sup>

15           88.     Mr. Andrade received the June 2014 Offer Letter by e-mail on June 13, 2014.<sup>232</sup> He  
16 then asked to meet with Harkins to better understand what was going on at Barcelona Advisors.<sup>233</sup>  
17 On June 15, 2014, Mr. Andrade met at Barcelona Advisors' office with Harkins and Simmons, who  
18 were both present for the entire meeting.<sup>234</sup> On cross examination, Mr. Andrade confirmed that he  
19 was absolutely certain that Simmons was at the June 15, 2014, meeting.<sup>235</sup>

20  
21  
22 <sup>225</sup> S-59 at ACC5853-5854

23 <sup>226</sup> S-60 at ACC5410

24 <sup>227</sup> S-51 at ACC5408-5409

25 <sup>228</sup> S-32 p.96:5-12; S-60

26 <sup>229</sup> S-60

<sup>230</sup> S-60

<sup>231</sup> S-60

<sup>232</sup> T.389:5-9

<sup>233</sup> T.389:7-9

<sup>234</sup> T.389:10-25

<sup>235</sup> T.411:8-11

1           89.     At the June 15, 2014, meeting, Andrade wanted to know why Barcelona Advisors  
 2 was pleading for money two months after he first invested.<sup>236</sup> He also wanted to know how Barcelona  
 3 Advisors' overall program was going and whether his first investment was likely to be paid back.<sup>237</sup>  
 4 Harkins discussed his past business successes and said he was very optimistic that new investments  
 5 would arrive and that the money Barcelona Advisors was requesting was just to pay the staff until  
 6 they received the new investments.<sup>238</sup> Harkins told Mr. Andrade not to let Barcelona Advisors'  
 7 request for more money worry him.<sup>239</sup> Mr. Andrade asked for more information about the business  
 8 plan so he could consider the likelihood of Barcelona Advisors' success, and in response Harkins  
 9 gave him a copy of Barcelona Land Company's May 2014 PPM.<sup>240</sup> During the meeting, Simmons  
 10 affirmed that things were okay and that there was no reason for Mr. Andrade to be worried.<sup>241</sup>

11           90.     Mr. Andrade was still worried, but he was convinced enough to invest \$5,000 in the  
 12 June 2014 Offering on June 16, 2014.<sup>242</sup> He considered it to be an investment.<sup>243</sup>

13           91.     Mr. Andrade has not received any principal or interest payments for his investment  
 14 in the June 2014 Offering.<sup>244</sup>

15           **J. Restitution**

16           92.     The investors named above invested a total of \$1,405,000 in Barcelona Advisors  
 17 securities, and have received payments totaling \$86,876.<sup>245</sup> Accordingly, principal in the amount of  
 18 \$1,318,124 has not been paid to the investors.<sup>246</sup>

22           <sup>236</sup> T.390:1-5

23           <sup>237</sup> T.390:1-8

24           <sup>238</sup> T.390:9-17

25           <sup>239</sup> T.390:18-25

26           <sup>240</sup> T.392:2-14; T.418:5-15

<sup>241</sup> T.391:1-5

<sup>242</sup> T.391:6-10; S-31b; S-51; S-52; S-169

<sup>243</sup> T.376:8-19

<sup>244</sup> T.397:9-14

<sup>245</sup> S-31b

<sup>246</sup> S-31b

1        **K. 8-8 Offering Integration**

2            93.        Barcelona Advisors made another promissory note offering within and from Arizona  
3 in mid-2013 known as the 8-8 offering (“8-8 Offering”). The “8-8” name referred to the terms of the  
4 notes, which offered 8% annual interest on the notes and 8% bonus interest.<sup>247</sup>

5            94.        The purpose of both the 12-6-12 Offering and the 8-8 Offering was to raise working  
6 capital for Barcelona Advisors.<sup>248</sup>

7            95.        After Ms. Burluson’s May 31, 2013, investment in the 12-6-12 Offering, neither  
8 Kerrigan nor anyone else appeared to have more prospective investors.<sup>249</sup> Therefore Harkins decided  
9 to try a new offering pursuant to R14-4-140.<sup>250</sup> R14-4-140 only allows raising a total of \$1,000,000  
10 within a twelve month period, so because Barcelona Advisors had already raised money under the  
11 12-6-12 Offering, and because he knew the two offerings would be integrated, the 8-8 Offering was  
12 limited to \$500,000.<sup>251</sup>

13            96.        Barcelona Advisors advertised the 8-8 Offering in a series of Arizona Republic  
14 newspaper advertisements from July 17, 2013, to September 4, 2013, but did not make any sales of  
15 notes from the 8-8 Offering.<sup>252</sup>

16            97.        Barcelona Advisors did not prepare a PPM specifically for the 8-8 Offering, but if  
17 there had been any interest Barcelona Advisors could have prepared one quickly because it would  
18 have been very similar to Barcelona Advisors’ other PPMs.<sup>253</sup>

19            98.        In September 2013, Kerrigan said he had some potential investors who might be ready  
20 to invest, so Harkins stopped the 8-8 advertisements, and Barcelona Advisors instead sold three more  
21 investments in the 12-6-12 Offering.<sup>254</sup>

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23  
24  
25  
26  

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<sup>247</sup> T.806:12–20

<sup>248</sup> T.927:19–T.929:14

<sup>249</sup> T.806:21–4

<sup>250</sup> T.807:4–13

<sup>251</sup> T.807:4–13; T.929:23–T.930:2

<sup>252</sup> T.807:13–15; T.807:19–21; S-25 at ACC6214, 6235

<sup>253</sup> T.807:22–T.808:1

<sup>254</sup> T.808:2–19

1       **L. Patrick McDonough**

2           99.     Patrick McDonough (“McDonough”) was an independent contractor who worked for  
3 Barcelona Advisors from November 1, 2013, to June 12, 2014.<sup>255</sup> His job was to develop a network  
4 of broker-dealers for the purpose of raising capital, but he had no experience that would qualify him  
5 to work with broker-dealers.<sup>256</sup> He had previously worked as an executive director of the Susan G.  
6 Komen Foundation, which has a reputation for being associated with wealthy volunteers and  
7 prominent business people.<sup>257</sup> He thought that Barcelona Advisors was interested in his access to  
8 such people, which Harkins confirmed.<sup>258</sup>

9           100.   Harkins encouraged McDonough to bring Barcelona Advisors’ PPM to anyone  
10 interested in investing.<sup>259</sup> Simmons also encouraged him to bring the PPM to investors, but Simmons  
11 was less aggressive and more cautious about who McDonough should give the PPM to.<sup>260</sup>

12           101.   McDonough eventually gave three people the PPM.<sup>261</sup> He was not comfortable giving  
13 it to them, but he felt pressured by Harkins to do it.<sup>262</sup> No one else from Barcelona Advisors was  
14 familiar with the personal finances of the three people he gave the PPM to.<sup>263</sup>

15           102.   McDonough was very concerned about the nature of the investment in the PPM.<sup>264</sup>  
16 He expressed his concern to Simmons, who just smiled and nodded his head.<sup>265</sup>

17       **M. Harkins**

18           103.   Harkins claimed that in his opinion he was the only control person of Barcelona  
19 Advisors.<sup>266</sup> However, in his answer to the Amended T.O. and Notice, Harkins denied that he ever  
20

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21       <sup>255</sup> T.60:4–19; T.64:1

22       <sup>256</sup> T.61:10–13; T.62:13–15

23       <sup>257</sup> T.61:16–T.62:9

24       <sup>258</sup> T.62:9–10; T.961:6–15

25       <sup>259</sup> T.77:18–T.78:10. McDonough was referring here to S-58, the January 2014 PPM for the 10-5-10 Offering, but he  
26 clarified later that his recollection is that it was a PPM for the 12-6-12 Offering that he was using. See T.140:9–25;  
T.149:10–17

27       <sup>260</sup> T.78:6–19

28       <sup>261</sup> T.79:6–17

29       <sup>262</sup> T.79:18–T.80:16

30       <sup>263</sup> T.80:17–21

31       <sup>264</sup> T.81:6–9

32       <sup>265</sup> T.81:9–14

33       <sup>266</sup> T.902:9–12

1 directly or indirectly controlled Barcelona Advisors.<sup>267</sup> He also admitted that Kerrigan, Simmons,  
2 and Orr were involved in the management of Barcelona Advisors, as evidenced by an e-mail he wrote  
3 describing their collaboration to develop and execute a plan to save the company.<sup>268</sup>

4 104. Harkins was previously the President, CEO, and Chairman of the Board of Arizona  
5 Village Communities, LLC, (“AVC”) a real estate company with a venture to develop four upscale  
6 housing communities.<sup>269</sup> The AVC real estate venture failed<sup>270</sup>, three of the companies controlled by  
7 Harkins that were related to the venture filed for protection under the U.S. Bankruptcy Code, Chapter  
8 11, with petitions signed by Harkins,<sup>271</sup> and the Arizona State Land Department cancelled the  
9 acquisition of the land for the fourth company related to the venture for nonpayment.<sup>272</sup> The AVC  
10 venture failed despite having raised over \$10,000,000 for the venture from Arizona investors.<sup>273</sup>

11 105. At Barcelona Advisors, Harkins was closely assisted by employee Paul Meka  
12 (“Meka”).<sup>274</sup> Meka was also a felon convicted of misprision of a felony in November 2010 for his  
13 role in an investment fraud scheme in which Meka was paid to “rubber stamp” documents that his  
14 superiors used to defraud investors.<sup>275</sup> Since June 19, 2006, Meka has been subject to a Maricopa  
15 Superior Court judgment permanently enjoining him from violating the Arizona Securities Act and  
16 ordering him to pay \$81,000 in disgorgement to investors.<sup>276</sup> Meka functioned like an office  
17 manager, maintained Barcelona Advisor’s files, and stored and printed PPMs.<sup>277</sup> Meka also had  
18 experience evaluating land parcels and commercial property, and Barcelona Advisors expected Meka  
19 to eventually have a significant role in the company to help locate land parcels, evaluate them, and  
20 do land entitlement work.<sup>278</sup>

21  
22 <sup>267</sup> T.904:5–24; S-183 p.18–19

<sup>268</sup> S-74; T.913:21–T.916:10

<sup>269</sup> T.783:14–16; S-32 p.16:14–18, p.44:24–p.46:11; S-57 at ACC751

<sup>270</sup> S-18 at ACC4174–4175; S-21 at ACC3863–3864

<sup>271</sup> S-15; S-16; S-17

<sup>272</sup> S-32 p.44–45; S-61

<sup>273</sup> S-32 p.47:25–p.48:8

<sup>274</sup> T.860:23–T.861:1

<sup>275</sup> S-20a p.11; S-20b

<sup>276</sup> S-14b

<sup>277</sup> T.94:8–19; T.350:20–T.351:6.

<sup>278</sup> T.861:22–T.862:3; S-76 p.101–102; S-136 p.27

1           106. In April 2015, Harkins sent a letter to the Barcelona Advisors investors explaining  
2 some of the background of Barcelona Advisors' failure.<sup>279</sup> In the letter, he explained that when the  
3 plan to acquire hotels with a \$50,000,000 fund failed because the company was unable to raise that  
4 money, Barcelona Advisors went into "Plan B" mode, which was the plan to instead focus on  
5 developing new hotels with entities like Barcelona Land Company.<sup>280</sup>

6           **N. Kerrigan**

7           107. Barcelona Advisors relied primarily on Kerrigan to raise working capital.<sup>281</sup>  
8 Barcelona Advisors did not, however, monitor what Kerrigan told investors about the company, and  
9 Barcelona Advisors had no guidelines regarding what salesmen were required to tell investors.<sup>282</sup>

10           108. Kerrigan claimed in his EUO that it was not his responsibility to bring in capital and  
11 that the full extent of his role and the only reason he joined Barcelona Advisors was to manage a  
12 \$70,000,000 fund that was supposed to be raised by someone else.<sup>283</sup> However, Kerrigan admitted  
13 at the hearing that, "I was there to help bring in some working capital ...."<sup>284</sup>

14           109. In 2007, Kerrigan was involved in a divorce proceeding and reached a settlement  
15 agreement with his ex-wife.<sup>285</sup> As part of the settlement, he agreed to make three installment  
16 payments of \$69,333.33 to buy out his ex-wife's interest in his wealth management company.<sup>286</sup> He  
17 also agreed to get a bank line of credit to secure the payments.<sup>287</sup> Kerrigan failed to make the final  
18 installment payment on June 30, 2009, and accordingly Kerrigan's ex-wife went to the National Bank  
19 of Arizona ("the Bank") and drew on the line of credit.<sup>288</sup> Kerrigan refused to repay the line of credit  
20 on the theory that his ex-wife was not authorized to draw on the line of credit and the Bank had erred

21 \_\_\_\_\_  
22 <sup>279</sup> S-67

<sup>280</sup> S-67 at ACC5499

<sup>281</sup> T.972:17-21

<sup>282</sup> T.1201:25-1202:4; S-98 p.47:6-21, p.48:23-p.49:1

<sup>283</sup> S-98 p.39:14-22; S-98 p.151:15-p.152:3

<sup>284</sup> T.139:21-T.140:3

<sup>285</sup> S-98 p.157:11-p.158:9; S-120

<sup>286</sup> S-98 p.158:10-15; S-120 p.15

<sup>287</sup> S-98 p.158:19-p.159:18; S-120 p.15

<sup>288</sup> S-121 p.2. Kerrigan claims that he had already made the final installment payment and that his ex-wife was not entitled to any further payment, but Kerrigan's own attorney conceded otherwise in S-121, a counterclaim filed on Kerrigan's behalf. See S-98 p.159:20-p.161:14; S-121 p.2

1 in allowing her to.<sup>289</sup> The Bank sued Kerrigan, and a Superior Court judge ruled in favor of the Bank  
 2 on summary judgment, finding that the Bank “did no more than pay [Kerrigan’s] ex-wife what  
 3 [Kerrigan] agreed that she be paid by him in his dissolution action.”<sup>290</sup> The Superior Court entered a  
 4 judgment against Kerrigan for \$88,392.58.<sup>291</sup> Kerrigan reached a settlement agreement with the Bank  
 5 in which he paid only \$23,500.<sup>292</sup>

6 110. In 2010, Kerrigan owed approximately \$80,000–\$90,000 for his taxes.<sup>293</sup> On July 16,  
 7 2014, the Internal Revenue Service filed a lien for \$22,909.36 that Kerrigan still owed for his 2010  
 8 taxes.<sup>294</sup>

9 111. In February 2013, Kerrigan made two investments of \$30,000 in Barcelona advisors,  
 10 and Barcelona Advisors issued him two notes with maturity dates of June 30, 2013.<sup>295</sup> However,  
 11 Barcelona Advisors never repaid the principal on these notes to Kerrigan.<sup>296</sup>

12 112. Harkins claimed that Barcelona Advisors did not repay these notes to Kerrigan  
 13 because he and Kerrigan knew at the time that the operating agreement did not permit repayment.<sup>297</sup>  
 14 This is false. Harkins was not aware of that operating agreement provision until September 15, 2015,  
 15 the day of his EUO.<sup>298</sup> He testified in his EUO that he did not discover that provision of the operating  
 16 agreement until the lunch break that day.<sup>299</sup>

17 113. Kerrigan invested another \$70,000 in Barcelona Advisors, and on October 1, 2013,  
 18 Barcelona Advisors issued a \$70,000 promissory note to Kerrigan promising that, “Principal and any  
 19 earned and unpaid interest shall be paid from proceeds received by [Barcelona Advisors] from new  
 20  
 21

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22 <sup>289</sup> S-122

23 <sup>290</sup> S-123 at ACC6167

24 <sup>291</sup> K-2 p.1

25 <sup>292</sup> K-2 p.4–5

26 <sup>293</sup> S-98 p.102:10–20

<sup>294</sup> S-98 p.101:25–p.102:20; S-100

<sup>295</sup> S-133; S-134

<sup>296</sup> S-98 p.18:2–p.184:12; S-133; S-134

<sup>297</sup> T.937:22–T.938:12

<sup>298</sup> S-32 p.139:6–25

<sup>299</sup> S-32 p.139:6–25

1 investors in the ... 12-6-12 Note Offering.”<sup>300</sup> Barcelona Advisors, however, never made any  
2 payments to Kerrigan for this note.<sup>301</sup>

3 114. FFEC, the dealer with which Kerrigan was registered, did not approve Kerrigan’s sale  
4 of any of Barcelona Advisors’ securities, and Kerrigan’s sales of its securities were not recorded on  
5 the records of FFEC.<sup>302</sup>

6 115. Barcelona Advisors investors Mr. and Mrs. Eaves, Ms. Burluson, Mr. Woods, Mr.  
7 Ramirez, and Mrs. Stewart were all clients of Kerrigan and FFEC.<sup>303</sup>

8 116. Kerrigan has consented to an indefinite bar from association with any member of the  
9 Financial Industry Regulatory Authority (“FINRA”) in any capacity, which became effective on May  
10 11, 2016.<sup>304</sup> The consent was based on FINRA’s allegation that Kerrigan refused to produce  
11 documents or information in response to a FINRA request, contrary to FINRA rules.<sup>305</sup>

12 **O. Simmons**

13 117. Simmons claimed he did not start working at Barcelona Advisors until approximately  
14 mid-July 2013.<sup>306</sup> However, Simmons was listed as an Executive Member and had a biography in  
15 the February 2013 PPM and April 2013 PPM, and Harkins listed Simmons as a Barcelona Advisors  
16 manager in an April 12, 2013, corporate filing.<sup>307</sup> Harkins also listed Simmons as an Executive  
17 Member in a January 11, 2013, e-mail.<sup>308</sup> Harkins also listed Simmons as an Executive Member and  
18 addressee of a March 26, 2013, Barcelona Advisors memo, which Simmons himself produced to the  
19 Division.<sup>309</sup>

20 118. Simmons viewed the role of the Executive Members as protecting the interests of the  
21 non-voting members of Barcelona Advisors.<sup>310</sup>

22 <sup>300</sup> S-98 p.184:13–p.185:7; S-135

23 <sup>301</sup> S-98 p.184:13–p.185:7

24 <sup>302</sup> S-98 p.65:9–p.66:1, p.71:14–17; T.1083:13–20

25 <sup>303</sup> S-98 p.57:24–p.58:24, p.59:7–22, p.60:4–22, p.97:23–p.98:13; S-99 at ACC6211

26 <sup>304</sup> S-175

<sup>305</sup> S-175

<sup>306</sup> T.1139:20–T.1140:14

<sup>307</sup> S-3b; S-5 at ACC7229-7230; S-57 at ACC751–752

<sup>308</sup> S-170

<sup>309</sup> S-24; T.643:11–12

<sup>310</sup> T.1175:16–24

1           119. Simmons claimed that Harkins asked the other Executing Members for opinions but  
2 that no formal votes were taken.<sup>311</sup> McDonough attended meetings where Harkins, Kerrigan,  
3 Simmons, and Orr were all present and where issues were discussed and decisions were made.<sup>312</sup>

4           120. Simmons appeared to McDonough to be aware of everything that went on at  
5 Barcelona Advisors and to be part of the decision-making process.<sup>313</sup>

6           121. Simmons claimed that he never held himself out to investors as an Executive Member,  
7 but he signed Barcelona Advisors' December 31, 2013, letter to existing investors as an Executive  
8 Member.<sup>314</sup> He claimed that he did not read the letter before he signed it.<sup>315</sup> However, he previously  
9 admitted that he had paraphrased the contents of the same letter to Orr when seeking permission to  
10 sign the letter on Orr's behalf.<sup>316</sup>

11           122. Simmons' role at Barcelona Advisors included company administration, coordinating  
12 the activities of others, and developing a management-by-objectives program.<sup>317</sup> He put the  
13 administrative structure into place so that Barcelona Advisors could operate.<sup>318</sup> Simmons denied that  
14 he supervised employees.<sup>319</sup> However, regarding his job duties, Simmons testified that, "... you just  
15 have to know what people are doing and make sure they are doing their job."<sup>320</sup>

16           123. Simmons sometimes took the lead in working on arrangements or relationships with  
17 third parties that were required for USA Barcelona to do business.<sup>321</sup>

18           124. Simmons signed McDonough's independent contractor agreement as Chief Operating  
19 Officer of Barcelona Advisors.<sup>322</sup> He also signed a job offer letter to McDonough as Chief Operating  
20

21 \_\_\_\_\_  
22 <sup>311</sup> T.1174:22-T.1175:12

23 <sup>312</sup> T.144:18-21; T.151:18-T.152:13

24 <sup>313</sup> T.87:23-T.88:5; T.154:2-4

25 <sup>314</sup> S-65; T.1196:7-T.1197:10

26 <sup>315</sup> S-65; T.1196:14-24

<sup>316</sup> S-65; S-108; T.1180:23-T.1181:10

<sup>317</sup> T.1178:14-T.1179:1; T.1184:1-18

<sup>318</sup> T.1183:18-22

<sup>319</sup> T.1143:2-6

<sup>320</sup> T.1141:21-T.1142:6

<sup>321</sup> T.1186:24-T.1187:2

<sup>322</sup> T.125:2-5; H-6 pp.5, 8, 12

1 Officer.<sup>323</sup> Simmons also signed Mr. Eaves' independent contractor agreement, and it was Simmons  
 2 who offered him the job.<sup>324</sup> Simmons also signed Orr's expense reports.<sup>325</sup>

3 125. Simmons claimed that he never reviewed any of Barcelona Advisors' offering  
 4 documents and he had no role in creating the PPMs.<sup>326</sup> However, Simmons gave Harkins major input  
 5 about draft PPMs including reviewing, editing, and giving his opinions.<sup>327</sup>

6 126. Simmons claimed he knew that Barcelona Advisors was funded by investments in a  
 7 note but, "I don't know anything about how it was sold or organized or any of that, because I had no  
 8 involvement in it."<sup>328</sup> However, Simmons admitted that he was shown final PPMs that were going  
 9 to be used to solicit investors.<sup>329</sup> And in an e-mail to McDonough, Simmons wrote, "... it will be  
 10 extremely important to get you indoctrinated as quickly as possible such that you can represent the  
 11 two entities accurately and convincingly (who we are, what we are, where we are and where we are  
 12 going) to potential investors. So Dick and I, and others as required, will spend the time with you to  
 13 accomplish that."<sup>330</sup>

14 127. Simmons and Harkins had practice sessions with McDonough and Wilkerson to  
 15 rehearse what they would say to potential investors.<sup>331</sup> McDonough and Wilkerson role-played  
 16 presentations with Harkins and Simmons pretending to be potential investors.<sup>332</sup> Harkins and  
 17 Simmons then critiqued their presentations, pointed out things they should have said about the  
 18 investments, and suggested what they could say to make the investment seem more attractive.<sup>333</sup>  
 19 McDonough observed from these sessions that Simmons understood the investment product as well  
 20  
 21

22 <sup>323</sup> T.1198:8-17

23 <sup>324</sup> T.372:2-5; T.374:3-14; T.1193:22-25; T.1194:18-T.1196:2

24 <sup>325</sup> T.721:24-25

25 <sup>326</sup> S-76 p.55:18-22; T.1146:21-T.1147:1

26 <sup>327</sup> S-32 p.35:22-p.36:8; T.736:8-12

<sup>328</sup> S-76 p.23:9-23

<sup>329</sup> T.1200:4-10

<sup>330</sup> S-176; T.1203:20-1204:13

<sup>331</sup> T.89:7-20

<sup>332</sup> T.89:20-22

<sup>333</sup> T.89:24-T.90:5

1 as Harkins did.<sup>334</sup> Simmons conceded that on two or three occasions he joined Harkins to critique  
 2 McDonough's ability to explain Barcelona Advisors and make a presentation.<sup>335</sup>

3 128. Simmons claimed he did not know the contents of the note and never reviewed a  
 4 note.<sup>336</sup> Orr testified, however, that everyone in Barcelona Advisors knew the basic terms of the 12-  
 5 6-12 Notes because they were discussed at staff meetings and that Simmons was sometimes present  
 6 for meetings discussing the 12-6-12 Notes.<sup>337</sup>

7 129. Simmons claimed he had "absolutely no involvement in raising capital."<sup>338</sup> He also  
 8 claimed he was never directly involved in soliciting any investors or selling any investments, apart  
 9 from signing one subscription agreement.<sup>339</sup> However, several time per week at staff meetings,  
 10 Simmons suggested potential investors from among his contacts and discussed potential investors he  
 11 had spoken to who declined to invest.<sup>340</sup>

12 130. Barcelona Advisors sought investors through Harkins', Simmons', and Orr's  
 13 contacts.<sup>341</sup> Orr's impression was that Simmons was making investment presentations, and he  
 14 thought Simmons reached out to high net worth friends through the Paradise Valley Country Club.<sup>342</sup>

15 131. Simmons once told McDonough that he had contacts from the Paradise Valley  
 16 Country Club that they could approach about investing, and he asked for McDonough's help to  
 17 approach them, but McDonough never followed up about that.<sup>343</sup>

18 132. Simmons' testimony contrasted with Mr. Andrade's. Simmons claimed that it was  
 19 Mr. Andrade who asked Wilkerson to schedule their lunch meeting.<sup>344</sup> At the time of the meeting,  
 20 Wilkerson, who was Mr. Andrade's investment advisor, had already decided to join USA Barcelona  
 21

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22 <sup>334</sup> T.90:6-8

23 <sup>335</sup> T.1185:1-15

24 <sup>336</sup> S.76 p.99:14-18

25 <sup>337</sup> S-177; T.736:25-T.737:23

26 <sup>338</sup> S-76 p.13:6-7

<sup>339</sup> T.1180:4-8

<sup>340</sup> T.318:13-T.320:19

<sup>341</sup> S-98 p.28:13-17

<sup>342</sup> S-136 p.31:12-19, p.16:25-p.17:2

<sup>343</sup> T.92:1-16; T.139:5-17

<sup>344</sup> T.1167:23-T.1169:25

1 advisors but chose to defer his start date.<sup>345</sup> Simmons agreed that Wilkerson attended the lunch  
 2 meeting with Mr. Andrade, but he claimed that this meeting with Mr. Andrade and Mr. Andrade's  
 3 investment advisor was a purely social meeting so he and Mr. Andrade could catch up and that  
 4 investing in Barcelona Advisors was not discussed.<sup>346</sup> He claimed he told Wilkerson that any  
 5 discussion about investing should be with Harkins, but as far as Simmons knows, Mr. Andrade never  
 6 spoke with Harkins before his April 2014 investment.<sup>347</sup> Simmons denied being present for Mr.  
 7 Andrade's June 2014 meeting with Harkins.<sup>348</sup>

8 133. In Mr. Simmons' EUO testimony, he did not mention the lunch meeting with Mr.  
 9 Andrade at all, and he instead testified that their social meeting to catch up happened the same day  
 10 that Mr. Andrade invested.<sup>349</sup> At the hearing, Simmons claimed that he was confused about the order  
 11 that those meetings took place.<sup>350</sup>

12 134. Simmons also claimed he never spoke with Mr. Eaves about investing in Barcelona  
 13 Advisors.<sup>351</sup>

14 **P. Orr**

15 135. Orr claimed he did not become an Executive Member until the summer of 2013.<sup>352</sup>  
 16 However, Orr was listed as an Executive Member and had a biography in the February 2013 PPM  
 17 and April 2013 PPM, and Harkins listed Orr as a Barcelona Advisors manager in an April 12, 2013,  
 18 corporate filing.<sup>353</sup> Harkins also listed Orr as an Executive Member and addressee of a March 26,  
 19 2013, Barcelona Advisors memo.<sup>354</sup>

20 136. Orr was told that the Executive Members would be "driving the company."<sup>355</sup> He  
 21 testified at the hearing that he was not told that the Executive Members would decide major

22 <sup>345</sup> T.1205:13-22

23 <sup>346</sup> T.1170:1-13; T.1207:6-14

24 <sup>347</sup> T.1211:20-T.1212:2

25 <sup>348</sup> T.1173:12-24. Harkins did not recall Simmons attending this meeting. See T.1258:8-16

26 <sup>349</sup> S-76 p.47:2-p.48:10

<sup>350</sup> T.1217:8-T.1218:3

<sup>351</sup> T.1164:21-23

<sup>352</sup> T.709:11-19

<sup>353</sup> S-3b; S-5 at ACC7229-7230; S-57 at ACC751-752

<sup>354</sup> S-24

<sup>355</sup> T.731:12-13

1 decisions.<sup>356</sup> But his EUO testimony, which he admitted was true, was that he was told that Executive  
 2 Members would handle major decisions.<sup>357</sup> He also knew the Executive Members were able to hire  
 3 the President.<sup>358</sup>

4 137. Orr testified that the Executive Members “never really had executive member  
 5 meetings to talk about major issues,” and that only one formal vote was taken.”<sup>359</sup> However,  
 6 approximately every month or two, Harkins informed the other Executive Members about things he  
 7 planned to do, and he asked for their opinions to gauge whether his plans would pass if put to a  
 8 formal vote.<sup>360</sup>

9 138. Until approximately mid-2013, Orr gave Harkins his opinions on Barcelona Advisors’  
 10 draft PPMs.<sup>361</sup> He opined on how Harkins was presenting financial information in the PPMs, and he  
 11 opined that Harkins was including fees in the financials that would make projects look more  
 12 profitable to Barcelona Advisors but would be a burden to the projects.<sup>362</sup> Harkins said Orr gave  
 13 major input on draft PPMs.<sup>363</sup>

14 139. Orr and the other Executive Members discussed the interest rates and bonuses of the  
 15 12-6-12 Notes and the 10-5-10 Notes, and Orr knew that Barcelona Advisors planned to use those  
 16 notes to raise money from investors.<sup>364</sup>

17 140. Orr does not know what information was provide to investors.<sup>365</sup> He did nothing to  
 18 supervise what Barcelona Advisors representatives told investors, and he did nothing to establish any  
 19 internal controls over what Barcelona Advisors did regarding investors.<sup>366</sup>

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22 <sup>356</sup> T.731:8-15

23 <sup>357</sup> T.732:17-T.733:5

24 <sup>358</sup> T.734:8-13

25 <sup>359</sup> S-136 p. 22:12-15, p.23:25-p.24:5

26 <sup>360</sup> S-136 p.24:18-p.25:11

<sup>361</sup> T.736:8-12; S-136 p.17:8-22

<sup>362</sup> T.736:8-24

<sup>363</sup> S-32 p.35:22-p.36:8

<sup>364</sup> T.738:5-12; T.739:3-14

<sup>365</sup> T.744:1-4

<sup>366</sup> T.743:14-25



1 PPM recipients Ms. Bair, Mr. Eaves, Mr. Woods, Mr. Jordan, and Mr. Ramirez.<sup>377</sup> Harkins,  
 2 Barcelona Advisors, and Barcelona Land Company made the same statement to Mr. Andrade through  
 3 the May 2014 PPM.<sup>378</sup> Kerrigan also made this statement to Mr. Jordan and Mr. Ramirez through  
 4 the April 2013 PPM.<sup>379</sup> Kerrigan and Barcelona Advisors stated to Mrs. Stewart through advertising  
 5 materials Kerrigan gave her that Harkins had over 40 years of background with developing,  
 6 ownership, and property management and “top-level” experience in the real estate industry.<sup>380</sup>  
 7 Simmons stated to Mr. Andrade that Harkins had a long, successful history in real estate businesses,  
 8 and Harkins also stated to Mr. Andrade that he had a history of business successes.<sup>381</sup>

9 146. Mr. Woods, Mr. Jordan, Mrs. Stewart, and Mr. Andrade were not informed before  
 10 they invested about the failure of the AVC real estate venture.<sup>382</sup> Mr. Eaves was not informed of this  
 11 before his first four investments.<sup>383</sup> If they had known, it would have been significant to their  
 12 decisions whether or not to invest.<sup>384</sup> Although Mr. Eaves learned about this before making his fifth  
 13 and sixth investments, he felt at that point that he needed to invest anyway to protect his first four  
 14 investments.<sup>385</sup> Even Orr knew nothing about the AVC venture except that it was part of Harkins’  
 15 work experience.<sup>386</sup>

### 16 Meka Conviction

17 147. Harkins and Barcelona Advisors stated through the February 2013 PPM and April  
 18 2013 PPM that Harkins was the President or Manager of Barcelona Advisors.<sup>387</sup> This statement was  
 19 made to PPM recipients Mr. Eaves, Mr. Woods, Mr. Jordan, and Mr. Ramirez.<sup>388</sup> Kerrigan also made  
 20

21 <sup>377</sup> T.161:6–12; T.162:13–T.163:2; T.193:12–T.194:1; T.667:24–T.668:7; T.844:3–4; T.1028:18–T.1029:1;  
 T.1064:18–T.1065:1

22 <sup>378</sup> S-59 at ACC5875

23 <sup>379</sup> T.161:6–12; T.162:13–T.163:2; T.1028:18–T.1029:1

24 <sup>380</sup> T.269:16–24; S-174 p.15

25 <sup>381</sup> T.380:10–20; T.390:9–17

26 <sup>382</sup> T.132:10–22; T.229:15–24; T.397:15–T.398:1; T.664:15–21; T.1222:20–25

<sup>383</sup> T.303:23–T.305:21

<sup>384</sup> T.132:10–22; T.229:15–24; T.303:23–T.304:8; T.397:15–T.398:1; T.664:15–21

<sup>385</sup> T.304:24–T.306:3

<sup>386</sup> S-136 p.33–p.34:3

<sup>387</sup> S-5 at ACC7214; S-57 at ACC737

<sup>388</sup> T.161:6–12; T.162:13–T.163:2; T.193:12–T.194:1; T.667:24–T.668:7; T.1028:18–T.1029:1; T.1064:18–T.1065:1

1 this statement to Mr. Jordan and Mr. Ramirez through the April 2013 PPM.<sup>389</sup> Kerrigan and  
 2 Barcelona Advisors also stated to Mrs. Stewart through advertising materials Kerrigan gave her that  
 3 Harkins was the President of Barcelona Advisors.<sup>390</sup> Simmons stated to Mr. Andrade that Harkins  
 4 managed Barcelona Advisors.<sup>391</sup>

5 148. Mr. Woods, Mr. Jordan, Mr. Ramirez, Mrs. Stewart, and Mr. Andrade were not  
 6 informed before they invested that Harkins was closely assisted by Meka, a felon convicted in  
 7 connection with an investment fraud scheme.<sup>392</sup> If Mr. Woods, Mr. Jordan, Mrs. Stewart, and Mr.  
 8 Andrade had known, it would have been significant to their decisions whether or not to invest.<sup>393</sup>  
 9 Even if Meka had only a clerical role, Mr. Jordan might not have invested if he had known.<sup>394</sup>

10 149. Eaves was not informed of Meka's background before making his first five  
 11 investments.<sup>395</sup> That would have been significant to his decisions to invest, and Eaves would not  
 12 have made his first five investment if he had known about Meka, regardless of whether Meka had  
 13 only a clerical role.<sup>396</sup> After learning about Meka, Eaves made his sixth investment to protect his first  
 14 five investments.<sup>397</sup>

### 15 **Kerrigan Debts**

16 150. Harkins and Barcelona Advisors stated through the February 2012 PPM and April  
 17 2012 PPM that, "For the past 45 years [Kerrigan] has been active in the financial services industry  
 18 both as a provider of financial services to private clients and through ownership and management of  
 19 several privately held companies both in manufacturing and service distribution."<sup>398</sup> This statement  
 20 was made to PPM recipients Mr. Eaves, Mr. Woods, and Mr. Jordan.<sup>399</sup> Harkins and Barcelona

21 <sup>389</sup> T.161:6-12; T.162:13-T.163:2; T.1028:18-T.1029:1

22 <sup>390</sup> T.269:16-24; S-174 p.15

23 <sup>391</sup> T.380:10-14

24 <sup>392</sup> T.173:23-T.174:10; T.229:25-T.230:10; T.398:2-14; T.664:22-T.665:3; T.1223:1-5. There are no statements in  
 the record from Mr. Ramirez, but Harkins testified that none of the investors were told about Meka's involvement. See  
 S-32 p.81:10-13

25 <sup>393</sup> T.173:23-T.174:10; T.229:25-T.230:10; T.398:2-14; T.664:22-T.665:3

26 <sup>394</sup> T.184:18-T.185:1

<sup>395</sup> T.306:4-T.307:12

<sup>396</sup> T.306:4-T.307:12; T.350:18-T.351:11

<sup>397</sup> T.306:4-T.307:12

<sup>398</sup> S-5 at ACC7230; S-57 at ACC752

<sup>399</sup> T.161:6-12; T.162:13-T.163:2; T.193:12-T.194:1; T.667:24-T.668:7; T.1064:18-T.1065:1

1 Advisors made the same statement to Mr. Andrade through the January 2014 PPM.<sup>400</sup> Kerrigan also  
 2 made this statement to Mr. Jordan and Mr. Ramirez through the April 2013 PPM and to Mrs. Stewart  
 3 through advertising materials he gave her.<sup>401</sup>

4 151. Mr. Eaves, Mr. Woods, Ms. Carolin, and Mr. Jordan were not informed before they  
 5 invested about the loan that a bank sued Kerrigan for or about the tax debt Kerrigan had still not fully  
 6 paid.<sup>402</sup> If Ms. Carolin and Mr. Jordan had known, it would have been significant to their decisions  
 7 whether or not to invest.<sup>403</sup> Even if the circumstances were as innocuous as Kerrigan claimed, Mr.  
 8 Jordan would have wanted to know about them.<sup>404</sup> It might have been significant to Eaves' decisions  
 9 to invest, and he would have questioned Kerrigan about the circumstances.<sup>405</sup> Woods would also  
 10 have wanted to talk to Kerrigan about the circumstances.<sup>406</sup>

#### 11 **Plan B Business Plan**

12 152. Harkins and Barcelona Advisors stated to Mr. Andrade through the January 2014  
 13 PPM that, "We have an appropriate business model .... We have appropriately planned for the  
 14 Company's capital requirements. ... We have organized and prepared to effectively raise the capital  
 15 required ...."<sup>407</sup>

16 153. Mr. Andrade was not informed before he invested that that the current business model  
 17 was Barcelona Advisors' "Plan B" after its first business model failed due to the inability to raise the  
 18 necessary capital for the first business model.<sup>408</sup> If he had known, it would have been significant to  
 19 his decision whether or not to invest.<sup>409</sup>

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 400 S-58 at ACC5744; T.384:6-14; T.416:11-14

23 401 T.161:6-12; T.162:13-T.163:2; T.269:16-24; T.1028:18-T.1029:1; S-174 p.16

24 402 T.174:11-22; T.307:13-T.308:2; T.446:14-T.447:7; T.665:4-11

25 403 T.174:11-22; T.446:14-T.447:7

26 404 T.180:4-T.181:4; T.186:7-12

405 T.307:13-T.308:2

406 T.665:4-11

407 S-58 at ACC 5727; T.384:6-14; T.416:11-14

408 T.398:15-T.399:2

409 T.398:15-T.399:2

**Failure to Pay Kerrigan Notes**

154. In all of Barcelona Advisors' notes to investors, which were all signed by Harkins, Harkins and Barcelona stated to the investor that Barcelona Advisors would repay the investor's principal by a specified maturity date.<sup>410</sup> Kerrigan also discussed the offerings with and made a recommendation to investors who invested after June 30, 2013, namely Mr. Woods, Ms. Carolin, Mr. Jordan, Mr. Ramirez, Ms. Chaimson, and Mrs. Stewart, and it is inferable that he told them the notes had a maturity date.<sup>411</sup> When Mr. Andrade was considering making his second investment in June 2015, Simmons told him there was no reason for him to be worried about investing.<sup>412</sup>

155. Mr. Eaves, Mr. Woods, Ms. Carolin, Mr. Jordan, Mr. Ramirez, Ms. Chaimson, Mr. Andrade, and Mrs. Stewart, all of whom made an investment after June 30, 2013, were not informed before they invested that Barcelona Advisors had failed to timely pay two \$30,000 promissory notes to Kerrigan.<sup>413</sup> Kerrigan did not tell any of them that Barcelona Advisors had failed to pay him because, in his words, "That's my business."<sup>414</sup> If Mr. Eaves, Mr. Woods, Ms. Carolin, Mr. Jordan, and Mr. Andrade, had known, it would have been significant to their decisions whether or not to invest.<sup>415</sup> If Mrs. Stewart had known she would have asked Kerrigan more questions.<sup>416</sup>

**Promised Use of Funds to Repay Kerrigan**

156. Harkins, Kerrigan, and Barcelona Advisors stated to Mr. Jordan and Mr. Ramirez through the April 2013 PPM that after using \$50,000 of the 12-6-12 Offering proceeds to reimburse management for the time and expenses of organizing the company and after using \$30,000 of the 12-

<sup>410</sup> S-37 through S-43; S-45 through S-49; S-51; S-53 through S-56; S-184

<sup>411</sup> T.159:10-25; T.222:20-T.233:6; T.225:1-5; T.426:10-T.427:7; T.660:4-6; S-98 p.56:7-20, p.57:24-p.58:24, p.169:18-p.170:4

<sup>412</sup> T.391:1-5

<sup>413</sup> T.176:11-21; T.230:23-T.231:15; T.308:7-17; T.399:5-24; T.447:8-20; T.665:12-23; T.1223:6-11. There are no statements in the record from Mr. Ramirez or Ms. Chaimson, but Kerrigan testified that never told any investors about Barcelona Advisor's failure to pay its notes to him. See T.1029:14-T.1030:14; S-98 p.57:24-p.58:24, p.169:18-p.170:4, p.185:17-23

<sup>414</sup> S-98 p.185:17-23

<sup>415</sup> T.176:11-21; T.308:7-17; T.399:5-24; T.447:8-20; T.665:12-23

<sup>416</sup> T.230:23-T.231:15

1 6-12 Offering proceeds to pay expenses related to the offering, "... all other Proceeds will be used  
2 by the Company to pursue the business plan outlined in this Memorandum."<sup>417</sup>

3 157. Mr. Jordan and Mr. Ramirez, who invested after October 1, 2013, were not informed  
4 before they invested that on that date Barcelona Advisors had promised to use their investment funds  
5 to pay back a \$70,000 note to Kerrigan.<sup>418</sup> Kerrigan did not tell them because, in his words, "It was  
6 none of their business."<sup>419</sup> If Mr. Jordan had known, it would have been significant to his decision  
7 whether or not to invest.<sup>420</sup>

### 8 **Delayed 12-6-12 Interest Payments**

9 158. In Barcelona Advisors' notes to Mr. Andrade and Mrs. Stewart, which were signed  
10 by Harkins, Harkins and Barcelona Advisors stated to them that Barcelona Advisors would make  
11 interest payments to investors at specific intervals.<sup>421</sup> Kerrigan stated to Mrs. Stewart the payment  
12 terms of the 10-5-10 Notes.<sup>422</sup> When Mr. Andrade was considering making his second investment in  
13 June 2015, Simmons told him there was no reason for him to be worried about investing.<sup>423</sup>

14 159. Mr. Andrade and Mrs. Stewart were not informed before they invested that Barcelona  
15 Advisors had previously failed to make timely interest payments due on December 31, 2013, to  
16 investors in the 12-6-12 Offering.<sup>424</sup> If they had known, it would have been significant to their  
17 decisions whether or not to invest.<sup>425</sup>

### 18 **Use of 10-5-10 Proceeds to pay 12-6-12 Investors**

19 160. Harkins and Barcelona Advisors stated to Mr. Andrade through the January 2014  
20 PPM that after using \$30,000 of the January 2014 Offering proceeds to pay expenses related to the  
21

22 <sup>417</sup> T.161:6-12; T.162:13-T.163:2; T.1028:18-T.1029:1; S-5 at ACC7237; S-57 at ACC758

23 <sup>418</sup> T.176:22-T.177:9. There are no statements in the record from Mr. Ramirez, but Kerrigan testified that he never told  
Mr. Ramirez. See T.1104:13-17

24 <sup>419</sup> T.1104:13-17

25 <sup>420</sup> T.176:22-T.177:9

<sup>421</sup> S-48; S-49; S-51

<sup>422</sup> S-98 p.60:4-12

26 <sup>423</sup> T.391:1-5

<sup>424</sup> T.232:14-21; T.400:12-24; T.1223:12-15

<sup>425</sup> T.232:14-21; T.400:12-24

1 offering, "... all other Offering Proceeds will be used by the Company to pursue the business plan  
2 outlined in this Memorandum."

3 161. Mr. Andrade was not informed before he invested that his investment funds would be  
4 used to make interest payments to prior investors in the 12-6-12 Offering.<sup>426</sup> If he had known, it  
5 would have been significant to his decision whether or not to invest.<sup>427</sup>

6 162. If Mr. Eaves, Mr. Woods, Ms. Carolin, Mr. Jordan, Mrs. Stewart, and Mr. Andrade,  
7 had been told about the relevant issues above, they would not have invested.<sup>428</sup>

## 8 **M. Misrepresentations**

### 9 **Agreement with Chanen Construction**

10 163. Harkins, Barcelona Advisors, and Barcelona Land Company misrepresented to Mr.  
11 Andrade in the May 2014 PPM that, "[Barcelona Land Company's] Parent Company has reached  
12 agreement with Chanen Construction Company to coordinate with us in the Entitlement work and  
13 handle all site development and construction requirements of the New Build Affiliates. We feel this  
14 strategic alliance adds a great deal of quality to both the Company's investment Offering and the  
15 future offerings of the New Build Affiliates. Chanen's over 50 years of experience across a broad  
16 spectrum of major construction projects and specifically numerous major hotels and resorts [sic]  
17 undertakings for both their own account and as agents for others is a major benefit to our investors  
18 and our Company."<sup>429</sup>

19 164. Chanen Construction Company never reached any agreement with Barcelona Land  
20 Company's parent company regarding entitlement work and site development, and in fact never had  
21 an agreement of any kind.<sup>430</sup> Harkins testified that an agreement was reached with Chanen regarding  
22 entitlement work and site development.<sup>431</sup> However, neither Kerrigan, Orr, nor McDonough were  
23

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24 <sup>426</sup> T.400:25–T.401:11

25 <sup>427</sup> T.400:25–T.401:11

26 <sup>428</sup> T.177:10–12; T.232:14–T.233:4; T.308:18–25; T.401:12–14; T.447:21–24; T.665:19–23

<sup>429</sup> S-59 at ACC5862

<sup>430</sup> T.522:4–8; T.544:6–13; S-136 p.40:22–p.42:4

<sup>431</sup> S-32 p.66:8–25

1 aware of any such agreement being reached, and Kerrigan and Orr testified that they would have  
2 expected to have heard about such an agreement had it actually been reached.<sup>432</sup>

### 3 **Low-Risk Investment**

4 165. Kerrigan misrepresented to Mrs. Stewart twice that her investment in the 10-5-10  
5 Offering was a low-risk investment, which directly contradicted the subscription agreement he gave  
6 her to sign.<sup>433</sup> In fact, according to both the subscription agreement and the January 14 PPM that  
7 described the 10-5-10 Offering, Mrs. Stewart's investment was a speculative investment involving a  
8 high degree of risk.<sup>434</sup> The claimed low-risk nature of the investment was important to Mrs. Stewart's  
9 decision to invest.<sup>435</sup>

## 10 **IV. ARGUMENT**

### 11 **A. Conforming the Notice to the Evidence**

12 166. The Division moved during the hearing to conform its notice to the evidence.<sup>436</sup> Rule  
13 15(b) of the Arizona Rules of Civil Procedure allows conforming if issues not raised in the notice are  
14 tried by express or implied consent of the parties.<sup>437</sup> Such issues are then treated as if they had been  
15 raised in the pleadings.<sup>438</sup> All of the issues in the hearing were tried with the express consent of the  
16 parties because there was no objection to the motion.<sup>439</sup>

17 167. A motion to conform the notice to the evidence is within the discretion of the hearing  
18 officer, and such amendments should be liberally allowed in the interests of justice.<sup>440</sup> The purposes  
19 of the rule are to permit cases to be tried on the merits and to promote judicial economy by allowing  
20 all relief the parties are entitled to in a single trial.<sup>441</sup>

21 \_\_\_\_\_  
22 <sup>432</sup> S-98 p.145:2-14; S-136 p.40:22-p.42:4; T.74:12-T.75:22

23 <sup>433</sup> T.222:20-3; T.224:2-5; T.245:9-22; S-35 at ACC993

24 <sup>434</sup> S-35 at ACC993; S-58 at ACC5713

25 <sup>435</sup> T.223:21-22; T.224:6-13

26 <sup>436</sup> T.697:24-T.698:5

<sup>437</sup> See Ariz. R. Civ. P. 15(b). Rule 15(b) of Arizona Rules of Civil Procedure is the applicable rule because no procedure for conforming pleadings to the evidence is set forth by law, the Commission's Rules of Practice and Procedure, Commission regulation, or Commission order. See A.A.C. R14-3-101(A)

<sup>438</sup> See Ariz. R. Civ. P. 15(b)

<sup>439</sup> T.700:3-7

<sup>440</sup> See *Continental National Bank v. Evans*, 107 Ariz. 378, 381 (1971)

<sup>441</sup> See *id.*

1 **B. Credibility Issues**

2 168. All of the individual respondents' testimony lacked credibility to varying degrees.  
3 Their testimony was contradicted in part by documentary evidence and by more credible testimony  
4 from other witnesses.

5 **Simmons' Credibility**

6 169. Simmons was the least credible respondent. Simmons' testimony was contradicted in  
7 many ways by Harkins, Orr, McDonough, Mr. Eaves, Mr. Andrade, and Simmons himself.

8 170. Simmons claimed ignorance about the terms of Barcelona Advisors' offering and the  
9 content of the PPMs.<sup>442</sup> However, Harkins, Orr, McDonough, and company documents described  
10 Simmons' role in reviewing PPMs and his detailed knowledge of Barcelona Advisors' offerings, so  
11 detailed that he and Harkins trained others on how to present them.<sup>443</sup> Simmons even contradicted  
12 himself on this subject, first claiming that he knew nothing about how the offerings were sold because  
13 he had no involvement in them, then later slipping up and admitting that he was shown final PPMs  
14 that would be used to solicit investors.<sup>444</sup>

15 171. Simmons also claimed that he had "absolutely no involvement in raising capital," and  
16 was never directly involved in soliciting any investors or selling any investments, apart from signing  
17 one subscription agreement.<sup>445</sup> This testimony was contradicted by Orr, McDonough, Mr. Eaves, and  
18 Mr. Andrade. McDonough noted that Simmons frequently suggested potential investors and reported  
19 on the status of potential investors he spoke to.<sup>446</sup> McDonough also testified that Simmons asked for  
20 his help approaching investors at Simmons' country club, which was corroborated by Orr's  
21 testimony.<sup>447</sup> Mr. Eaves contradicted Simmons with his detailed and confident testimony that  
22 Simmons called him to solicit his fourth investment.<sup>448</sup>

23  
24 <sup>442</sup> S-76 p.23:9-23, p.55:18-22, p.99:14-18; T.1146:21-T.1147:1

25 <sup>443</sup> S-32 p.35:22-p.36:8; S-176; S-177; T.89:7- T.90:8; T.736:8-T.737:23; T.1203:20-1204:13

26 <sup>444</sup> S-76 p.23:9-23; T.1200:4-12

<sup>445</sup> S-76 p.13:6-7; T.1180:4-8

<sup>446</sup> T.318:13-T.320:19

<sup>447</sup> T.92:1-16; T.139:5-17; S-136 p.16:25-p.17:2, p.31:12-19

<sup>448</sup> T.286:21-T.287:22; T.288:24-T.289:1; T.290:1-6; T.346:18-T.347:2

1           172. Contrasting Simmons' testimony with Mr. Andrade's also highlights Simmons' lack  
 2 of credibility. Simmons admitted that he had a lunch meeting with Mr. Andrade in December 2013  
 3 that was arranged and attended by Wilkerson.<sup>449</sup> But Simmons' account of what happened at the  
 4 meeting is not credible. It is implausible that Mr. Andrade brought his investment advisor, Wilkerson,  
 5 to a purely social meeting to reminisce with Simmons and did not talk about investing in Barcelona  
 6 Advisors, especially because Simmons admitted that Wilkerson at this point was already intending  
 7 to join Barcelona Advisors.<sup>450</sup> Simmons' account of the meeting is also inconsistent with his own  
 8 follow-up email inviting Mr. Andrade to visit the Barcelona Advisors office to meet the team and  
 9 "discuss our current capital raise."<sup>451</sup> Mr. Andrade's e-mail replay stating, "Sorry, but I'm not in a  
 10 position to make an investment at this time," corroborates Mr. Andrade's testimony that Simmons  
 11 asked him to invest during their lunch meeting.<sup>452</sup>

12           173. In his EUO testimony, Simmons omitted this lunch meeting with Mr. Andrade to hide  
 13 the extent of their contact.<sup>453</sup> At the hearing, Simmons claimed that he was confused during his EUO  
 14 about the order that those meetings took place.<sup>454</sup> But Simmons did not mention two meetings in his  
 15 EUO, he just omitted the December meeting altogether.<sup>455</sup>

16           174. Simmons' denial of attending the June 2014 meeting with Mr. Andrade and Harkins  
 17 is also not credible.<sup>456</sup> Although Harkins did not recall Simmons being at the meeting, Mr. Andrade  
 18 remembered not only that Simmons was present, but also generally remembered what Simmons told  
 19 him during that meeting.<sup>457</sup> Mr. Andrade made his subsequent investment despite his concerns about  
 20 Barcelona Advisors, and his memory of who persuaded him to invest again despite his concerns is  
 21 the more reliable testimony.<sup>458</sup>

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22 <sup>449</sup> T.1167:23–T.1169:25

23 <sup>450</sup> T.377:4–18; T.420:10–11; T.1170:1–13; T.1207:6–14; T.1205:13–22

24 <sup>451</sup> S-171

25 <sup>452</sup> S-171; T.387:7–17

26 <sup>453</sup> S-76 p.47:2–p.48:10

<sup>454</sup> T.1217:8–T.1218:3

<sup>455</sup> S-76 p.47:2–p.48:10

<sup>456</sup> T.1173:12–24

<sup>457</sup> T.391:1–5; T.1258:8–16

<sup>458</sup> T.391:6–10; S-31b; S-51; S-52; S-169



1 because Harkins previously admitted that he was not even aware of the relevant operating agreement  
2 provision until years later in 2015.<sup>468</sup>

3 179. Harkins also tried to bolster the other respondents' theories of defense by falling on  
4 his sword and claiming that he was the only control person of Barcelona Advisors.<sup>469</sup> But this claim  
5 was inconsistent with his answer, in which he denied he was a control person at all.<sup>470</sup> It was also  
6 inconsistent with his admission that Kerrigan, Simmons, and Orr were involved in the management  
7 of Barcelona Advisors, in particular by working together to develop and execute a plan to save the  
8 company.<sup>471</sup>

### 9 **Kerrigan's Credibility**

10 180. Kerrigan lied about his role at Barcelona Advisors. He claimed in his EUO that it was  
11 not his responsibility to bring in capital, only to manage a \$70,000,000 fund.<sup>472</sup> However, Kerrigan  
12 admitted at the hearing that he was at Barcelona Advisors to raise working capital.<sup>473</sup>

### 13 **Orr's Credibility**

14 181. Orr was not credible about his contacts with potential investors. He claimed he did  
15 not have any conversations with potential investors.<sup>474</sup> But he admitted, only when confronted with  
16 an expense report he wrote, that he did discuss Barcelona Advisors with four prospective investors  
17 whom he then directed to speak with McDonough.<sup>475</sup>

18 182. Orr was also not credible about his knowledge of how Barcelona Advisors found  
19 investors, claiming he did not even know how Barcelona Advisors found investors.<sup>476</sup> This was  
20 inconsistent with McDonough's testimony that discussing potential investors and progress  
21 soliciting them happened frequently at staff meetings.<sup>477</sup>

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22 <sup>468</sup> S-32 p.139:6-25

23 <sup>469</sup> T.902:9-12

24 <sup>470</sup> T.904:5-24; S-183 p.18-19

25 <sup>471</sup> S-74; T.913:21-T.916:10

26 <sup>472</sup> S-98 p.39:14-22; S-98 p.151:15-p.152:3

<sup>473</sup> T.139:21-T.140:3

<sup>474</sup> T.743:9-13

<sup>475</sup> T.744:5-9; T.749:5-T.750:3; S-173 at ACC7316

<sup>476</sup> S-136 p.16:1-3

<sup>477</sup> T.318:13-T.320:19

1 183. Orr, like Simmons, was not even credible about when he became an Executive  
 2 Member, claiming he did not become an Executive Member until the summer of 2013.<sup>478</sup> However,  
 3 numerous documents from Barcelona Advisors, including two PPMs, show that he was an  
 4 Executive Member in early 2013, as early as February 2013.<sup>479</sup>

5 184. Orr also contradicted himself about how well he understood his role as an Executive  
 6 Member. At the hearing he claimed that he was not told that the Executive Members would decide  
 7 major decisions, but he admitted in his EUO that he was told this.<sup>480</sup>

8 **C. Barcelona Advisors' Notes, LLC Membership Units, and Rights to Purchase LLC**

9 **Membership Units Are Securities**

10 **Notes**

11 185. Barcelona Advisors' notes ("the Notes") are securities. The Act identifies notes as  
 12 securities.<sup>481</sup> For purposes of the Act's registration provisions, all notes are securities unless they are  
 13 exempt from registration pursuant to the Act.<sup>482</sup> The Notes are not exempt from registration, as  
 14 explained below in Section E., therefore the notes are securities for purposes of the Act's registration  
 15 provisions.

16 186. The Notes are also securities for purposes of the Act's anti-fraud provisions. Under  
 17 the applicable "family resemblance" test, notes are presumptively securities for anti-fraud purposes.<sup>483</sup>  
 18 A respondent may attempt to rebut this presumption by showing that a note bears a strong resemblance  
 19 to an instrument that is not intended to be regulated as a security based on four factor: 1) the motives  
 20 of the parties, 2) the plan of distribution, 3) the public's reasonable expectations, and 4) the existence  
 21 of a risk-reducing factor such as another regulatory scheme.<sup>484</sup>

22  
 23  
 24 <sup>478</sup> T.709:11-19

<sup>479</sup> S-3b; S-5 at ACC7229-7230; S-24; S-57 at ACC751-752

<sup>480</sup> T.731:8-15; T.732:17-T.733:5

<sup>481</sup> A.R.S. § 44-1801(26)

<sup>482</sup> State v. Tober, 173 Ariz. 211, 213 (1992)

<sup>483</sup> MacCollum v. Perkinson, 185 Ariz 179, 187 (Ct. App. 1996)

<sup>484</sup> Id.

1 187. None of these four factors rebut the presumption that the Notes are securities.  
 2 Barcelona Advisors' motive was to raise working capital.<sup>485</sup> The investors in the Notes ("the  
 3 Investors") were motivated by the promise of returns.<sup>486</sup> Barcelona Advisor's plan of distribution was  
 4 to find investors through Kerrigan, a registered securities salesman.<sup>487</sup> The public could reasonably  
 5 expect that the Notes are securities because the PPMs expressly refer to them as securities.<sup>488</sup> Lastly,  
 6 there is no alternate regulatory scheme or risk-reducing factor for the Notes other than securities  
 7 regulation.

8 188. Therefore the Notes are securities for purposes of both registration and anti-fraud  
 9 provisions of the Act.

#### 10 **LLC Membership Units and Rights to Purchase the Units**

11 189. Barcelona Advisors' LLC membership units ("the LLC Units") are securities because  
 12 they are investment contracts. The Howey test is the applicable test.<sup>489</sup> The LLC Units are securities  
 13 if they involve an investment of money in a common enterprise with the expectation of profits from  
 14 the managerial efforts of others.<sup>490</sup>

15 190. The LLC Units meet this test. The Investors all invested money that was used in the  
 16 common enterprise of funding Barcelona Advisor's working capital.<sup>491</sup> They expected profits from  
 17 distributions promised to LLC Unit holders.<sup>492</sup> The investors relied on the managerial efforts of  
 18 Harkins, Kerrigan, Simmons, and Orr, the managers of Barcelona Advisors, which was a manager-  
 19 managed LLC.<sup>493</sup> Investors could not take part in the management of Barcelona Advisors except for  
 20  
 21  
 22

23 <sup>485</sup> T.927:19–T.929:14

<sup>486</sup> T.165:21–23; T.199:20–T.200:8; T.228:15–16; T.388:18–23; T.439:9–14

<sup>487</sup> S-2a

<sup>488</sup> S-5 at ACC7207; S-57 at ACC729; S-58 at ACC5715

<sup>489</sup> Nutek Information Systems, Inc. v. Ariz. Corp. Comm'n, 194 Ariz 104, 108 ¶ 16–17 (Ct. App. 1999) (citing S.E.C. v. W.J. Howey Co., 328 U.S. 293 (1946))

<sup>490</sup> See Nutek, 194 Ariz. at 108 ¶ 17–18

<sup>491</sup> T.927:19–T.929:14; S-31b; S-65

<sup>492</sup> S-5 at ACC7213; S-57 at ACC736; S-58 at

<sup>493</sup> S-3b

1 minor powers similar to those of corporate shareholders.<sup>494</sup> Accordingly, the LLC Units are  
2 investment contract securities.

3 191. The rights to purchase the LLC Units are also securities because the Act identifies  
4 rights to purchase investment contracts as also being securities.<sup>495</sup>

5 **D. Harkins, Kerrigan, Simmons, Orr, Barcelona Advisors, and Barcelona Land Company**  
6 **Offered or Sold the Securities Within and From Arizona**

7 192. An offer to sell a security means any attempt to offer or dispose of a security.<sup>496</sup> A sale  
8 of a security means any sale or disposition of a security for value or a contract to make such a sale.<sup>497</sup>  
9 All of Barcelona Advisors' securities were sold from Arizona because it is an Arizona company that  
10 had its offices in Arizona and had Arizona resident salesmen.<sup>498</sup> There is also evidence that many of  
11 the offers and sales occurred within Arizona.<sup>499</sup>

12 **Harkins' Offers and Sales**

13 193. Harkins sold all of the Notes to all of the Investors because he executed all of the Notes  
14 for Barcelona Advisors.<sup>500</sup> He also sold the LLC Units to Ms. Bair, Mr. Eaves, Ms. Burleson, Mr.  
15 Woods, Ms. Carolin, Mr. Jordan, Mr. Ramirez, and Ms. Chaimson because he executed the contracts,  
16 their subscription agreements, for the purchase of their LLC Units.<sup>501</sup> Harkins also sold the rights to  
17 purchase LLC Units because he executed the notes to Mr. Eaves evidencing their sale.<sup>502</sup>

18 194. Harkins also made several offers. Harkins offered the 12-6-12 Offering to Ms. Bair by  
19 giving her the October 2012 PPM to encourage her to invest.<sup>503</sup> He also solicited Mr. Eaves' fifth and  
20

21 <sup>494</sup> S-5 at ACC7266; S-57 at ACC787-790. See *Nutek*, 194 Ariz. at 100 ¶ 25 (members who can only approve the  
management efforts of a third party are no different than shareholders)

22 <sup>495</sup> A.R.S. § 44-1801(26)

23 <sup>496</sup> A.R.S. § 44-1801(15)

24 <sup>497</sup> A.R.S. § 44-1801(21)

25 <sup>498</sup> S-3a; T.764:3-7; Harkins admitted his Arizona residence in his October 2, 2015, Answer to the T.O. and Notice at ¶  
2. Kerrigan admitted his Arizona residence in his September 29, 2015, Answer at ¶ 3. Simmons admitted his Arizona  
residence in his October 2, 2015, Answer at ¶ 4

26 <sup>499</sup> T.161:13-15; T.199:20-T.200:8; T.206:8-19; T.227:16-22; T.378:13-23; T.426:24-T.427:2; T.439:9-14;  
T.633:19-20

<sup>500</sup> S-37 through S-49; S-51; S-53 through S-56; S-184

<sup>501</sup> S-6 through S-13; S-33 through S-35

<sup>502</sup> S-53; S-54

<sup>503</sup> T.834:3-4

1 sixth investments.<sup>504</sup> He solicited Ms. Burluson's investments by telling her the investment would be  
 2 good as long as the economy was stable and by drafting custom terms for her second note to meet her  
 3 financial needs so she could invest.<sup>505</sup> He solicited Ms. Carolin's first investment by giving her a  
 4 subscription agreement.<sup>506</sup> He solicited investments in the June 2014 Offering in a letter by asking all  
 5 of the existing investors to invest more.<sup>507</sup>

### 6 **Kerrigan's Offers**

7 195. Kerrigan offered the securities by introducing his clients to them in an attempt to  
 8 dispose those securities. Kerrigan introduced and recommended investing in the 12-6-12 Offering to  
 9 Mr. Eaves,<sup>508</sup> Mr. Woods,<sup>509</sup> Ms. Carolin,<sup>510</sup> Mr. Jordan,<sup>511</sup> Mr. Ramirez,<sup>512</sup> and Ms. Chaimson<sup>513</sup> and  
 10 in the 10-5-10 Offering to Mrs. Stewart.<sup>514</sup> He also solicited an investment from Ms. Burluson by  
 11 recommending that she invest and telling her that the money would be "rolling in."<sup>515</sup> Kerrigan also  
 12 solicited Mr. Eaves' second investment by giving him the loan document for that investment<sup>516</sup> and  
 13 solicited Mr. Eaves' third investment by telling him that Barcelona Advisors needed more money.<sup>517</sup>

### 14 **Simmons' Offers and Sale**

15 196. Simmons offered the securities to Mr. Eaves and Mr. Andrade. Simmons solicited Mr.  
 16 Eaves by calling Mr. Eaves and asking him to make his fourth investment.<sup>518</sup> Simmons solicited Mr.  
 17 Andrade by asking him to make his first investment during their December 2013 lunch meeting.<sup>519</sup>

18  
 19  
 20 <sup>504</sup> T.290:20–T.291:3; T.293:23–T.294:18

<sup>505</sup> T.633:13–15; T.634:2–5; T.844:9–12; T.1008:6–T.1009:11; S-32 p.79:24–p.80:3

<sup>506</sup> T.431:17–18

<sup>507</sup> S-32 p.96:5–12; S-60

<sup>508</sup> T.190:3–T.191:15; S-98 p.36:18–20, p.59:7–12

<sup>509</sup> T.660:4–6; T.661:20–24

<sup>510</sup> T.426:10–17; T.426:24–T.427:2; S-98 p.29:25–p.30:5

<sup>511</sup> T.159:10–25

<sup>512</sup> S-98 p.57:24–p.58:24, p.169:18–p.170:4

<sup>513</sup> T.1029:14–T.1030:7; S-98 p.29:25–p.30:6, p.56:7–20

<sup>514</sup> T.222:20–T.233:6

<sup>515</sup> T.633:16–19, 23–24; T.988:6–8; S-98 p.169:18–p.170:4

<sup>516</sup> T.206:8–19

<sup>517</sup> T.282:6–20

<sup>518</sup> T.287:16–22; T.288:17–23

<sup>519</sup> T.378:13–23; T.381:2–7; T.382:2–5; T.387:15–17

1 Simmons also sold Mr. Andrade's first investment by executing Mr. Andrade's subscription  
2 agreement on behalf of Barcelona Advisors.<sup>520</sup>

3 197. Whether Wilkerson also offered Mr. Andrade's first investment does not matter. The  
4 Act's definitions of "offer" and "sale" do not limit a securities transaction to only one offeror and one  
5 seller.<sup>521</sup> If two people both attempt to dispose of a security to the same person, then they have both  
6 made an offer to sell under the Act.<sup>522</sup>

7 198. Simmons also offered Mr. Andrade his second investment. Simmons attempted to  
8 dispose of Mr. Andrade's second investment by persuading Mr. Andrade that there was no reason for  
9 him to be worried about investing more.<sup>523</sup> As described below in Section F., there were actually many  
10 reasons for Mr. Andrade to have been worried, so Simmons telling him otherwise was clearly an effort  
11 to get Mr. Andrade to invest.

#### 12 **Orr's Offers**

13 199. Orr offered Barcelona Advisors' securities to four individuals over drinks. Orr  
14 attempted to dispose of the securities by talking to them about Barcelona Advisors in the hope that  
15 they would invest.<sup>524</sup> He described them as "prospective investors."<sup>525</sup> Orr's expense report shows  
16 that he spent \$85 on drinks with them, and the \$85 amount indicates Orr was buying drinks for them,  
17 not just paying for his own drinks.<sup>526</sup> The fact that Orr billed Barcelona Advisors for this \$85 expense  
18 shows that he believed the \$85 was spent for the company's benefit, and the benefit was clearly to  
19 build goodwill with the prospective investors to increase the likelihood they would invest. He also  
20 directed the prospective investors to speak to McDonough.<sup>527</sup> This was an attempt to have  
21  
22

23 <sup>520</sup> S-76 p.46:18-p.48:2; S-77 at ACC986

24 <sup>521</sup> A.R.S. § 44-1801(15) and (21)

25 <sup>522</sup> See A.R.S. § 44-1801(15)

26 <sup>523</sup> T.391:1-5

<sup>524</sup> T.749:5-23

<sup>525</sup> S-173 at ACC7316

<sup>526</sup> S-173 at ACC7316

<sup>527</sup> T.749:24-T.750:3

1 McDonough close the sale because McDonough was specifically trained to be able to present  
2 Barcelona Advisor's securities to potential investors.<sup>528</sup>

3 **Barcelona Advisors' Offers and Sales**

4 200. Barcelona Advisors also made all of the offers and sales that were made by Harkins,  
5 Kerrigan, Simmons, and Orr, its four Executive Members and Managers, because those offers and  
6 sales were made by Barcelona Advisors' agents on its behalf.<sup>529</sup>

7 **Barcelona Land Company's Offer**

8 201. Barcelona Land Company offered Mr. Andrade's second investment. Mr. Andrade's  
9 second note was issued by Barcelona Advisors, but Barcelona Land Company also attempted to  
10 dispose of the note. When Harkins and Simmons met with Mr. Andrade in June 2014 about making a  
11 second investment, Mr. Andrade wanted to know more about Barcelona Advisors' business plan to  
12 consider the likelihood of its success.<sup>530</sup> In response Harkins gave him a copy of Barcelona Land  
13 Company's May 2014 PPM.<sup>531</sup> In addition to being President of Barcelona Advisors, Harkins was  
14 also the President of Barcelona Land Company, and giving Barcelona Land Company's May 2014  
15 PPM to Mr. Andrade was an action of both companies.<sup>532</sup> This was an attempt to dispose of the  
16 Barcelona Advisors note because it was favorable information that Mr. Andrade sought to decide  
17 whether to make the Barcelona Advisors investment.<sup>533</sup>

18 ...  
19 ...  
20 ...  
21 ...  
22 ...  
23 ...

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24 <sup>528</sup> T.89:7-20; T.89:24-T.90:5  
25 <sup>529</sup> S-3b; S-5 at ACC7229-7230  
26 <sup>530</sup> T.389:10-25; T.392:2-14; T.418:5-15  
<sup>531</sup> T.392:2-14; T.418:5-15  
<sup>532</sup> S-57 at ACC737; S-59 at ACC5902, 5909  
<sup>533</sup> T.389:10-25; T.392:2-14; T.418:5-15

1  
2 **E. Neither the Securities Nor the Salesman, Other than Kerrigan, Were Registered or**  
3 **Exempt from Registration**

4 202. Harkins, Simmons, Orr, Barcelona Advisors, and Barcelona Land Company were not  
5 registered by the Commission as securities salesmen or dealers.<sup>534</sup> Barcelona Advisors' securities  
6 have not been registered by the Commission.<sup>535</sup>

7 203. It is the Respondents' burden to prove any exemption from registration.<sup>536</sup> Because of  
8 the vital public policies underlying the Act's registration requirements, all exemption requirements  
9 must be strictly complied with.<sup>537</sup>

10 204. The Respondents have failed to prove that any exemption from registration applies to  
11 them or to the securities. Most importantly, there is no evidence that Barcelona Advisors has ever  
12 made a Form D notice filing with the Commission, which is a requirement after making a securities  
13 sale for several exemption grounds.<sup>538</sup> Other exemptions require that the issuer not engage in general  
14 solicitation or general advertisement, but Barcelona Advisors has done both.<sup>539</sup>

15 **General Advertisement**

16 205. Barcelona Advisors used general advertisement with a series of newspaper ads in the  
17 Arizona Republic from July 17, 2013, to September 4, 2013.<sup>540</sup> These advertisements were for the  
18 8-8 Offering, but that offering, the 12-6-12 Offering, the 10-5-10 Offering, the June 2014 Offering,  
19 and the Additional Eaves Notes were actually all part of one integrated offering by Barcelona  
20 Advisors. Whether offerings should be considered integrated is based on five factors, 1) whether  
21 the sales are part of a single plan of financing; 2) whether the sales involve issuance of the same  
22

23 <sup>534</sup> T.842:13-15; S-1a; S-1b; S-5 at ACC7207; S-57 at ACC729; S-58 at ACC5715; S-136 p.6: 17-24, p.13:5-14.  
24 Simmons admitted he had not been registered in his October 2, 2015, Answer at ¶ 4. Barcelona Land Company  
25 admitted it has not been registered in its October 2, 2015, Answer to the T.O. and Notice at ¶ 7

<sup>535</sup> T.842:13-15; S-5 at ACC7207; S-57 at ACC729; S-58 at ACC5715

<sup>536</sup> A.R.S. § 44-2033

<sup>537</sup> State v. Baumann, 125 Ariz. 404, 411 (1980)

<sup>538</sup> See, e.g., R14-4-126(D); R14-4-140(L)

<sup>539</sup> See, e.g., 17 C.F.R. §230.502(c); R14-4-126(C)(3)

<sup>540</sup> T.807:13-15; T.807:19-21; S-25 at ACC6214, 6235

1 class of securities; 3) whether the sales have been made at or about the same time; 4) whether the  
 2 same type of consideration is being received; and 5) whether the sales are made for the same  
 3 general purpose.<sup>541</sup>

4 206. All of these five factors support integration. First, the sales were part of the same  
 5 plan of financing, which was to raise working capital for Barcelona Advisors.<sup>542</sup> The Additional  
 6 Eaves Notes and the June 2014 Notes were interim working capital solutions to bridge delays  
 7 between other investors.<sup>543</sup> Second, the 12-6-12 Offering and the 8-8 Offering both involved the  
 8 issuance of the same class of securities, namely “Series A” notes.<sup>544</sup> Third, the sales were made at  
 9 about the same time because they were a planned sequence. Barcelona Advisors started with the  
 10 12-6-12 Offering, then switched to the 8-8 Offering because interest in the 12-6-12 Offering  
 11 appeared to be waning in June 2013.<sup>545</sup> After a few months without sales, the 8-8 Offering was  
 12 discontinued because Kerrigan had new potential investors for the 12-6-12 Offering.<sup>546</sup> After the  
 13 final 12-6-12 Offering sale to Ms. Chaimson in November 2013, Barcelona Advisors promptly  
 14 began the 10-5-10 Offering in January 2014.<sup>547</sup> The one June 2014 Offering sale occurred shortly  
 15 after the last 10-5-10 Offering sale.<sup>548</sup> The Additional Eaves Notes were concurrent with and then  
 16 extended slightly beyond the timeframes of the 10-5-10 Offering and June 2014 Offering.<sup>549</sup>  
 17 Fourth, the same type of consideration was received by all investors, specifically notes, and usually  
 18 with a bonus interest feature and LLC Units.<sup>550</sup> Fifth, the 12-6-12 Offering, 8-8 Offering, and 10-  
 19 5-10 Offering were made for the same general purpose of developing Barcelona Advisors into the  
 20 advisor to a series of funds that would invest in the acquisition or development of real estate.<sup>551</sup>

21  
 22 <sup>541</sup> See 17 C.F.R. §230.502(a); R14-4-126(C)(1)

23 <sup>542</sup> T.809:3–10; T.927: 19–T.929:14; S-65

24 <sup>543</sup> T.282:6–20; T.287:16–22; T.288:17–23; T.390:9–17

25 <sup>544</sup> S-5 at ACC 7203; S-25 at ACC6216; S-57 at ACC724

26 <sup>545</sup> T.806:21–4

<sup>546</sup> T.808:2–19

<sup>547</sup> S-31b; S-47; S-58

<sup>548</sup> S-31b; S-48; S-51

<sup>549</sup> S-31b; S-53 through S-56

<sup>550</sup> S-5 at ACC7213–7214; S-57 at ACC736-737; S-58 at ACC5719; S-53 through S-56; S-60

<sup>551</sup> S-5 at ACC7217; S-25 at ACC6216; S-57 at ACC740; S-58 at ACC5720;

1 Harkins also noted in his testimony that he expected the 8-8 Offering to be integrated with the 12-  
2 6-12 Offering.<sup>552</sup> Based on these factors, all of the offerings should be considered integrated.

3 207. When offerings are integrated, they must all meet all of the requirements of any  
4 exemption.<sup>553</sup> Because the 8-8 Offering involved general advertisement, all of the other integrated  
5 offerings also involved general advertisement, so none of them can satisfy exemption requirements  
6 that forbid general advertisement.

### 7 **General Solicitation**

8 208. Barcelona Advisors used general solicitation to solicit Ms. Bair and Ms. Chaimson.

9 209. Whether general solicitation has occurred is based on the relationship between the  
10 offeror and offeree, and whether that relationship is substantive and pre-existing.<sup>554</sup>

11 210. When Harkins met with Ms. Bair to sell her Barcelona Advisors' securities he had no  
12 pre-existing relationship with her at all. Ms. Bair was introduced to him by a third party.<sup>555</sup> Before  
13 they met, Harkins knew nothing about her personal finances and did not know whether she was an  
14 accredited investor.<sup>556</sup>

15 211. When Kerrigan offered the Barcelona Advisors securities to Ms. Chaimson, he did not  
16 have a substantive relationship with her. Ms. Chaimson was a friend of Kerrigan, not a client, and  
17 Kerrigan did not know her net worth or her income.<sup>557</sup> This does not establish a substantive  
18 relationship.<sup>558</sup>

19 212. Ms. Bair and Ms. Chaimson were both consistent with Harkins' policy to bring  
20 PPMs to anyone interested in investing.<sup>559</sup>

21  
22 

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<sup>552</sup> T.807:4-13; T.929:23-T.930:2

23 <sup>553</sup> See 17 C.F.R. §230.502(a); R14-4-126(C)(1)

24 <sup>554</sup> Woodtrails-Seattle, Ltd., SEC No-Action Letter, 1982 WL 29366 (Aug. 9, 1982); E.F. Hutton Co., SEC No-Action  
Letter, 1985 WL 55680 (Dec. 3, 1985)

25 <sup>555</sup> S-32 p.74:8-17

26 <sup>556</sup> S-32 p.74:24-p.75:1

<sup>557</sup> T.1029:14-T.1030:7; T.1030:15-T.1031:2; T.1031:8-13

<sup>558</sup> E.F. Hutton Co., SEC No-Action Letter, 1985 WL 55680 (Dec. 3, 1985) (substantive relationship may be  
established with prior questionnaires to evaluate financial circumstances)

<sup>559</sup> T.77:17-T.78:10

### Accredited Investors Requirements

213. Barcelona Advisors also failed to satisfy the requirements of any exemption limited to accredited or sophisticated investors. Ms. Carolin was not an accredited investor because she had neither a net worth excluding home equity over \$1,000,000 nor an annual income over \$200,000.<sup>560</sup> Barcelona Advisors also lacked a reasonable belief that Ms. Carolin was an accredited investor because she told Harkins she did not meet any of the accredited investor criteria on the investor questionnaire in her subscription agreement.<sup>561</sup> Ms. Carolin also lacked the investment experience to be able to evaluate the risks and merits of the investment.<sup>562</sup>

214. Barcelona Advisors also lacked a reasonable belief that Ms. Burleson was an accredited investor because despite Kerrigan's representation that she was, she was herself uncertain and was unwilling to claim that she was an accredited investor based on net worth on her questionnaire.<sup>563</sup>

#### **F. Harkins, Kerrigan, Simmons, Barcelona Advisors, and Barcelona Land Company Violated the Anti-Fraud Provisions of the Act**

215. Harkins, Kerrigan, Simmons, Barcelona Advisors, and Barcelona Land Company engaged in multiple violations of A.R.S. § 44-1991(A), the antifraud provisions of the Securities Act.

216. Under A.R.S. § 44-1991(A)(2) it is unlawful to make untrue statements of material fact or to omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.<sup>564</sup>

<sup>560</sup> T.431:19–T.432:9. See 17 C.F.R. §230.501(a); R14-4-126(B)(1)

<sup>561</sup> T.432:23–T.433:17; S-10 at ACC88. See 17 C.F.R. §230.501(a); R14-4-140(E)

<sup>562</sup> T.445:13–20; See, e.g., 17 C.F.R. §230.506(b)(ii); R14-4-126(F)(2)(b)

<sup>563</sup> T.990 ln.10–12; T.991 ln.5–16; T.991 ln.25–T.992 ln.2; T.992 ln.9–14; S-8 at ACC891

<sup>564</sup> A.R.S. § 44-1991(A)(2)



1 **Meka Conviction**

2 221. Harkins, Kerrigan, Simmons, and Barcelona Advisors all made statements to  
3 investors regarding Harkins being the President or Manager of Barcelona Advisors.<sup>575</sup> They omitted  
4 that Harkins was closely assisted by Meka, a felon convicted in connection with an investment fraud  
5 scheme.<sup>576</sup>

6 222. This omission was misleading because it potentially reflected very poorly on Harkins'  
7 judgment.<sup>577</sup> The many investors who stated that this would have been significant to their decision  
8 whether or not to invest shows that it would have been material to a reasonable investor.<sup>578</sup>

9 **Kerrigan Debts**

10 223. Harkins, Kerrigan, and Barcelona Advisors all made statements to investors regarding  
11 Kerrigan's forty five years of experience as a financial services provider and manager.<sup>579</sup> They  
12 omitted the bank loan for which Kerrigan was sued and the large tax debt Kerrigan had still not fully  
13 paid.<sup>580</sup> The fact that Mr. Jordan, Mr. Eaves, Ms. Carolin, and Mr. Woods were not informed before  
14 they invested indicates that Mr. Ramirez was probably not informed either.<sup>581</sup>

15 224. These omissions were misleading because Kerrigan's long experience was stated to  
16 create confidence in the investment, and knowing about the bank loan tax debt would have  
17 undermined such confidence.<sup>582</sup> It was misleading because Kerrigan's financial services experience  
18 suggests that he has strong money management skills.<sup>583</sup> But the omitted facts might have called that  
19 suggestion into doubt. The facts of the bank loan were that Kerrigan failed to make a timely payment  
20

21 <sup>575</sup> T.161:6-12; T.162:13-T.163:2; T.193:12-T.194:1; T.269:16-24; T.380:10-14; T.667:24-T.668:7; T.1028:18-  
T.1029:1; T.1064:18-T.1065:1; S-5 at ACC7214; S-57 at ACC737; S-174 p.15

22 <sup>576</sup> T.173:23-T.174:10; T.229:25-T.230:10; T.306:4-T.307:12; T.398:2-14; T.664:22-T.665:3; T.1223:1-5. There are  
23 no statements in the record from Mr. Ramirez, but Harkins testified that none of the investors were told about Meka's  
involvement. See S-32 p.81:10-13

24 <sup>577</sup> See Trimble, 152 Ariz. at 553 (the Act places a heavy burden not to mislead potential investors in any way)

<sup>578</sup> T.173:23-T.174:10; T.229:25-T.230:10; T.398:2-14; T.664:22-T.665:3

25 <sup>579</sup> T.161:6-12; T.162:13-T.163:2; T.193:12-T.194:1; T.269:16-24; T.384:6-14; T.416:11-14; T.667:24-T.668:7;  
T.1028:18-T.1029:1; T.1064:18-T.1065:1; S-5 at ACC7230; S-57 at ACC752; S-58 at ACC5744; S-174 p.16

<sup>580</sup> T.174:11-22; T.307:13-T.308:2; T.446:14-T.447:7; T.665:4-11

26 <sup>581</sup> T.174:11-22; T.307:13-T.308:2; T.446:14-T.447:7; T.665:4-11

<sup>582</sup> See Johnson, 224 P.3d at 731

<sup>583</sup> See Schwenke, 222 P.3d at 773

1 to his ex-wife and tried to stiff the bank by blaming it for paying his legitimate obligation.<sup>584</sup> The bank  
 2 had to sue him, and even then it only got a fraction of the recovery it was entitled to.<sup>585</sup> This suggests  
 3 that Kerrigan may not be someone you want to lend money to. Kerrigan's failure to make the timely  
 4 payment to his ex-wife and the large tax debt<sup>586</sup> that he had not paid at the time both cast doubt on his  
 5 money management skills.<sup>587</sup> The many investors who stated that this would have been significant to  
 6 their decision whether or not to invest or that they would have wanted to ask more questions about  
 7 the circumstances shows that it would have been material to a reasonable investor.<sup>588</sup>

### 8 **Plan B Business Plan**

9 225. Harkins and Barcelona Advisors stated to Mr. Andrade that, "We have an appropriate  
 10 business model .... We have appropriately planned for the Company's capital requirements. ... We  
 11 have organized and prepared to effectively raise the capital required ...."<sup>589</sup> They omitted that the  
 12 current business model was Barcelona Advisors' "Plan B" after its first business model failed due to  
 13 the inability to raise the necessary capital for the first business model.<sup>590</sup>

14 226. This omission was misleading because the statements were made to create confidence  
 15 in the business plan, and explaining the failure of the original business plan would have undermined  
 16 that confidence.<sup>591</sup> Mr. Andrade's testimony that this would have been significant to his decision  
 17 whether or not to invest shows that this omission would have been material to a reasonable  
 18 investor.<sup>592</sup>

### 19 **Failure to Pay Kerrigan Notes**

20 227. Harkins, Kerrigan, Simmons, and Barcelona Advisors stated to investors that  
 21 Barcelona Advisors would pay their notes by a specific maturity date or that they had no reason to

22 <sup>584</sup> S-98 p.157:11–p.161:14; S-120 p.15; S-121 p.2; S-122

23 <sup>585</sup> S-123 at ACC6167; K-2 p.1, 4–5

24 <sup>586</sup> The \$2.50 fee that Kerrigan documented in K-1 is not the basis of the Division's allegations

25 <sup>587</sup> S-98 p.101:25–p.102:20; S-100

26 <sup>588</sup> T.174:11–22; T.180:4–T.181:4; T.186:7–12; T.307:13–T.308:2; T.446:14–T.447:7; T.665:4–11

<sup>589</sup> S-58 at ACC 5727; T.384:6–14; T.416:11–14

<sup>590</sup> T.398:15–T.399:2

<sup>591</sup> See Johnson, 224 P.3d at 731 (Statements made to create confidence in a transaction can be misleading if omitted facts would undermine that confidence)

<sup>592</sup> T.398:15–T.399:2

1 be worried about investing.<sup>593</sup> They omitted to investors who invested after June 30, 2013, that  
2 Barcelona Advisors had failed to timely pay two \$30,000 promissory notes to Kerrigan.<sup>594</sup>

3 228. This omission was misleading because the failure to pay Kerrigan would have called  
4 into question Barcelona Advisors' ability to repay the investors. The company's ability to repay the  
5 notes would clearly be material to a reasonable investor and was concerning to the actual investors.<sup>595</sup>

### 6 **Promised Use of Funds to Repay Kerrigan**

7 229. Harkins, Kerrigan, and Barcelona Advisors stated to investors that after using \$50,000  
8 of the 12-6-12 Offering proceeds to reimburse management for the time and expenses of organizing  
9 the company and after using \$30,000 of the 12-6-12 Offering proceeds to pay expenses related to the  
10 offering, "... all other Proceeds will be used by the Company to pursue the business plan outlined in  
11 this Memorandum."<sup>596</sup> They omitted to 12-6-12 Offering investors who invested after October 1,  
12 2013, that Barcelona Advisors had promised to use their investment funds to pay back a \$70,000  
13 note to Kerrigan.<sup>597</sup>

14 230. This omission was misleading because the statement implied that the funds would be  
15 used to advance the company's business plan, rather than just rewarding a company insider.<sup>598</sup> The  
16 use of investor funds would have been material to a reasonable investor, as shown by Mr. Jordan's  
17 testimony that it would have been significant to his decision whether or not to invest.<sup>599</sup>

### 18 **Delayed 12-6-12 Interest Payments**

19 231. Harkins, Kerrigan, and Barcelona Advisors stated to investors in the 10-5-10 Offering  
20 that Barcelona Advisors would make interest payments to investors at specific intervals.<sup>600</sup> Simmons

21 <sup>593</sup> T.159:10-25; T.222:20-T.233:6; T.225:1-5; T.391:1-5; T.426:10-T.427:7; T.660:4-6; S-37 through S-43; S-45  
22 through S-49; S-51; S-53 through S-56; S-98 p.56:7-20, p.57:24-p.58:24, p.169:18-p.170:4; S-184

23 <sup>594</sup> T.176:11-21; T.230:23-T.231:15; T.308:7-17; T.399:5-24; T.447:8-20; T.665:12-23; T.1223:6-11. There are no  
24 statements in the record from Mr. Ramirez or Ms. Chaimson, but Kerrigan testified that never told any investors about  
25 Barcelona Advisor's failure to pay its notes to him. See T.1029:14-T.1030:14; S-98 p.57:24-p.58:24, p.169:18-  
26 p.170:4, p.185:17-23

<sup>595</sup> T.176:11-21; T.230:23-T.231:15; T.308:7-17; T.399:5-24; T.447:8-20; T.665:12-23

<sup>596</sup> T.161:6-12; T.162:13-T.163:2; T.1028:18-T.1029:1; S-5 at ACC7237; S-57 at ACC758

<sup>597</sup> T.176:22-T.177:9. There are no statements in the record from Mr. Ramirez, but Kerrigan testified that he never told  
Mr. Ramirez. See T.1104:13-17

<sup>598</sup> See Schwenke, 222 P.3d at 773

<sup>599</sup> T.176:22-T.177:9

<sup>600</sup> S-48; S-49; S-51; S-98 p.60:4-12

1 also stated to Mr. Andrade in June 2014 that there was no reason for him to be worried about  
2 investing.<sup>601</sup> They omitted that Barcelona Advisors had previously failed to make timely interest  
3 payments due on December 31, 2013, to investors in the 12-6-12 Offering.<sup>602</sup>

4 232. This omission was misleading because the failure to timely pay the 12-6-12 Offering  
5 investors would have called into question Barcelona Advisors' ability to timely pay subsequent  
6 investors. The company's ability to pay timely interest on the notes would clearly be material to a  
7 reasonable investor and was concerning to the actual investors.<sup>603</sup>

#### 8 **Use of 10-5-10 Proceeds to pay 12-6-12 Investors**

9 233. Harkins and Barcelona Advisors stated to Mr. Andrade that after using \$30,000 of the  
10 January 2014 Offering proceeds to pay expenses related to the offering, "... all other Offering  
11 Proceeds will be used by the Company to pursue the business plan outlined in this Memorandum."  
12 They omitted that his investment funds would be used to make interest payments to prior investors  
13 in the 12-6-12 Offering.<sup>604</sup>

14 234. This omission was misleading because the statement implied that the funds would be  
15 used to advance the company's business plan, rather than just satisfying old obligations.<sup>605</sup> This  
16 would have been material to a reasonable investor because it is one of the hallmarks of a Ponzi  
17 scheme, and it would have been significant to Mr. Andrade's decision whether or not to invest.<sup>606</sup>

#### 18 **Agreement with Chanen Construction**

19 235. Harkins, Barcelona Advisors, and Barcelona Land Company stated to Mr. Andrade  
20 that, "[Barcelona Land Company's] Parent Company has reached agreement with Chanen  
21 Construction Company to coordinate with us in the Entitlement work and handle all site development  
22 and construction requirements of the New Build Affiliates. We feel this strategic alliance adds a great  
23 deal of quality to both the Company's investment Offering and the future offerings of the New Build

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24 <sup>601</sup> T.391:1-5

25 <sup>602</sup> T.232:14-21; T.400:12-24; T.1223:12-15

26 <sup>603</sup> T.232:14-21; T.400:12-24

<sup>604</sup> T.400:25-T.401:11

<sup>605</sup> See *Schwenke*, 222 P.3d at 773

<sup>606</sup> T.400:25-T.401:11

1 Affiliates. Chanen's over 50 years of experience across a broad spectrum of major construction  
 2 projects and specifically numerous major hotels and resorts [sic] undertakings for both their own  
 3 account and as agents for others is a major benefit to our investors and our Company."<sup>607</sup>

4 236. The existence of an agreement with Chanen Construction Company was a statement  
 5 of fact, but it was false.<sup>608</sup> This fact was material and would have been significant to a reasonable  
 6 investor because, as the statement itself concedes, the existence of such a deal would have added a  
 7 "great deal of quality" to the offering.<sup>609</sup>

### 8 **Low-Risk Investment**

9 237. Kerrigan stated to Mrs. Stewart twice that her investment in the 10-5-10 Offering was  
 10 a low-risk investment.<sup>610</sup> This was a statement of fact, but it was false.<sup>611</sup> This fact was material and  
 11 would have been significant to a reasonable investor because it was the exact opposite of the truth,  
 12 that the investment was speculative and involved a high degree of risk.<sup>612</sup> The level of risk is  
 13 fundamental to the value of an investment, and it was important to Mrs. Stewart's decision to  
 14 invest.<sup>613</sup>

### 15 **G. Harkins, Kerrigan, Simmons, and Orr Were Controlling Persons of Barcelona Advisors** 16 **and Are Liable for Its Anti-Fraud Violations**

17 238. Harkins, Kerrigan, Simmons, and Orr are also liable as control persons for the  
 18 violations of the antifraud provisions committed by Barcelona Advisors. A.R.S. § 44-1999(B)  
 19 imposes presumptive liability "on those persons who have the power to directly or indirectly control  
 20 the activities of those persons or entities liable as primary violators of A.R.S. § 44-1991."<sup>614</sup> Control  
 21 includes both actual control and legally enforceable control.<sup>615</sup>

22 \_\_\_\_\_  
 23 <sup>607</sup> S-59 at ACC5862

<sup>608</sup> T.74:12-T.75:22; T.522:4-8; T.544:6-13; S-98 p.145:2-14; S-136 p.40:22-p.42:4

<sup>609</sup> S-59 at ACC5862

<sup>610</sup> T.222:20-3; T.224:2-5; T.245:9-22; S-35 at ACC993

<sup>611</sup> S-35 at ACC993; S-58 at ACC5713

<sup>612</sup> S-35 at ACC993; S-58 at ACC5713

<sup>613</sup> T.223:21-22; T.224:6-13

<sup>614</sup> Eastern Vanguard Forex Ltd. v. Ariz. Corp. Comm'n, 206 Ariz. 399, 412 ¶ 42 (Ct. App. 2003). See also A.R.S. § 44-1999(B)

<sup>615</sup> See Eastern Vanguard, 206 Ariz. at 412 ¶ 41

1           **Harkins, Kerrigan, Simmons, and Orr Had the Power to Control Barcelona Advisors**

2           239. Pursuant to the terms of the Operating Agreements, a majority of the Executive  
3 Members must approve Barcelona Advisors' "Major Decisions," including decisions to incur  
4 liability for borrowed money, issue any note, or admit new company members.<sup>616</sup> This means that  
5 the Executive Members' approval was required for each of Barcelona Advisors' notes, so the  
6 Executive Members had the power to exclude any investor they did not approve.

7           240. The Second Operating Agreement expressly stated that, "the Executive Members  
8 have control of the company through their exclusive power to approve all 'Major Decisions.'"<sup>617</sup>

9           241. The Executive Members were roughly equivalent to the directors of a corporation. They  
10 did not control day-to-day business like the President, but they controlled major decisions.<sup>618</sup> Simmons  
11 described them in ways evoking the role of corporate directors, saying the role of the Executive  
12 Members was protecting the interests of the non-voting members of Barcelona Advisors, in other  
13 words, the equivalent of shareholders.<sup>619</sup>

14           242. In addition to being Executive Members, Harkins, Kerrigan, Simmons, and Orr were  
15 Managers of Barcelona Advisors, which was a manager-managed company.<sup>620</sup>

16           243. Being Executive Members and Managers gave Harkins, Kerrigan, Simmons, and Orr  
17 legally enforceable control, which means that Harkins, Kerrigan, Simmons, and Orr had the power to  
18 control Barcelona Advisors, regardless of whether they exercised that power effectively.<sup>621</sup> The  
19 testimony that Harkins made decisions with some Executive Member input but without formal votes  
20 does not prove that the other Executive Members lacked the power to control Barcelona Advisors.<sup>622</sup> It  
21 only shows that they failed to exercise the power they had, and does not excuse them from being  
22 control persons of Barcelona Advisors.<sup>623</sup>

23 \_\_\_\_\_  
<sup>616</sup> S-5 at ACC7268–7269; S-57 at ACC791–792

24 <sup>617</sup> S-57 at ACC789

25 <sup>618</sup> S-5 at ACC7214–7215, 7268–7269; S-57 at ACC737–738, 791–792

26 <sup>619</sup> T.1175:16–24

<sup>620</sup> S-3b

<sup>621</sup> See Eastern Vanguard, 206 Ariz. at 412 ¶ 41, 42

<sup>622</sup> T.1174:22–T.1175:12; S-136 p. 22:12–15, p.23:25–p.24:5, p.24:18–p.25:11

<sup>623</sup> See Eastern Vanguard, 206 Ariz. at 412 ¶ 41, 42

1           244. In additional to the legally enforceable control that all Executive Members had  
2 pursuant to the Operating Agreements, Harkins and Kerrigan both exercised actual control as  
3 company officers. As President, Harkins had “complete authority” to conduct business on behalf of  
4 the company, and he did so, for example by executing all of the Notes.<sup>624</sup>

5           245. Simmons also had actual control of Barcelona Advisors. He was Executive Vice  
6 President and Chief Operating Officer and had “all specific rights and powers required for or  
7 appropriate to the management of the Company’s business, affairs and purposes ...” including the  
8 power to operate and manage the company’s interests and execute agreements.<sup>625</sup> He exercised  
9 such power by signing Mr. Andrade’s subscription agreement, signing several independent  
10 contractor agreements, offering jobs to McDonough and Mr. Eaves, and approving Orr’s expense  
11 reports.<sup>626</sup> Simmons sometimes took the lead in working on arrangements or relationships with  
12 important third parties.<sup>627</sup> Simmons also exercised control as an administrator who put the  
13 company’s administrative structure into place and as a supervisor who developed the company’s  
14 management program.<sup>628</sup>

15 **Harkins, Kerrigan, Simmons, and Orr Have Not Proven Good Faith and Lack of Inducement**

16           246. An affirmative defense is available to control persons who acted in good faith and did  
17 not induce the violations, but it is the controlling person's burden to prove those circumstances.<sup>629</sup> The  
18 good faith element requires at a minimum that the control person exercised due care by taking  
19 reasonable steps to maintain and enforce a reasonable and proper system of supervision and internal  
20 controls.<sup>630</sup> Harkins, Kerrigan, Simmons, and Orr have not met that burden.

21  
22  
23  
<sup>624</sup> S-5 at ACC7214–7215, 7268–7269; S-57 at ACC737–738, 791–792

24 <sup>625</sup> S-57 at ACC790-791; T.1186:4–6

25 <sup>626</sup> T.125:2–5; T.372:2–5; T.374:3–14; T.721:24–25; T.1193:22–25; T.1194:18–T.1196:2; T.1198:8–17; S-36; H-6  
pp.5, 8, 12;

26 <sup>627</sup> T.1186:24–T.1187:2

<sup>628</sup> T.1141:21–T.1142:6; T.1178:14–T.1179:1; T.1183:18-22; T.1184:1–18

<sup>629</sup> Eastern Vanguard, 206 Ariz. at 413 ¶ 46. See A.R.S. § 44-1999(B)

<sup>630</sup> Eastern Vanguard, 206 Ariz. at 414 ¶ 50

1           247. Barcelona Advisors did not supervise and control its securities salesmen. It did not  
2 monitor what Kerrigan, its leading salesman, told investors about the company.<sup>631</sup> Nor did Barcelona  
3 Advisors have guidelines regarding what salesmen were required to tell investors.<sup>632</sup> Therefore  
4 none of them can prove good faith.

5           248. Harkins, Kerrigan, and Simmons also directly induced the acts underlying the fraud  
6 violations because their acts were the fraud violations.<sup>633</sup> As described above in Section F., Barcelona  
7 Advisors' fraud violations were based on Harkins, Kerrigan, and Simmons' materially misleading  
8 omissions to the Investors on Barcelona Advisors' behalf.

9           **H. Harkins and Simmons Were Controlling Persons of Barcelona Land Company and Are**  
10           **Liable for Its Anti-Fraud Violations**

11           249. Harkins and Simmons are liable as control persons for Barcelona Land Company's  
12 anti-fraud violations because they had the power to directly or indirectly control Barcelona Land  
13 Company's activities.<sup>634</sup>

14           250. Harkins was the President of Barcelona Land Company and had the power to oversee  
15 the day-to-day activities of the company and make all decisions other than an enumerated list of  
16 "Major Decisions" that required approval by the company's manager.<sup>635</sup> However, major decisions  
17 were not actually a limitation because Harkins was also the President of Barcelona Land Company's  
18 manager.<sup>636</sup>

19           251. Simmons was the Executive Vice President of Barcelona Land Company and the  
20 Executive Vice President of Barcelona Land Company's manager.<sup>637</sup> As an officer of Barcelona  
21 Land Company, Simmons had the power to perform normal business functions and otherwise operate  
22 and manage the company's business, to keep all books, accounts, and other records of the company,  
23

24 <sup>631</sup> T.743:14-25; T.972:17-21; T.1202:18-T.1203:3; S-98 p.47:6-21

<sup>632</sup> T.743:14-25; T.1201:25-1202:4; S-98 p.47:6-21, p.48:23-p.49:1

<sup>633</sup> See A.R.S. § 44-1999(B)

<sup>634</sup> Eastern Vanguard, 206 Ariz. at 412 ¶ 42. See also A.R.S. § 44-1999(B)

<sup>635</sup> S-59 at ACC5902, 5909, 5917

<sup>636</sup> S-59 at ACC5875

<sup>637</sup> S-59 at ACC5875, 5917

1 to enforce obligations of third parties to the company, pay all debts and other obligations of the  
2 company, and to execute agreements in connection with the company's assets.<sup>638</sup>

3 252. The affirmative defense for control persons who acted in good faith and did not induce  
4 the violations is not available to either Harkins or Simmons.<sup>639</sup>

5 253. Harkins directly induced Barcelona Land Company's fraud violations because he was  
6 the author of the May 2014 PPM that contained the untrue statement of material fact and materially  
7 misleading omission, as described above in Section F., and because it was Harkins who gave the May  
8 2014 PPM to Mr. Andrade.<sup>640</sup>

9 254. Simmons did not act in good faith because he failed to maintain a reasonable system  
10 of supervision and controls over Barcelona Land Company.<sup>641</sup> He either failed to review the May  
11 2014 PPM and let Harkins give it to Mr. Andrade without knowing its accuracy or did review the May  
12 2014 PPM and let Harkins give it to Mr. Andrade despite the untrue statement of material fact and  
13 materially misleading omission in the PPM.

14 **I. The Marital Communities of Simmons, Orr, and the Respondent Spouses Are Liable**  
15 **Under the Act**

16 255. All property acquired by either husband or wife during the marriage is the community  
17 property of the husband and wife except for property that is acquired by gift, devise, descent or is  
18 acquired after service of a petition for dissolution of marriage, legal separation or annulment if the  
19 petition results in a decree of dissolution of marriage, legal separation, or annulment.<sup>642</sup> During  
20 marriage, "the spouses have equal management, control and disposition rights over their community  
21 property and have equal power to bind the community."<sup>643</sup> In addition, "... either spouse may contract  
22 debts and otherwise act for the benefit of the community."<sup>644</sup> "(T)he presumption of law is, in the  
23

24 <sup>638</sup> S-59 at ACC5909

25 <sup>639</sup> See A.R.S. § 44-1999(B)

26 <sup>640</sup> T.392:2-14; T.418:5-15; S-32 p.35:22-p.36:6

<sup>641</sup> Eastern Vanguard, 206 Ariz. at 414 ¶ 50

<sup>642</sup> See A.R.S. § 25-211

<sup>643</sup> A.R.S. § 25-214(B)

<sup>644</sup> A.R.S. § 25-215(D)

1 absence of the contrary showing, that all property acquired and all business done and transacted during  
2 coverture, by either spouse, is for the community.”<sup>645</sup>

3         256. Simmons, Orr, and Respondent Spouses failed to rebut the presumption that a debt  
4 incurred during marriage is a community obligation. A debt incurred by a spouse during marriage is  
5 presumed to be a community obligation, and a party contesting the community nature of a debt bears  
6 the burden of overcoming that presumption by clear and convincing evidence.”<sup>646</sup> Furthermore, a debt  
7 is incurred at the time of the actions that give rise to the debt.<sup>647</sup> Here, the actions giving rise to the  
8 debt occurred while Simmons, Orr, and Respondent Spouses were married. Therefore, the debt was  
9 incurred during marriage and is presumed to be a community debt. Since Simmons, Orr, and  
10 Respondent Spouses failed to overcome this presumption, the debt remains a liability of their  
11 respective marital communities.

12         257. Based on the foregoing, any restitution and administrative penalty is a community  
13 debt. The Commission need not determine whether the Respondent Spouses had knowledge,  
14 participation, or intent in order to bind the community for the debt incurred; the presumption of intent  
15 is enough to bind the community, even if the Respondent Spouse was unaware or did not approve of  
16 their participant spouses’ actions.<sup>648</sup> Therefore, the marital communities of Simmons, Orr, and  
17 Respondent Spouses are subject to any order of restitution, administrative penalties, or other  
18 appropriate affirmative action.

19         **J. Kerrigan’s Registration as a Securities Salesman Should be Revoked**

20         258. Kerrigan’s conduct is grounds to revoke Kerrigan’s registration as a securities  
21 salesman with the Commission pursuant to A.R.S. §44-1962.

22         259. Kerrigan violated A.R.S. §44-1962(A)(2) by violating Chapter 12 of the act,  
23 specifically by committing fraud in connection with the offer or sale of securities as described above  
24 in Section F.

25         <sup>645</sup> Johnson v. Johnson, 131 Ariz. 38, 45 (1981)

26         <sup>646</sup> Hrudka v. Hrudka, 186 Ariz. 84, 91 (Ct. App. 1995)

<sup>647</sup> Arab Monetary Fund v. Hashim, 219 Ariz. 108, 111 (Ct. App. 2008)

<sup>648</sup> See Ellsworth v. Ellsworth, 5 Ariz. App. 89, 92 (Ct. App. 1967)

1           260.   Kerrigan violated A.R.S. §44-1962(A)(8) by being subject to an order of an SRO,  
2 namely FINRA, denying, suspending, or revoking his membership for at least six months.<sup>649</sup>

3           261.   Kerrigan also violated A.R.S. §44-1962(A)(10) by engaging in dishonest or unethical  
4 practices in the securities industry, as defined by R14-4-130(A), by employing, in connection with the  
5 sale of a security, a manipulative or deceptive device or contrivance, contrary to R14-4-130(A)(14).

6           262.   Specifically, Kerrigan’s statement to Ms. Burleson that money would be “rolling in”  
7 from an investment in Barcelona Advisors was a manipulative device to persuade her to invest.<sup>650</sup>

8           263.   Kerrigan also violated A.R.S. §44-1962(A)(10) by engaging in dishonest or unethical  
9 practices in the securities industry, as defined by R14-4-130(A), by effectuating securities transactions  
10 which have not been recorded on the records of the dealer with whom Kerrigan was registered at the  
11 time of the transactions, contrary to R14-4-130(A)(17).

12           264.   Specifically, none of Barcelona Advisors’ securities that Kerrigan offered and  
13 effectuated the sales of were recorded on the books and records of his dealer, FFEC.<sup>651</sup>

14 **V.    CONCLUSION**

15           265.   Based on the evidence admitted at the hearing, the Division respectfully requests that  
16 the Commission make the following conclusions of law.

17           266.   Harkins, Kerrigan, Simmons, Orr, Barcelona Advisors, and Barcelona Land Company  
18 violated A.R.S. § 44-1841 by the offer or sale of unregistered securities within or from Arizona.

19           267.   Harkins, Simmons, Orr, Barcelona Advisors, and Barcelona Land Company violated  
20 A.R.S. § 44-1842 by the offer or sale of securities within or from Arizona while not registered as s  
21 securities salesman or dealer.

22           268.   Harkins, Kerrigan, Simmons, Barcelona Advisors, and Barcelona Land Company  
23 violated A.R.S. § 44-1991(A)(2) by making untrue statements of material fact or materially  
24 misleading omissions in connection with an offer to sell securities within or from Arizona.

25 \_\_\_\_\_  
26 <sup>649</sup> S-175

<sup>650</sup> T.633:16–19, 23-24; T.988:6-8; S-98 p.169:18–p.170:4

<sup>651</sup> S-2a; S-2b; S-98 p.65:9–p.66:1, p.71:14–17; T.1083:13–20

1           269. Harkins, Kerrigan, Simmons, and Orr directly or indirectly controlled Barcelona  
2 Advisors within the meaning of A.R.S. § 44-1999, so that they are jointly and severally liable under  
3 A.R.S. § 44-1999 to the same extent as Barcelona Advisors for its violations of A.R.S. § 44-1991.

4           270. Harkins and Simmons directly or indirectly controlled Barcelona Land Company  
5 within the meaning of A.R.S. § 44-1999, so that they are jointly and severally liable under A.R.S. §  
6 44-1999 to the same extent as Barcelona Land Company for its violations of A.R.S. § 44-1991.

7           271. Kerrigan violated A.R.S. §44-1962(A)(2) by fraud in connection with the offer or sale  
8 of securities, contrary to A.R.S. § 44-1991.

9           272. Kerrigan violated A.R.S. §44-1962(A)(8) by being subject to an order of an SRO  
10 denying, suspending, or revoking his membership for at least six months.

11           273. Kerrigan violated A.R.S. §44-1962(A)(10) by engaging in dishonest or unethical  
12 practices in the securities industry, as defined by R14-4-130(A), by:

- 13                   a) employing, in connection with the sale of a security, a manipulative or  
14                   deceptive device or contrivance, contrary to R14-4-130(A)(14); and  
15                   b) while registered as a salesman, effectuating securities transactions which have  
16                   not been recorded on the records of the dealer with whom Kerrigan was  
17                   registered at the time of the transactions, contrary to R14-4-130(A)(17).

18           274. The Division respectfully requests that the Commission grant the following relief.

19           275. Order Harkins, Kerrigan, Simmons, Orr, and Barcelona Advisors to jointly and  
20 severally pay restitution in the amount of \$1,318,124, plus pre-judgment interest from the date of each  
21 investor's investment as set forth in Exhibit S-31b (interest rate to be calculated at the time of judgment  
22 under A.R.S. § 44-1201).

23           276. Order Barcelona Land Company to pay, jointly and severally with Harkins, Kerrigan,  
24 Simmons, Orr, and Barcelona Advisors, restitution in the amount of \$5,000, plus pre-judgment  
25 interest from the date of Mr. Andrade's June 16, 2014, investment as set forth in Exhibit S-31b  
26 (interest rate to be calculated at the time of judgment under A.R.S. § 44-1201).

1           277. Order Harkins, Kerrigan, Simmons, Orr, Barcelona Advisors, and Barcelona Land  
2 Company to pay administrative penalties of not more than five thousand dollars (\$5,000) for each  
3 violation of the Act, as the Commission deems just and proper, pursuant to A.R.S. § 44-2036(A).  
4 The Division recommends that Harkins be ordered to pay an administrative penalty in the amount  
5 of \$130,000, that Kerrigan be ordered to pay an administrative penalty in the amount of \$120,000,  
6 that Simmons be ordered to pay an administrative penalty in the amount of \$80,000, that Orr be  
7 ordered to pay an administrative penalty in the amount of \$60,000, that Barcelona Advisors be  
8 ordered to pay an administrative penalty in the amount of \$130,000, and that Barcelona Land  
9 Company be ordered to pay an administrative penalty in the amount of \$15,000.

10           278. Order Harkins, Kerrigan, Simmons, Orr, Barcelona Advisors, and Barcelona Land  
11 Company to cease and desist from further violations of the Act, pursuant to A.R.S. § 44-2032.

12           279. Order that the marital communities of Simmons and Orr, and their respective  
13 Respondent Spouses, be subject to any order of restitution, rescission, administrative penalties, or  
14 other appropriate affirmative action pursuant to A.R.S. § 25-215; and

15           280. Order the revocation of Kerrigan's registration as a securities salesman pursuant to  
16 A.R.S. § 44-1962;

17           281. Order any other relief the Commission deems appropriate or just.

18  
19 RESPECTFULLY SUBMITTED this 8th day of July, 2016.

20  
21 ARIZONA CORPORATION COMMISSION

22 By:  \_\_\_\_\_

23 Paul Kitchin  
24 Attorney for the Securities Division of the  
25 Arizona Corporation Commission  
26

1 ORIGINAL AND SIX (6) COPIES of the foregoing  
2 filed this 8th day of July, 2016, with:

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

7 COPY of the foregoing hand delivered  
8 this 8th day of July, 2016, to:

9 Mark Preny  
10 Administrative Law Judge  
11 Arizona Corporation Commission/Hearing Division  
12 1200 W. Washington St.  
13 Phoenix, AZ 85007

14 COPY of the foregoing mailed first-class  
15 this 8th day of July, 2016, to:

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