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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

AZ CORP COMMISSION
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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 AMENDED
POST-HEARING BRIEF

Arizona Corporation Commission
DOCKETED

JUL 11 2016

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The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") submits its amended¹ 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

¹ This amended brief is corrected to reflect the fact that Robert J. Kerrigan, George T. Simmons, and Bruce L. Orr were not control persons at the time of the first investment in USA Barcelona Realty Advisors, LLC

1 the Arizona Securities Act (“Act”) in connection with the offer and sale of securities in the form of
2 promissory notes and investment contracts. The Respondents all filed Answers to the T.O. and Notice.

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

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

13 The administrative hearing began on May 9, 2016, and ended on May 19, 2016.²

14 **II. JURISDICTION**

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

17 **III. FACTS**

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

19 **A. Respondents**

20 1. USA Barcelona Realty Advisors, LLC (“Barcelona Advisors”) is a limited liability
21 company that was organized under the laws of the state of Arizona in November 2010.³ Barcelona
22 Advisors’ office was in Scottsdale, Arizona.⁴ Barcelona Advisors was originally named Barcelona
23 Administration Company, LLC before amending its name on April 12, 2013.⁵ Barcelona Advisors
24

25 ² 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 ³ S-3a

⁴ T.764:3–7

⁵ S-3a

1 has not been registered by the Commission as a securities salesman or dealer.⁶ Barcelona Advisors'
 2 securities have not been registered by the Commission.⁷ There is no evidence that Barcelona Advisors
 3 has ever made a Form D notice filing with the Commission.

4 2. USA Barcelona Hotel Land Company I, LLC ("Barcelona Land Company") is a
 5 limited liability company that was organized under the laws of the state of Arizona in January 2014.⁸
 6 Barcelona Land Company has not been registered by the Commission as a securities salesman or
 7 dealer.⁹

8 3. Since October 2012, Richard C. Harkins ("Harkins") has been a resident of the state
 9 of Arizona.¹⁰ Since November 28, 2012, Harkins has been an unmarried man. Harkins has not been
 10 registered by the Commission as a securities salesman or dealer.¹¹

11 4. From at least October 2012 until August 2015, Robert J. Kerrigan ("Kerrigan") was
 12 an unmarried man, a resident of the state of Arizona, registered by the Commission as a securities
 13 salesman with CRD no. 268516, and registered in Arizona with First Financial Equity Corporation
 14 ("FFEC"), a securities dealer with CRD no. 16507.¹²

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

18 6. Since October 2012, Bruce L. Orr ("Orr") has been a married man and a resident of
 19 the state of California.¹⁶ Orr has not been registered by the Commission as a securities salesman or
 20 dealer.¹⁷

21 _____
 22 ⁶ S-1b

⁷ T.842:13-15; S-5 at ACC7207; S-57 at ACC729; S-58 at ACC5715

⁸ S-4

23 ⁹ Barcelona admitted it has not been registered in its October 2, 2015, Answer to the T.O. and Notice at ¶ 7

¹⁰ Harkins admitted his residence in his October 2, 2015, Answer to the T.O. and Notice at ¶ 2

24 ¹¹ S-1a

¹² S-2a; S-2b; Kerrigan admitted these facts in his September 29, 2015, Answer at ¶ 3

25 ¹³ Simmons admitted these facts in his October 2, 2015, Answer at ¶ 4

¹⁴ Simmons admitted these facts in his October 2, 2015, Answer at ¶ 4

26 ¹⁵ T.1130:23-T.1131:2

¹⁶ S-136 p.6:17-24, p.13:22-14:4

¹⁷ S-136 p.6:17-24, p.13:5-14

1 7. Since October 2012, Janet B. Simmons has been the spouse of George T. Simmons,
2 and Susan S. Orr has been the spouse of Bruce L. Orr (Janet B. Simmons and Susan S. Orr may be
3 referred to as “Respondent Spouses”).¹⁸ Respondent Spouses are joined in this action under A.R.S. §
4 44-2031(C) solely for purposes of determining the liabilities of their marital communities.

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

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

8 9. Since October 2012, Harkins has been the President of Barcelona Advisors.¹⁹
9 According to the company’s operating agreements, as President Harkins has had complete authority
10 and exclusive control to conduct any business on behalf of the Company in the sole and absolute
11 discretion of the President except for an enumerated list of “Major Decisions” which require approval
12 by a majority of four Executive Members,²⁰ namely Harkins, Kerrigan, Simmons, and Orr.²¹ The
13 first operating agreement (“First Operating Agreement”) was in effect from October 18, 2012, to
14 April 25, 2013, and the second operating agreement (“Second Operating Agreement”) was in effect
15 since April 25, 2013 (collectively “the Operating Agreements”).²² These Operating Agreements were
16 each in effect during their respective timeframes.²³

17 10. Simmons was Executive Vice President and Chief Operating Officer of Barcelona
18 Advisors.²⁴ As an officer of Barcelona Advisors, Simmons had “all specific rights and powers
19 required for or appropriate to the management of the Company’s business, affairs and purposes ...”
20 including the power to operate and manage the company’s interests and execute agreements.²⁵

21
22
23 ¹⁸ S-76 p.18:10–18; S-136 p.13:22–14:4

¹⁹ S-57 at ACC737. The position was previously known as Manager. See S-5 at ACC7214

²⁰ 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.”

²¹ S-5 at ACC7214–7215, 7268–7269; S-57 at ACC737–738, 790–792

²² S-5 at ACC7261; S-57 at ACC782

²³ T.931:20–T.932:5

²⁴ T.1186:4–6

²⁵ S-57 at ACC790-791

1 11. From at least February 1, 2013,²⁶ to at least August 8, 2014, Harkins, Kerrigan,
2 Simmons, and Orr were Executive Members of Barcelona Advisors.²⁷ A majority of the Executive
3 Members must approve Barcelona Advisors' "Major Decisions," including decisions to incur liability
4 for borrowed money, issue any note, or admit new company members.²⁸

5 12. According to Barcelona Advisors' own offering memorandum, "as a result of the
6 members' limited voting rights, the Executive Members have control of the company through their
7 exclusive power to approve all 'Major Decisions.'"²⁹

8 13. Barcelona Advisors' non-executive members cannot take part in the control of
9 management of the company's business except to require majority-in-interest approval for actions
10 that would materially diminish their membership interests and to remove Executive Members for
11 cause by a majority-in-interest vote.³⁰

12 14. According to a Barcelona Advisors' corporate filing on April 12, 2013, Harkins,
13 Kerrigan, Simmons, and Orr were all limited liability company Managers of Barcelona Advisors,
14 and management of Barcelona Advisors was vested in those four Managers.³¹ It also stated that
15 Harkins and Simmons each owned a 20% or greater interest in Barcelona Advisors.³² This corporate
16 filing was accurate.³³

17 15. Since January 2014, Harkins has been the President of Barcelona Land Company.³⁴
18 As President, Harkins has the power to oversee the day-to-day activities of the company and make
19 all decisions other than an enumerated list of "Major Decisions" that require approval by the
20 company's manager, which is USA Barcelona Hotel Holding Company, LLC.³⁵ From at least April
21

22 _____
²⁶ S-5 at ACC7203, 7229

23 ²⁷ S-67 at ACC5499; S-30 at ACC6360.

24 ²⁸ S-5 at ACC7268-7269; S-57 at ACC791-792

25 ²⁹ S-57 at ACC789

26 ³⁰ S-5 at ACC7266; S-57 at ACC787-790

³¹ S-3b

³² S-3b p.3

³³ T.911:7-T.913:7

³⁴ S-59 at ACC5902, 5909

³⁵ S-59 at ACC5909, 5917

1 2014 to at least August 2014, Harkins was the President of USA Barcelona Hotel Holding Company,
2 LLC.³⁶

3 16. From at least April 2014 to at least August 2014, Simmons was the Executive Vice
4 President of Barcelona Land Company and the Executive Vice President of Barcelona Land
5 Company's manager.³⁷ As an officer of Barcelona Land Company, Simmons had the power to
6 perform normal business functions and otherwise operate and manage the company's business, to
7 keep all books, accounts, and other records of the company, to enforce obligations of third parties to
8 the company, pay all debts and other obligations of the company, and to execute agreements in
9 connection with the company's assets.³⁸

10 **C. 12-6-12 Offering**

11 17. From at least October 12, 2012, to November 25, 2013, Barcelona Advisors offered
12 and sold promissory notes and investment contracts in the form of limited liability company
13 membership units ("LLC membership units") in Barcelona Advisors within and from Arizona with
14 its 12-6-12 offering ("12-6-12 Offering"). The "12-6-12" name referred to the terms of the notes,
15 which offered 12% annual interest on the notes, paid quarterly, and a maturity date of December 31,
16 2014, with a 6% bonus payment at the end of 2013 and a 12% bonus payment at the end of 2014
17 ("12-6-12 Notes").³⁹

18 18. Barcelona Advisors' stated business plan during the 12-6-12 Offering was to act as
19 the advisor to a series of private funds that would raise capital to acquire apartments and hotels.⁴⁰

20 19. Barcelona Advisors issued to investors in the 12-6-12 Offering promissory notes
21 containing the same terms with respect to interest, maturity date, and bonus payments, except that
22
23
24

25 ³⁶ S-59 PPM at ACC5875

³⁷ S-59 PPM at ACC5875, 5917

³⁸ S-59 at ACC5909

³⁹ S-5 at ACC7213; S-57 at ACC736

⁴⁰ S-5 at ACC7217; S-57 at ACC740

1 one note included an optional earlier maturity date.⁴¹ Barcelona Advisors also issued subscription
2 agreements reflecting LLC membership units in Barcelona Advisors.⁴²

3 20. Harkins accepted and signed all of the subscription agreements and notes for the 12-
4 6-12 Offering.⁴³

5 21. Barcelona Advisors prepared three versions of a private placement offering
6 memorandum (“PPM”) describing the 12-6-12 Offering. The first PPM was dated October 18,
7 2012, (“October 2012 PPM”).⁴⁴ The second PPM was dated February 1, 2013 (“February 2013
8 PPM”).⁴⁵ The third PPM was dated April 29, 2013 (“April 2013 PPM”) (collectively “the 12-6-12
9 PPMs”).⁴⁶ Harkins was the primary drafter of these PPMs.⁴⁷ Investors who received a PPM
10 received the version that was most recent at that time.⁴⁸

11 22. The PPMs for the 12-6-12 Offering offered combinations of promissory notes and
12 membership interests in Barcelona Advisors with a total offering of \$1,000,000.⁴⁹ The February 2013
13 PPM and April 2013 PPM stated that members would receive annual distributions.⁵⁰

14 23. On December 31, 2013, Barcelona Advisors failed to make timely interest payments
15 due on the 12-6-12 Notes.⁵¹ Barcelona Advisors eventually did make delayed payments with funds
16 from subsequent investors.⁵²

17 ...

18 ...

19 ...

20 ...

21 ⁴¹ S-184

22 ⁴² S-33 at ACC821-907, 966-971

23 ⁴³ S-6; S-8 through S-13; S-32 p.58; S-33; S-34; S-37 through S-43; S-45 through S-47

24 ⁴⁴ There is no copy of the October 2012 PPM in the record, but it’s date is specified on the cover page of S-57, the
25 April 2013 PPM

26 ⁴⁵ S-5

⁴⁶ S-57

⁴⁷ S-32 p.35:22-p.36:6, p.72:2-3; S-57

⁴⁸ S-32 p.61:5-9

⁴⁹ S-5 at ACC7203; S-57 at ACC724

⁵⁰ S-5 at ACC7213; S-57 at ACC736

⁵¹ S-65

⁵² S-32 p.91:11-p.92:20

1 Kerrigan, her financial advisor, recommended that she invest \$100,000, and Kerrigan told her that
2 the money would be “rolling in” from the investment.⁷⁶ She was in Arizona at the time she invested.⁷⁷

3 31. One of Ms. Burleson’s investments was a standard 12-6-12 Offering investment.⁷⁸
4 Ms. Burleson completed a subscription agreement for her investment, but the only accredited
5 investor basis she indicated in her paperwork was “relationship with sponsor.”⁷⁹ Harkins did not
6 know Ms. Burleson’s financial status, but Kerrigan told Harkins that Ms. Burleson met the accredited
7 investor net worth test.⁸⁰ Ms. Burleson, however, was uncertain whether her net worth qualified her
8 as an accredited investor, and she did not want to represent in her subscription documents that it
9 did.⁸¹ Despite Ms. Burleson’s uncertainty, Harkins accepted Ms. Burleson’s subscription agreement
10 relying on Kerrigan’s representation about her net worth.⁸²

11 32. Ms. Burleson’s second investment differed somewhat from the normal 12-6-12
12 Offering terms because she did not receive LLC membership units for that investment and because
13 her note gave her the option to invoke an early maturity date on December 31, 2013, or at the end of
14 any quarter in 2014, but otherwise had the normal 12-6-12 interest terms.⁸³ Harkins drafted the
15 special terms of this note to meet Ms. Burleson’s financial needs.⁸⁴

16 **Richard Woods**

17 33. Richard Woods invested \$100,000 in the 12-6-12 Offering on July 2, 2013.⁸⁵ Mr.
18 Woods learned about the investment opportunity from Kerrigan, who was his investment advisor for
19 over 30 years and a family friend.⁸⁶ Kerrigan discussed the investment with Mr. Woods in his living
20 room in Scottsdale, Arizona, told him it was a good investment, and gave him a subscription
21

22 ⁷⁶ T.633:16–19, 23-24; T.988:6-8; S-98 p.169:18–p.170:4

23 ⁷⁷ T.633:19–20

⁷⁸ S-8; S-39

⁷⁹ S-8 at ACC891

24 ⁸⁰ T.990:10–12; T.991:25–T.992:2

⁸¹ T.991:5–13; T.992:9–14

25 ⁸² T.991:13-16

⁸³ S-184

26 ⁸⁴ T.1008:6–T.1009:11

⁸⁵ S-9; S-31b; S-41

⁸⁶ T.660:4–6; T.661:20–24

1 agreement.⁸⁷ Mr. Woods trusted Kerrigan's recommendation because he had known Kerrigan so
 2 long.⁸⁸ Mr. Woods did not speak to anyone else from Barcelona Advisors about investing.⁸⁹ Mr.
 3 Woods was in Arizona when he invested.⁹⁰

4 34. Mr. Woods also received a document similar to the April 2013 PPM, which he
 5 referred to as a "prospectus," and Harkins' testimony that investors received the most recent version
 6 of the PPM confirms that the April 2013 PPM is probably the exact document that Mr. Woods
 7 received.⁹¹

8 Kathleen Carolin

9 35. Kathleen Carolin invested \$25,000 in the 12-6-12 Offering on July 5, 2013.⁹² She
 10 testified that she learned about the investment opportunity while in Arizona from Kerrigan, whom
 11 she was dating at the time.⁹³ Kerrigan recommended to her that it was a good investment with a high
 12 interest rate that could increase her retirement savings.⁹⁴ She trusted Kerrigan's recommendation
 13 because of his long history of investment experience.⁹⁵ She considered it to be an investment.⁹⁶

14 36. Ms. Carolin made a second \$25,000 investment in the 12-6-12 Offering on July 30,
 15 2013.⁹⁷ She invested the second time because she had become friends with many of Barcelona
 16 Advisors' principals and because Ms. Burleson's investments gave her confidence.⁹⁸ Ms. Carolin's
 17 motivation for both investments was to earn money for her retirement, and she was in Arizona at the
 18 time of both investments.⁹⁹ The loss of her investments caused her financial hardship because it
 19 forced her to sell her home and cut her retirement funds in half.¹⁰⁰

20
 21 ⁸⁷ T.661:25–T.662:7; T.1022:4–13; T.1023:9–11; S-98 p.168:23–p.169:1, p.169:18–p.170:4

⁸⁸ T.662:16–21

⁸⁹ T.663:9–11

⁹⁰ T.663:15–16

⁹¹ T.667:24–T.668:7; T.1064:18–T.1065:1; S-32 p.61:5–9; S-57

⁹² S-10; S-31b; S-40

⁹³ T.426:10–17; T.426:24–T.427:2; S-98 p.29:25–p.30:5

⁹⁴ T.426:20–T.427:7; S-98 p.169:18–p.170:4

⁹⁵ T.428:6–11

⁹⁶ T.426:7–9

⁹⁷ S-31b; S-34; S-43

⁹⁸ T.438:24–T.439:5

⁹⁹ T.439:9–14

¹⁰⁰ 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 \$200,000.¹⁰¹ Ms. Carolin and Kerrigan had been
3 dating for five years, and Kerrigan had some knowledge of her finances.¹⁰² 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.¹⁰³

6 38. Harkins gave Ms. Carolin the subscription agreement for her first investment.¹⁰⁴
7 Harkins met with Ms. Carolin at a restaurant to discuss her first subscription agreement.¹⁰⁵ She did
8 not read the subscription agreement carefully because she trusted Kerrigan's recommendation that
9 this was a good investment.¹⁰⁶ 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.¹⁰⁷ She believed that Harkins wanted her to check one of those lines.¹⁰⁸ 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.¹⁰⁹ She
15 believed that she was allowed to invest despite not meeting the qualifications because she was a
16 friend.¹¹⁰

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.¹¹¹ She does not know who did mark it.¹¹²

20
21
22 ¹⁰¹ T.431:19–T.432:9

¹⁰² T.432:13–22; S-98 p.49:10–p.50:19

¹⁰³ T.445:13–20

¹⁰⁴ T.431:17–18

¹⁰⁵ T.433:20–24

¹⁰⁶ T.469:19–T.470:8

¹⁰⁷ T.432:23–T.433:17; S-10 at ACC881

¹⁰⁸ T.474:15–21

¹⁰⁹ S-10 at ACC881; T.432:23–T.433

¹¹⁰ T.472:22–T.473:4

¹¹¹ T.472:22–T.473:4

¹¹² T.436:3–4

1 **Nancy Chaimson**

2 43. Nancy Chaimson invested \$50,000 in the 12-6-12 Offering on November 25, 2013.¹²⁷
 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.¹²⁸ Kerrigan gave Ms. Chaimson a
 5 subscription agreement and recommended that she invest.¹²⁹

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 \$500,000.¹³⁰ 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.¹³¹ 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."¹³² Kerrigan did not know Ms. Chaimson's annual income
 12 and only estimated that it was over \$100,000.¹³³

13 45. These eight investors invested a total of \$970,000 in the 12-6-12 Offering.¹³⁴

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.¹³⁵

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
 23 ¹²⁷ S-13; S-31b; S-47

24 ¹²⁸ T.1029:14-T.1030:7; S-98 p.29:25-p.30:6, p.56:7-20

25 ¹²⁹ T.1029:14-T.1030:14; S-98 p.169:18-p.170:4

26 ¹³⁰ S.98 p.56:21-p.57:8

¹³¹ T.1030:15-T.1031:2

¹³² T.1020:15-20

¹³³ T.1031:8-13

¹³⁴ S-31b

¹³⁵ S-31a p.3; S-31b

1 48. Mr. and Mrs. Eaves made their third investment on December 30, 2013.¹³⁶ 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, 2014.¹³⁷

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.¹³⁸ Mr. Eaves wanted to protect the \$500,000 he had
8 already invested by keeping the company afloat until new capital arrived.¹³⁹

9 50. Mr. and Mrs. Eaves made their fourth investment on February 28, 2014.¹⁴⁰ 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, 2014.¹⁴¹

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.¹⁴²
15 Simmons told Mr. Eaves more capital was still expected to arrive, and Simmons asked if Mr. Eaves
16 could invest another \$125,000.¹⁴³ Mr. Eaves told Simmons he would consider it.¹⁴⁴ 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.¹⁴⁵ 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."¹⁴⁶

22 ¹³⁶ S-31b; S-53

23 ¹³⁷ S-31b; S-53

24 ¹³⁸ T.282:6-20

25 ¹³⁹ T.282:24-T.283:18

26 ¹⁴⁰ S-31b; S-54

¹⁴¹ S-31b; S-54

¹⁴² T.287:16-22; T.290:1-6

¹⁴³ T.287:16-22; T.288:17-23

¹⁴⁴ T.288:24-T.289:1

¹⁴⁵ T.286:21-T.287:16

¹⁴⁶ T.346:18-T.347:2

1 52. Mr. Eaves made a fifth investment on July 14, 2014.¹⁴⁷ 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, 2014.¹⁴⁸

4 53. Mr. Eaves made his fifth investment at Harkins' request.¹⁴⁹ Mr. Eaves attended a
5 roundtable discussion in the Barcelona Advisors conference room with Harkins, Kerrigan, and
6 Simmons.¹⁵⁰ 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.¹⁵¹ Mr. Eaves wrote a check
8 and gave it to Harkins.¹⁵²

9 54. Mr. Eaves made a sixth investment on July 31, 2014.¹⁵³ 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, 2014.¹⁵⁴

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.¹⁵⁵ They discussed the company's bills and who could help with them, and Harkins
15 eventually asked Mr. Eaves for more funds.¹⁵⁶ Mr. Eaves again wrote a check and gave it to
16 Harkins.¹⁵⁷

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.¹⁵⁸

19 57. The notes and rights to purchase LLC membership units of the Additional Eaves
20 Notes were not registered by the Commission.¹⁵⁹

21 ¹⁴⁷ S-31b; S-55

22 ¹⁴⁸ S-31b; S-55; S-168

23 ¹⁴⁹ T.289:23-25

24 ¹⁵⁰ T.290:7-24

25 ¹⁵¹ T.290:20-T.291:3

26 ¹⁵² T.292:25-T.293:6; S-168

¹⁵³ S-31b; S-56

¹⁵⁴ S-31b; S-56; S-167

¹⁵⁵ T.293:23-T.294:18

¹⁵⁶ T.293:23-T.294:18

¹⁵⁷ T.296:12-T.297:24; S-167

¹⁵⁸ T.297:24-T.298:2; T.870:12-19

¹⁵⁹ S-1b

1 58. Mr. and Mrs. Eaves did not receive any principal or interest payments for any of the
2 Additional Eaves Investments.¹⁶⁰

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.¹⁶¹ The loss of this amount was about 40% of their entire
5 net worth.¹⁶² 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.¹⁶³

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.¹⁶⁴

11 61. Later, on August 8, 2014, Mr. Eaves briefly became an Executive Member of
12 Barcelona Advisors, replacing Orr.¹⁶⁵ Mr. Eaves had already made his final investment on July 31,
13 2014, before he became an Executive Member.¹⁶⁶ He did not have any management responsibilities
14 at Barcelona Advisors until he became an Executive Member.¹⁶⁷

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”).¹⁶⁸ The 10-5-10 Offering was very similar to the 12-
21
22

23 ¹⁶⁰ T.298:3–T.303:22

24 ¹⁶¹ S-31b

25 ¹⁶² T.209:15–19

26 ¹⁶³ T.309:20–T.310:8

¹⁶⁴ T.310:13–T.311:3

¹⁶⁵ T.311:4–14; T.326:1–5; S-30 at ACC6360

¹⁶⁶ T.311:15–19; S-31b

¹⁶⁷ T.311:20–23

¹⁶⁸ 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.¹⁶⁹

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.¹⁷⁰ 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.¹⁷¹

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.¹⁷² Simmons signed the other 10-5-10 Offering subscription agreement.¹⁷³

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.”¹⁷⁴ 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.¹⁷⁵

17 67. Barcelona Advisors prepared a PPM dated January 1, 2014, describing the \$1,000,000
18 10-5-10 Offering (“January 2014 PPM”).¹⁷⁶ Harkins was the primary drafter of the January 2014
19 PPM.¹⁷⁷

23 ¹⁶⁹ T.809:3–10

24 ¹⁷⁰ S-58 at ACC5720

25 ¹⁷¹ T.809:10–13

26 ¹⁷² S-32 p.58:8–17; S-35; S-48; S-51

¹⁷³ S-36 at ACC980–986; S-32 p.55:16–25

¹⁷⁴ S-65; S-66; S-32 p.1145:21–p.115:7

¹⁷⁵ S-65; S-66; T.740:8–T.741:22

¹⁷⁶ S-58

¹⁷⁷ S-32 p.86:18–20; S-58

Richard Andrade

1
2 71. Richard Andrade invested \$50,000 in the 10-5-10 Offering on April 16, 2014.¹⁹⁰ Mr.
3 Andrade first heard that there was an investment opportunity in approximately November 2013 from
4 his investment advisor, Jim Wilkerson (“Wilkerson”).¹⁹¹ 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.¹⁹² 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.¹⁹³ Mr. Andrade does not recall receiving any documents from
9 Wilkerson or Barcelona Advisors at the time.¹⁹⁴

10 72. Mr. Andrade’s lunch meeting with Simmons occurred on December 23, 2013, at a
11 restaurant in Scottsdale, Arizona.¹⁹⁵ Before this meeting, Mr. Andrade had not seen Simmons since
12 the mid-1980s when they both worked at Intel Corporation.¹⁹⁶ Wilkerson also attended the lunch
13 meeting with Mr. Andrade and Simmons.¹⁹⁷ 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.¹⁹⁸ 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.¹⁹⁹ 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.²⁰⁰ Simmons said it was a good investment based
21

22 ¹⁹⁰ S-31b; S-36; S-49; S-50; S-148

23 ¹⁹¹ T.377:4-18; T.420:10-11

24 ¹⁹² T.377:4-14; T.420:3-9

25 ¹⁹³ T.277:22-T.378:2; T.404:15-23

26 ¹⁹⁴ T.404:15-T.405:3

¹⁹⁵ T.378:13-23

¹⁹⁶ T.376:20-25; T.378:24-T.379:2

¹⁹⁷ T.405:9-T.406:3

¹⁹⁸ T.379:3-22

¹⁹⁹ T.379:23-T.380:3

²⁰⁰ T.380:10-20; S-171

1 on the track record of the individuals involved, and he asked Mr. Andrade to invest.²⁰¹ Simmons also
2 discussed having a follow-up meeting with Mr. Andrade in 2014.²⁰²

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.²⁰³ 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.”²⁰⁴ 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.”²⁰⁵ That statement was Mr. Andrade’s
8 response to Simmons’ request for an investment during the lunch meeting.²⁰⁶

9 74. In approximately late March 2014, Wilkerson stopped working as an investment
10 advisor and joined Barcelona Advisors to find investors.²⁰⁷

11 75. Mr. Andrade eventually decided to invest in Barcelona Advisors, and he did so in
12 April 2014 while in Arizona.²⁰⁸ He decided to invest because of the high interest rate that Barcelona
13 Advisors offered, and he considered it to be an investment.²⁰⁹ He did not speak with anyone else
14 from Barcelona Advisors before investing.²¹⁰ Before investing, Mr. Andrade had received the
15 January 2014 PPM.²¹¹

16 76. Simmons signed Mr. Andrade’s subscription agreement for his investment.²¹² Before
17 signing it, Simmons called Harkins, who was away from the office, and asked for authorization to
18 sign the subscription agreement.²¹³ It was unnecessary for Simmons to seek that authorization
19
20

21 ²⁰¹ T.381:2–7; T.382:2–5; T.387:15–17

22 ²⁰² T.387:1–4

23 ²⁰³ T.382:15–T.383:3

24 ²⁰⁴ S-171

25 ²⁰⁵ S-171

26 ²⁰⁶ T.387:7–17

²⁰⁷ T.406:14–T.407:15

²⁰⁸ T.388:44–17

²⁰⁹ T.376:8–19; T.388:18–23

²¹⁰ T.377:1–3

²¹¹ T.384:6–14; T.416:11–14

²¹² S-76 p.46:18–p.48:2; S-77 at ACC986

²¹³ 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.²¹⁴

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.²¹⁵

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.²¹⁶

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.²¹⁷ 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.²¹⁸

12 80. Mrs. Stewart and Mr. Andrade invested a total of \$150,000 in the 10-5-10 Offering.²¹⁹

13 81. They have not received any principal or interest payments for their investments.²²⁰

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.²²¹

17 83. Barcelona Land Company prepared a PPM for the offering dated May 5, 2014 ("May
18 2014 PPM").²²² The May 2014 PPM offered Barcelona Land Company membership interests with a
19 total offering of \$10,000,000.²²³ The May 2014 PPM forecasted 214% returns over four years.²²⁴
20 Harkins was the primary drafter of the May 2014 PPM.²²⁵

21 _____
22 ²¹⁴ T.874:8-17

²¹⁵ T.420:1-9

²¹⁶ T.401:15-22

²¹⁷ S-26; S-27; S-32 p.91:11-p.92:20; S-65; S-98 p.138:13-23

²¹⁸ S-26; S-27

²¹⁹ S-31b

²²⁰ T.228:17-19; T.397:9-14

²²¹ S-32 p.95:12-18

²²² S-59

²²³ S-59 at ACC5818

²²⁴ S-59 at ACC5831

²²⁵ 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.²²⁶

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

4 85. From at least June 11, 2014,²²⁷ to June 16, 2014²²⁸, 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.²²⁹ 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.²³⁰ The June 2014 Offer Letter also offered LLC membership units in Barcelona
12 Advisors based on the amount of the promissory notes.²³¹

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.²³²

15 88. Mr. Andrade received the June 2014 Offer Letter by e-mail on June 13, 2014.²³³ He
16 then asked to meet with Harkins to better understand what was going on at Barcelona Advisors.²³⁴
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.²³⁵ On cross examination, Mr. Andrade confirmed that he
19 was absolutely certain that Simmons was at the June 15, 2014, meeting.²³⁶

20

21

22 ²²⁶ S-59 at ACC5853-5854

²²⁷ S-60 at ACC5410

23 ²²⁸ S-51 at ACC5408-5409

²²⁹ S-32 p.96:5-12; S-60

24 ²³⁰ S-60

²³¹ S-60

25 ²³² S-60

²³³ T.389:5-9

²³⁴ T.389:7-9

26 ²³⁵ T.389:10-25

²³⁶ 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.²³⁷ He also wanted to know how Barcelona
 3 Advisors' overall program was going and whether his first investment was likely to be paid back.²³⁸
 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.²³⁹ Harkins told Mr. Andrade not to let Barcelona Advisors'
 7 request for more money worry him.²⁴⁰ 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.²⁴¹ During the meeting, Simmons
 10 affirmed that things were okay and that there was no reason for Mr. Andrade to be worried.²⁴²

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, 2014.²⁴³ He considered it to be an investment.²⁴⁴

13 91. Mr. Andrade has not received any principal or interest payments for his investment
 14 in the June 2014 Offering.²⁴⁵

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 \$86,876.²⁴⁶ Accordingly, principal in the amount of
 18 \$1,318,124 has not been paid to the investors.²⁴⁷

22 ²³⁷ T.390:1-5

23 ²³⁸ T.390:1-8

24 ²³⁹ T.390:9-17

25 ²⁴⁰ T.390:18-25

26 ²⁴¹ T.392:2-14; T.418:5-15

²⁴² T.391:1-5

²⁴³ T.391:6-10; S-31b; S-51; S-52; S-169

²⁴⁴ T.376:8-19

²⁴⁵ T.397:9-14

²⁴⁶ S-31b

²⁴⁷ 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.²⁴⁸

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.²⁴⁹

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.²⁵⁰ Therefore Harkins decided
9 to try a new offering pursuant to R14-4-140.²⁵¹ 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 \$500,000.²⁵²

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.²⁵³

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.²⁵⁴

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.²⁵⁵

22
23
24 ²⁴⁸ T.806:12-20

25 ²⁴⁹ T.927:19-T.929:14

26 ²⁵⁰ T.806:21-4

²⁵¹ T.807:4-13

²⁵² T.807:4-13; T.929:23-T.930:2

²⁵³ T.807:13-15; T.807:19-21; S-25 at ACC6214, 6235

²⁵⁴ T.807:22-T.808:1

²⁵⁵ 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, 2014.²⁵⁶ 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.²⁵⁷ 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.²⁵⁸ He thought that Barcelona Advisors was interested in his access to
8 such people, which Harkins confirmed.²⁵⁹

9 100. Harkins encouraged McDonough to bring Barcelona Advisors’ PPM to anyone
10 interested in investing.²⁶⁰ 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.²⁶¹

12 101. McDonough eventually gave three people the PPM.²⁶² He was not comfortable giving
13 it to them, but he felt pressured by Harkins to do it.²⁶³ No one else from Barcelona Advisors was
14 familiar with the personal finances of the three people he gave the PPM to.²⁶⁴

15 102. McDonough was very concerned about the nature of the investment in the PPM.²⁶⁵
16 He expressed his concern to Simmons, who just smiled and nodded his head.²⁶⁶

17 **M. Harkins**

18 103. Harkins claimed that in his opinion he was the only control person of Barcelona
19 Advisors.²⁶⁷ However, in his answer to the Amended T.O. and Notice, Harkins denied that he ever

20 _____
21 ²⁵⁶ T.60:4–19; T.64:1

²⁵⁷ T.61:10–13; T.62:13–15

²⁵⁸ T.61:16–T.62:9

²⁵⁹ T.62:9–10; T.961:6–15

²⁶⁰ 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 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

²⁶¹ T.78:6–19

²⁶² T.79:6–17

²⁶³ T.79:18–T.80:16

²⁶⁴ T.80:17–21

²⁶⁵ T.81:6–9

²⁶⁶ T.81:9–14

²⁶⁷ T.902:9–12

1 directly or indirectly controlled Barcelona Advisors.²⁶⁸ 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.²⁶⁹

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.²⁷⁰ The AVC real estate venture failed²⁷¹, 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,²⁷² and the Arizona State Land Department cancelled the
9 acquisition of the land for the fourth company related to the venture for nonpayment.²⁷³ The AVC
10 venture failed despite having raised over \$10,000,000 for the venture from Arizona investors.²⁷⁴

11 105. At Barcelona Advisors, Harkins was closely assisted by employee Paul Meka
12 (“Meka”).²⁷⁵ 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.²⁷⁶ 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.²⁷⁷ Meka functioned like an office
17 manager, maintained Barcelona Advisor’s files, and stored and printed PPMs.²⁷⁸ 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.²⁷⁹

21
22 ²⁶⁸ T.904:5–24; S-183 p.18–19

²⁶⁹ S-74; T.913:21–T.916:10

²⁷⁰ T.783:14–16; S-32 p.16:14–18, p.44:24–p.46:11; S-57 at ACC751

²⁷¹ S-18 at ACC4174–4175; S-21 at ACC3863–3864

²⁷² S-15; S-16; S-17

²⁷³ S-32 p.44–45; S-61

²⁷⁴ S-32 p.47:25–p.48:8

²⁷⁵ T.860:23–T.861:1

²⁷⁶ S-20a p.11; S-20b

²⁷⁷ S-14b

²⁷⁸ T.94:8–19; T.350:20–T.351:6.

²⁷⁹ 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.²⁸⁰ 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.²⁸¹

6 **N. Kerrigan**

7 107. Barcelona Advisors relied primarily on Kerrigan to raise working capital.²⁸²
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.²⁸³

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.²⁸⁴ However, Kerrigan admitted
13 at the hearing that, "I was there to help bring in some working capital"²⁸⁵

14 109. In 2007, Kerrigan was involved in a divorce proceeding and reached a settlement
15 agreement with his ex-wife.²⁸⁶ 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.²⁸⁷ He
17 also agreed to get a bank line of credit to secure the payments.²⁸⁸ 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.²⁸⁹ 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 _____
22 ²⁸⁰ S-67

²⁸¹ S-67 at ACC5499

²⁸² T.972:17-21

²⁸³ T.1201:25-1202:4; S-98 p.47:6-21, p.48:23-p.49:1

²⁸⁴ S-98 p.39:14-22; S-98 p.151:15-p.152:3

²⁸⁵ T.139:21-T.140:3

²⁸⁶ S-98 p.157:11-p.158:9; S-120

²⁸⁷ S-98 p.158:10-15; S-120 p.15

²⁸⁸ S-98 p.158:19-p.159:18; S-120 p.15

²⁸⁹ 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.²⁹⁰ 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.”²⁹¹ The Superior Court entered a
 4 judgment against Kerrigan for \$88,392.58.²⁹² Kerrigan reached a settlement agreement with the Bank
 5 in which he paid only \$23,500.²⁹³

6 110. In 2010, Kerrigan owed approximately \$80,000–\$90,000 for his taxes.²⁹⁴ 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.²⁹⁵

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, 2013.²⁹⁶ However,
 11 Barcelona Advisors never repaid the principal on these notes to Kerrigan.²⁹⁷

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.²⁹⁸
 14 This is false. Harkins was not aware of that operating agreement provision until September 15, 2015,
 15 the day of his EUO.²⁹⁹ He testified in his EUO that he did not discover that provision of the operating
 16 agreement until the lunch break that day.³⁰⁰

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

22 ²⁹⁰ S-122

23 ²⁹¹ S-123 at ACC6167

24 ²⁹² K-2 p.1

25 ²⁹³ K-2 p.4–5

26 ²⁹⁴ S-98 p.102:10–20

²⁹⁵ S-98 p.101:25–p.102:20; S-100

²⁹⁶ S-133; S-134

²⁹⁷ S-98 p.18:2–p.184:12; S-133; S-134

²⁹⁸ T.937:22–T.938:12

²⁹⁹ S-32 p.139:6–25

³⁰⁰ S-32 p.139:6–25

1 investors in the ... 12-6-12 Note Offering.”³⁰¹ Barcelona Advisors, however, never made any
2 payments to Kerrigan for this note.³⁰²

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.³⁰³

6 115. Barcelona Advisors investors Mr. and Mrs. Eaves, Ms. Burleson, Mr. Woods, Mr.
7 Ramirez, and Mrs. Stewart were all clients of Kerrigan and FFEC.³⁰⁴

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, 2016.³⁰⁵ 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.³⁰⁶

12 **O. Simmons**

13 117. Simmons claimed he did not start working at Barcelona Advisors until approximately
14 mid-July 2013.³⁰⁷ 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.³⁰⁸ Harkins also listed Simmons as an Executive
17 Member in a January 11, 2013, e-mail.³⁰⁹ 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.³¹⁰

20 118. Simmons viewed the role of the Executive Members as protecting the interests of the
21 non-voting members of Barcelona Advisors.³¹¹

22 ³⁰¹ S-98 p.184:13–p.185:7; S-135

³⁰² S-98 p.184:13–p.185:7

23 ³⁰³ S-98 p.65:9–p.66:1, p.71:14–17; T.1083:13–20

³⁰⁴ 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

24 ³⁰⁵ S-175

³⁰⁶ S-175

25 ³⁰⁷ T.1139:20–T.1140:14

³⁰⁸ S-3b; S-5 at ACC7229-7230; S-57 at ACC751–752

³⁰⁹ S-170

26 ³¹⁰ S-24; T.643:11–12

³¹¹ 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.³¹² McDonough attended meetings where Harkins, Kerrigan,
3 Simmons, and Orr were all present and where issues were discussed and decisions were made.³¹³

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.³¹⁴

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.³¹⁵ He claimed that he did not read the letter before he signed it.³¹⁶ 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.³¹⁷

11 122. Simmons' role at Barcelona Advisors included company administration, coordinating
12 the activities of others, and developing a management-by-objectives program.³¹⁸ He put the
13 administrative structure into place so that Barcelona Advisors could operate.³¹⁹ Simmons denied that
14 he supervised employees.³²⁰ 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."³²¹

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.³²²

18 124. Simmons signed McDonough's independent contractor agreement as Chief Operating
19 Officer of Barcelona Advisors.³²³ He also signed a job offer letter to McDonough as Chief Operating
20

21 _____
312 T.1174:22-T.1175:12

22 313 T.144:18-21; T.151:18-T.152:13

23 314 T.87:23-T.88:5; T.154:2-4

24 315 S-65; T.1196:7-T.1197:10

25 316 S-65; T.1196:14-24

26 317 S-65; S-108; T.1180:23-T.1181:10

318 T.1178:14-T.1179:1; T.1184:1-18

319 T.1183:18-22

320 T.1143:2-6

321 T.1141:21-T.1142:6

322 T.1186:24-T.1187:2

323 T.125:2-5; H-6 pp.5, 8, 12

1 Officer.³²⁴ Simmons also signed Mr. Eaves' independent contractor agreement, and it was Simmons
2 who offered him the job.³²⁵ Simmons also signed Orr's expense reports.³²⁶

3 125. Simmons claimed that he never reviewed any of Barcelona Advisors' offering
4 documents and he had no role in creating the PPMs.³²⁷ However, Simmons gave Harkins major input
5 about draft PPMs including reviewing, editing, and giving his opinions.³²⁸

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."³²⁹ However, Simmons admitted that he was shown final PPMs that were going
9 to be used to solicit investors.³³⁰ 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."³³¹

14 127. Simmons and Harkins had practice sessions with McDonough and Wilkerson to
15 rehearse what they would say to potential investors.³³² McDonough and Wilkerson role-played
16 presentations with Harkins and Simmons pretending to be potential investors.³³³ 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.³³⁴
19 McDonough observed from these sessions that Simmons understood the investment product as well
20
21

22 ³²⁴ T.1198:8-17

23 ³²⁵ T.372:2-5; T.374:3-14; T.1193:22-25; T.1194:18-T.1196:2

24 ³²⁶ T.721:24-25

25 ³²⁷ S-76 p.55:18-22; T.1146:21-T.1147:1

26 ³²⁸ S-32 p.35:22-p.36:8; T.736:8-12

³²⁹ S-76 p.23:9-23

³³⁰ T.1200:4-10

³³¹ S-176; T.1203:20-1204:13

³³² T.89:7-20

³³³ T.89:20-22

³³⁴ T.89:24-T.90:5

1 as Harkins did.³³⁵ 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.³³⁶

3 128. Simmons claimed he did not know the contents of the note and never reviewed a
4 note.³³⁷ 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.³³⁸

7 129. Simmons claimed he had "absolutely no involvement in raising capital."³³⁹ He also
8 claimed he was never directly involved in soliciting any investors or selling any investments, apart
9 from signing one subscription agreement.³⁴⁰ 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.³⁴¹

12 130. Barcelona Advisors sought investors through Harkins', Simmons', and Orr's
13 contacts.³⁴² 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.³⁴³

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.³⁴⁴

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.³⁴⁵ At the time of the meeting,
20 Wilkerson, who was Mr. Andrade's investment advisor, had already decided to join USA Barcelona
21

22 ³³⁵ T.90:6-8

23 ³³⁶ T.1185:1-15

24 ³³⁷ S.76 p.99:14-18

25 ³³⁸ S-177; T.736:25-T.737:23

26 ³³⁹ S-76 p.13:6-7

³⁴⁰ T.1180:4-8

³⁴¹ T.318:13-T.320:19

³⁴² S-98 p.28:13-17

³⁴³ S-136 p.31:12-19, p.16:25-p.17:2

³⁴⁴ T.92:1-16; T.139:5-17

³⁴⁵ T.1167:23-T.1169:25

1 advisors but chose to defer his start date.³⁴⁶ 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.³⁴⁷ 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.³⁴⁸ Simmons denied being present for Mr.
 7 Andrade's June 2014 meeting with Harkins.³⁴⁹

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.³⁵⁰ At the hearing, Simmons claimed that he was confused about the order
 11 that those meetings took place.³⁵¹

12 134. Simmons also claimed he never spoke with Mr. Eaves about investing in Barcelona
 13 Advisors.³⁵²

14 **P. Orr**

15 135. Orr claimed he did not become an Executive Member until the summer of 2013.³⁵³
 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.³⁵⁴ Harkins also listed Orr as an Executive Member and addressee of a March 26,
 19 2013, Barcelona Advisors memo.³⁵⁵

20 136. Orr was told that the Executive Members would be "driving the company."³⁵⁶ He
 21 testified at the hearing that he was not told that the Executive Members would decide major

22 ³⁴⁶ T.1205:13-22

23 ³⁴⁷ T.1170:1-13; T.1207:6-14

24 ³⁴⁸ T.1211:20-T.1212:2

25 ³⁴⁹ T.1173:12-24. Harkins did not recall Simmons attending this meeting. See T.1258:8-16

26 ³⁵⁰ S-76 p.47:2-p.48:10

³⁵¹ T.1217:8-T.1218:3

³⁵² T.1164:21-23

³⁵³ T.709:11-19

³⁵⁴ S-3b; S-5 at ACC7229-7230; S-57 at ACC751-752

³⁵⁵ S-24

³⁵⁶ T.731:12-13

1 decisions.³⁵⁷ But his EUO testimony, which he admitted was true, was that he was told that Executive
2 Members would handle major decisions.³⁵⁸ He also knew the Executive Members were able to hire
3 the President.³⁵⁹

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.”³⁶⁰ 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.³⁶¹

9 138. Until approximately mid-2013, Orr gave Harkins his opinions on Barcelona Advisors’
10 draft PPMs.³⁶² 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.³⁶³ Harkins said Orr gave
13 major input on draft PPMs.³⁶⁴

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 than Barcelona Advisors planned to use those
16 notes to raise money from investors.³⁶⁵

17 140. Orr does not know what information was provide to investors.³⁶⁶ 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.³⁶⁷

20
21
22 ³⁵⁷ T.731:8-15

³⁵⁸ T.732:17-T.733:5

³⁵⁹ T.734:8-13

³⁶⁰ S-136 p. 22:12-15, p.23:25-p.24:5

³⁶¹ S-136 p.24:18-p.25:11

³⁶² T.736:8-12; S-136 p.17:8-22

³⁶³ T.736:8-24

³⁶⁴ S-32 p.35:22-p.36:8

³⁶⁵ T.738:5-12; T.739:3-14

³⁶⁶ T.744:1-4

³⁶⁷ T.743:14-25

1 this statement to Mr. Jordan and Mr. Ramirez through the April 2013 PPM.³⁹⁰ 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.³⁹¹ Simmons stated to Mr. Andrade that Harkins
 4 managed Barcelona Advisors.³⁹²

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.³⁹³ 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.³⁹⁴
 9 Even if Meka had only a clerical role, Mr. Jordan might not have invested if he had known.³⁹⁵

10 149. Eaves was not informed of Meka's background before making his first five
 11 investments.³⁹⁶ 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.³⁹⁷ After learning about Meka, Eaves made his sixth investment to protect his first
 14 five investments.³⁹⁸

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."³⁹⁹ This statement
 20 was made to PPM recipients Mr. Eaves, Mr. Woods, and Mr. Jordan.⁴⁰⁰ Harkins and Barcelona

21 ³⁹⁰ T.161:6-12; T.162:13-T.163:2; T.1028:18-T.1029:1

22 ³⁹¹ T.269:16-24; S-174 p.15

23 ³⁹² T.380:10-14

24 ³⁹³ 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
 25 the record from Mr. Ramirez, but Harkins testified that none of the investors were told about Meka's involvement. See
 26 S-32 p.81:10-13

³⁹⁴ T.173:23-T.174:10; T.229:25-T.230:10; T.398:2-14; T.664:22-T.665:3

³⁹⁵ T.184:18-T.185:1

³⁹⁶ T.306:4-T.307:12

³⁹⁷ T.306:4-T.307:12; T.350:18-T.351:11

³⁹⁸ T.306:4-T.307:12

³⁹⁹ S-5 at ACC7230; S-57 at ACC752

⁴⁰⁰ 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.⁴⁰¹ 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.⁴⁰²

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.⁴⁰³ If Ms. Carolin and Mr. Jordan had known, it would have been significant to their decisions
 7 whether or not to invest.⁴⁰⁴ Even if the circumstances were as innocuous as Kerrigan claimed, Mr.
 8 Jordan would have wanted to know about them.⁴⁰⁵ It might have been significant to Eaves' decisions
 9 to invest, and he would have questioned Kerrigan about the circumstances.⁴⁰⁶ Woods would also
 10 have wanted to talk to Kerrigan about the circumstances.⁴⁰⁷

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"⁴⁰⁸

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.⁴⁰⁹ If he had known, it would have been significant to
 19 his decision whether or not to invest.⁴¹⁰

20
 21
 22

 23 ⁴⁰¹ S-58 at ACC5744; T.384:6-14; T.416:11-14

⁴⁰² T.161:6-12; T.162:13-T.163:2; T.269:16-24; T.1028:18-T.1029:1; S-174 p.16

⁴⁰³ T.174:11-22; T.307:13-T.308:2; T.446:14-T.447:7; T.665:4-11

⁴⁰⁴ T.174:11-22; T.446:14-T.447:7

⁴⁰⁵ T.180:4-T.181:4; T.186:7-12

⁴⁰⁶ T.307:13-T.308:2

⁴⁰⁷ T.665:4-11

⁴⁰⁸ S-58 at ACC 5727; T.384:6-14; T.416:11-14

⁴⁰⁹ T.398:15-T.399:2

⁴¹⁰ 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.⁴¹¹ 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.⁴¹² 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.⁴¹³

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.⁴¹⁴ Kerrigan did not tell any of them that Barcelona Advisors had failed to pay him because, in his words, "That's my business."⁴¹⁵ 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.⁴¹⁶ If Mrs. Stewart had known she would have asked Kerrigan more questions.⁴¹⁷

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-

⁴¹¹ S-37 through S-43; S-45 through S-49; S-51; S-53 through S-56; S-184

⁴¹² 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

⁴¹³ T.391:1-5

⁴¹⁴ 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

⁴¹⁵ S-98 p.185:17-23

⁴¹⁶ T.176:11-21; T.308:7-17; T.399:5-24; T.447:8-20; T.665:12-23

⁴¹⁷ 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."⁴¹⁸

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.⁴¹⁹ Kerrigan did not tell them because, in his words, "It was
6 none of their business."⁴²⁰ If Mr. Jordan had known, it would have been significant to his decision
7 whether or not to invest.⁴²¹

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.⁴²² Kerrigan stated to Mrs. Stewart the payment
12 terms of the 10-5-10 Notes.⁴²³ 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.⁴²⁴

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.⁴²⁵ If they had known, it would have been significant to their
17 decisions whether or not to invest.⁴²⁶

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

22 ⁴¹⁸ T.161:6-12; T.162:13-T.163:2; T.1028:18-T.1029:1; S-5 at ACC7237; S-57 at ACC758

23 ⁴¹⁹ T.176:22-T.177:9. There are no statements in the record from Mr. Ramirez, but Kerrigan testified that he never told
24 Mr. Ramirez. See T.1104:13-17

⁴²⁰ T.1104:13-17

⁴²¹ T.176:22-T.177:9

⁴²² S-48; S-49; S-51

⁴²³ S-98 p.60:4-12

⁴²⁴ T.391:1-5

⁴²⁵ T.232:14-21; T.400:12-24; T.1223:12-15

⁴²⁶ 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.⁴²⁷ If he had known, it
5 would have been significant to his decision whether or not to invest.⁴²⁸

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.⁴²⁹

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."⁴³⁰

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.⁴³¹ Harkins testified that an agreement was reached with Chanen regarding
22 entitlement work and site development.⁴³² However, neither Kerrigan, Orr, nor McDonough were
23

24 ⁴²⁷ T.400:25–T.401:11

25 ⁴²⁸ T.400:25–T.401:11

26 ⁴²⁹ 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

⁴³⁰ S-59 at ACC5862

⁴³¹ T.522:4–8; T.544:6–13; S-136 p.40:22–p.42:4

⁴³² 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.⁴³³

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.⁴³⁴ 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.⁴³⁵ The claimed low-risk nature of the investment was important to Mrs. Stewart's
9 decision to invest.⁴³⁶

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.⁴³⁷ 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.⁴³⁸ Such issues are then treated as if they had been
15 raised in the pleadings.⁴³⁹ 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.⁴⁴⁰

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.⁴⁴¹ 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.⁴⁴²

21 _____
22 ⁴³³ S-98 p.145:2-14; S-136 p.40:22-p.42:4; T.74:12-T.75:22

⁴³⁴ T.222:20-3; T.224:2-5; T.245:9-22; S-35 at ACC993

⁴³⁵ S-35 at ACC993; S-58 at ACC5713

⁴³⁶ T.223:21-22; T.224:6-13

⁴³⁷ T.697:24-T.698:5

24 ⁴³⁸ See Ariz. R. Civ. P. 15(b). Rule 15(b) of Arizona Rules of Civil Procedure is the applicable rule because no
25 procedure for conforming pleadings to the evidence is set forth by law, the Commission's Rules of Practice and
26 Procedure, Commission regulation, or Commission order. See A.A.C. R14-3-101(A)

⁴³⁹ See Ariz. R. Civ. P. 15(b)

⁴⁴⁰ T.700:3-7

⁴⁴¹ See *Continental National Bank v. Evans*, 107 Ariz. 378, 381 (1971)

⁴⁴² 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.⁴⁴³ 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.⁴⁴⁴ 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.⁴⁴⁵

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.⁴⁴⁶ 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.⁴⁴⁷ McDonough also testified that Simmons asked for
20 his help approaching investors at Simmons' country club, which was corroborated by Orr's
21 testimony.⁴⁴⁸ Mr. Eaves contradicted Simmons with his detailed and confident testimony that
22 Simmons called him to solicit his fourth investment.⁴⁴⁹

23
24 ⁴⁴³ S-76 p.23:9-23, p.55:18-22, p.99:14-18; T.1146:21-T.1147:1

⁴⁴⁴ 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

⁴⁴⁵ S-76 p.23:9-23; T.1200:4-12

⁴⁴⁶ S-76 p.13:6-7; T.1180:4-8

⁴⁴⁷ T.318:13-T.320:19

⁴⁴⁸ T.92:1-16; T.139:5-17; S-136 p.16:25-p.17:2, p.31:12-19

⁴⁴⁹ 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.⁴⁵⁰ 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.⁴⁵¹ 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."⁴⁵² 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.⁴⁵³

12 173. In his EUO testimony, Simmons omitted this lunch meeting with Mr. Andrade to hide
13 the extent of their contact.⁴⁵⁴ At the hearing, Simmons claimed that he was confused during his EUO
14 about the order that those meetings took place.⁴⁵⁵ But Simmons did not mention two meetings in his
15 EUO, he just omitted the December meeting altogether.⁴⁵⁶

16 174. Simmons' denial of attending the June 2014 meeting with Mr. Andrade and Harkins
17 is also not credible.⁴⁵⁷ 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.⁴⁵⁸ 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.⁴⁵⁹

22 ⁴⁵⁰ T.1167:23–T.1169:25

23 ⁴⁵¹ T.377:4–18; T.420:10–11; T.1170:1–13; T.1207:6–14; T.1205:13–22

24 ⁴⁵² S-171

25 ⁴⁵³ S-171; T.387:7–17

26 ⁴⁵⁴ S-76 p.47:2–p.48:10

⁴⁵⁵ T.1217:8–T.1218:3

⁴⁵⁶ S-76 p.47:2–p.48:10

⁴⁵⁷ T.1173:12–24

⁴⁵⁸ T.391:1–5; T.1258:8–16

⁴⁵⁹ 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 2015.⁴⁶⁹

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.⁴⁷⁰ But this claim
5 was inconsistent with his answer, in which he denied he was a control person at all.⁴⁷¹ 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.⁴⁷²

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.⁴⁷³ However, Kerrigan
12 admitted at the hearing that he was at Barcelona Advisors to raise working capital.⁴⁷⁴

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.⁴⁷⁵ 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.⁴⁷⁶

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.⁴⁷⁷ This was
20 inconsistent with McDonough's testimony that discussing potential investors and progress
21 soliciting them happened frequently at staff meetings.⁴⁷⁸

22 ⁴⁶⁹ S-32 p.139:6-25

23 ⁴⁷⁰ T.902:9-12

24 ⁴⁷¹ T.904:5-24; S-183 p.18-19

25 ⁴⁷² S-74; T.913:21-T.916:10

26 ⁴⁷³ S-98 p.39:14-22; S-98 p.151:15-p.152:3

⁴⁷⁴ T.139:21-T.140:3

⁴⁷⁵ T.743:9-13

⁴⁷⁶ T.744:5-9; T.749:5-T.750:3; S-173 at ACC7316

⁴⁷⁷ S-136 p.16:1-3

⁴⁷⁸ T.318:13-T.320:19

1 187. None of these four factors rebut the presumption that the Notes are securities.
 2 Barcelona Advisors' motive was to raise working capital.⁴⁸⁶ The investors in the Notes ("the
 3 Investors") were motivated by the promise of returns.⁴⁸⁷ Barcelona Advisor's plan of distribution was
 4 to find investors through Kerrigan, a registered securities salesman.⁴⁸⁸ The public could reasonably
 5 expect that the Notes are securities because the PPMs expressly refer to them as securities.⁴⁸⁹ 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.⁴⁹⁰ 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.⁴⁹¹

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.⁴⁹² They expected profits from
 17 distributions promised to LLC Unit holders.⁴⁹³ 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.⁴⁹⁴ Investors could not take part in the management of Barcelona Advisors except for
 20
 21
 22

23 ⁴⁸⁶ T.927: 19–T.929:14

⁴⁸⁷ T.165:21–23; T.199:20–T.200:8; T.228:15–16; T.388:18–23; T.439:9–14

⁴⁸⁸ S-2a

⁴⁸⁹ S-5 at ACC7207; S-57 at ACC729; S-58 at ACC5715

⁴⁹⁰ 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))

⁴⁹¹ See Nutek, 194 Ariz. at 108 ¶ 17–18

⁴⁹² T.927:19–T.929:14; S-31b; S-65

⁴⁹³ S-5 at ACC7213; S-57 at ACC736; S-58 at

⁴⁹⁴ S-3b

1 minor powers similar to those of corporate shareholders.⁴⁹⁵ 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.⁴⁹⁶

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.⁴⁹⁷ A sale
8 of a security means any sale or disposition of a security for value or a contract to make such a sale.⁴⁹⁸
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.⁴⁹⁹ There is also evidence that many of
11 the offers and sales occurred within Arizona.⁵⁰⁰

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.⁵⁰¹ 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.⁵⁰² Harkins also sold the rights to
17 purchase LLC Units because he executed the notes to Mr. Eaves evidencing their sale.⁵⁰³

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.⁵⁰⁴ He also solicited Mr. Eaves' fifth and
20

21 ⁴⁹⁵ 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)

22 ⁴⁹⁶ A.R.S. § 44-1801(26)

23 ⁴⁹⁷ A.R.S. § 44-1801(15)

24 ⁴⁹⁸ A.R.S. § 44-1801(21)

25 ⁴⁹⁹ 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
26 residence in his October 2, 2015, Answer at ¶ 4

⁵⁰⁰ 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

⁵⁰¹ S-37 through S-49; S-51; S-53 through S-56; S-184

⁵⁰² S-6 through S-13; S-33 through S-35

⁵⁰³ S-53; S-54

⁵⁰⁴ T.834:3-4

1 sixth investments.⁵⁰⁵ He solicited Ms. Burleson'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.⁵⁰⁶ He solicited Ms. Carolin's first investment by giving her a
 4 subscription agreement.⁵⁰⁷ He solicited investments in the June 2014 Offering in a letter by asking all
 5 of the existing investors to invest more.⁵⁰⁸

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,⁵⁰⁹ Mr. Woods,⁵¹⁰ Ms. Carolin,⁵¹¹ Mr. Jordan,⁵¹² Mr. Ramirez,⁵¹³ and Ms. Chaimson⁵¹⁴ and
 10 in the 10-5-10 Offering to Mrs. Stewart.⁵¹⁵ He also solicited an investment from Ms. Burleson by
 11 recommending that she invest and telling her that the money would be "rolling in."⁵¹⁶ Kerrigan also
 12 solicited Mr. Eaves' second investment by giving him the loan document for that investment⁵¹⁷ and
 13 solicited Mr. Eaves' third investment by telling him that Barcelona Advisors needed more money.⁵¹⁸

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.⁵¹⁹ Simmons solicited Mr.
 17 Andrade by asking him to make his first investment during their December 2013 lunch meeting.⁵²⁰

19 _____
 20 ⁵⁰⁵ T.290:20–T.291:3; T.293:23–T.294:18

⁵⁰⁶ 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

⁵⁰⁷ T.431:17–18

⁵⁰⁸ S-32 p.96:5–12; S-60

⁵⁰⁹ T.190:3–T.191:15; S-98 p.36:18–20, p.59:7–12

⁵¹⁰ T.660:4–6; T.661:20–24

⁵¹¹ T.426:10–17; T.426:24–T.427:2; S-98 p.29:25–p.30:5

⁵¹² T.159:10–25

⁵¹³ S-98 p.57:24–p.58:24, p.169:18–p.170:4

⁵¹⁴ T.1029:14–T.1030:7; S-98 p.29:25–p.30:6, p.56:7–20

⁵¹⁵ T.222:20–T.233:6

⁵¹⁶ T.633:16–19, 23–24; T.988:6–8; S-98 p.169:18–p.170:4

⁵¹⁷ T.206:8–19

⁵¹⁸ T.282:6–20

⁵¹⁹ T.287:16–22; T.288:17–23

⁵²⁰ 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.⁵²¹

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.⁵²² 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.⁵²³

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.⁵²⁴ 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.⁵²⁵ He described them as "prospective investors."⁵²⁶ 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.⁵²⁷ 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.⁵²⁸ This was an attempt to have
21
22

23 ⁵²¹ S-76 p.46:18-p.48:2; S-77 at ACC986

24 ⁵²² A.R.S. § 44-1801(15) and (21)

25 ⁵²³ See A.R.S. § 44-1801(15)

26 ⁵²⁴ T.391:1-5

⁵²⁵ T.749:5-23

⁵²⁶ S-173 at ACC7316

⁵²⁷ S-173 at ACC7316

⁵²⁸ 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.⁵²⁹

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.⁵³⁰

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.⁵³¹ In response Harkins gave him a copy of Barcelona Land
13 Company's May 2014 PPM.⁵³² 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.⁵³³ 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.⁵³⁴

18 ...

19 ...

20 ...

21 ...

22 ...

23 ...

24 ⁵²⁹ T.89:7-20; T.89:24-T.90:5

25 ⁵³⁰ S-3b; S-5 at ACC7229-7230

26 ⁵³¹ T.389:10-25; T.392:2-14; T.418:5-15

⁵³² T.392:2-14; T.418:5-15

⁵³³ S-57 at ACC737; S-59 at ACC5902, 5909

⁵³⁴ 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.⁵³⁵ Barcelona Advisors' securities
6 have not been registered by the Commission.⁵³⁶

7 203. It is the Respondents' burden to prove any exemption from registration.⁵³⁷ Because of
8 the vital public policies underlying the Act's registration requirements, all exemption requirements
9 must be strictly complied with.⁵³⁸

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.⁵³⁹ Other exemptions require that the issuer not engage in general
14 solicitation or general advertisement, but Barcelona Advisors has done both.⁵⁴⁰

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, 2013.⁵⁴¹ 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

23 ⁵³⁵ 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

26 ⁵³⁶ T.842:13-15; S-5 at ACC7207; S-57 at ACC729; S-58 at ACC5715

⁵³⁷ A.R.S. § 44-2033

⁵³⁸ State v. Baumann, 125 Ariz. 404, 411 (1980)

⁵³⁹ See, e.g., R14-4-126(D); R14-4-140(L)

⁵⁴⁰ See, e.g., 17 C.F.R. §230.502(c); R14-4-126(C)(3)

⁵⁴¹ 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.⁵⁴²

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.⁵⁴³ The Additional
 6 Eaves Notes and the June 2014 Notes were interim working capital solutions to bridge delays
 7 between other investors.⁵⁴⁴ 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.⁵⁴⁵ 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 2013.⁵⁴⁶ 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.⁵⁴⁷ 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 2014.⁵⁴⁸ The one June 2014 Offering sale occurred shortly
 15 after the last 10-5-10 Offering sale.⁵⁴⁹ 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.⁵⁵⁰
 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.⁵⁵¹ 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.⁵⁵²

21
 22 ⁵⁴² See 17 C.F.R. §230.502(a); R14-4-126(C)(1)

23 ⁵⁴³ T.809:3-10; T.927: 19-T.929:14; S-65

24 ⁵⁴⁴ T.282:6-20; T.287:16-22; T.288:17-23; T.390:9-17

25 ⁵⁴⁵ S-5 at ACC 7203; S-25 at ACC6216; S-57 at ACC724

26 ⁵⁴⁶ T.806:21-4

⁵⁴⁷ T.808:2-19

⁵⁴⁸ S-31b; S-47; S-58

⁵⁴⁹ S-31b; S-48; S-51

⁵⁵⁰ S-31b; S-53 through S-56

⁵⁵¹ S-5 at ACC7213-7214; S-57 at ACC736-737; S-58 at ACC5719; S-53 through S-56; S-60

⁵⁵² 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.⁵⁵³ 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.⁵⁵⁴ 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.⁵⁵⁵

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.⁵⁵⁶ Before
13 they met, Harkins knew nothing about her personal finances and did not know whether she was an
14 accredited investor.⁵⁵⁷

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.⁵⁵⁸ This does not establish a substantive
18 relationship.⁵⁵⁹

19 212. Ms. Bair and Ms. Chaimson were both consistent with Harkins' policy to bring
20 PPMs to anyone interested in investing.⁵⁶⁰

21
22

⁵⁵³ T.807:4-13; T.929:23-T.930:2

23 ⁵⁵⁴ See 17 C.F.R. §230.502(a); R14-4-126(C)(1)

24 ⁵⁵⁵ 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)

25 ⁵⁵⁶ S-32 p.74:8-17

26 ⁵⁵⁷ S-32 p.74:24-p.75:1

⁵⁵⁸ T.1029:14-T.1030:7; T.1030:15-T.1031:2; T.1031:8-13

⁵⁵⁹ 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)

⁵⁶⁰ 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 \$200,000.⁵⁶¹ 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.⁵⁶² Ms. Carolin also lacked the investment experience to be able to evaluate the risks and merits of the investment.⁵⁶³

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.⁵⁶⁴

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.⁵⁶⁵

...
...
...
...

⁵⁶¹ T.431:19–T.432:9. See 17 C.F.R. §230.501(a); R14-4-126(B)(1)
⁵⁶² T.432:23–T.433:17; S-10 at ACC88. See 17 C.F.R. §230.501(a); R14-4-140(E)
⁵⁶³ T.445:13–20; See, e.g., 17 C.F.R. §230.506(b)(ii); R14-4-126(F)(2)(b)
⁵⁶⁴ 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
⁵⁶⁵ 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.⁵⁷⁶ They omitted
4 that Harkins was closely assisted by Meka, a felon convicted in connection with an investment fraud
5 scheme.⁵⁷⁷

6 222. This omission was misleading because it potentially reflected very poorly on Harkins'
7 judgment.⁵⁷⁸ 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.⁵⁷⁹

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.⁵⁸⁰ They
12 omitted the bank loan for which Kerrigan was sued and the large tax debt Kerrigan had still not fully
13 paid.⁵⁸¹ 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.⁵⁸²

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.⁵⁸³ It was misleading because Kerrigan's financial services experience
18 suggests that he has strong money management skills.⁵⁸⁴ 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

21 ⁵⁷⁶ 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

22 ⁵⁷⁷ 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

24 ⁵⁷⁸ See Trimble, 152 Ariz. at 553 (the Act places a heavy burden not to mislead potential investors in any way)

⁵⁷⁹ T.173:23-T.174:10; T.229:25-T.230:10; T.398:2-14; T.664:22-T.665:3

25 ⁵⁸⁰ 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

⁵⁸¹ T.174:11-22; T.307:13-T.308:2; T.446:14-T.447:7; T.665:4-11

26 ⁵⁸² T.174:11-22; T.307:13-T.308:2; T.446:14-T.447:7; T.665:4-11

⁵⁸³ See Johnson, 224 P.3d at 731

⁵⁸⁴ 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.⁵⁸⁵ The bank
 2 had to sue him, and even then it only got a fraction of the recovery it was entitled to.⁵⁸⁶ 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 debt⁵⁸⁷ that he had not paid at the time both cast doubt on his
 5 money management skills.⁵⁸⁸ 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.⁵⁸⁹

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"⁵⁹⁰ 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.⁵⁹¹

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.⁵⁹² 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.⁵⁹³

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

22 ⁵⁸⁵ S-98 p.157:11-p.161:14; S-120 p.15; S-121 p.2; S-122

23 ⁵⁸⁶ S-123 at ACC6167; K-2 p.1, 4-5

24 ⁵⁸⁷ The \$2.50 fee that Kerrigan documented in K-1 is not the basis of the Division's allegations

25 ⁵⁸⁸ S-98 p.101:25-p.102:20; S-100

26 ⁵⁸⁹ 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

⁵⁹⁰ S-58 at ACC 5727; T.384:6-14; T.416:11-14

⁵⁹¹ T.398:15-T.399:2

⁵⁹² 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)

⁵⁹³ T.398:15-T.399:2

1 be worried about investing.⁵⁹⁴ 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.⁵⁹⁵

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.⁵⁹⁶

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."⁵⁹⁷ 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.⁵⁹⁸

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.⁵⁹⁹ 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.⁶⁰⁰

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.⁶⁰¹ Simmons

21 ⁵⁹⁴ 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

23 ⁵⁹⁵ 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

⁵⁹⁶ 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

⁵⁹⁷ T.161:6–12; T.162:13–T.163:2; T.1028:18–T.1029:1; S-5 at ACC7237; S-57 at ACC758

⁵⁹⁸ 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

⁵⁹⁹ See Schwenke, 222 P.3d at 773

⁶⁰⁰ T.176:22–T.177:9

⁶⁰¹ 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.⁶⁰² 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.⁶⁰³

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.⁶⁰⁴

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.⁶⁰⁵

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.⁶⁰⁶ 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.⁶⁰⁷

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

24 ⁶⁰² T.391:1-5

25 ⁶⁰³ T.232:14-21; T.400:12-24; T.1223:12-15

26 ⁶⁰⁴ T.232:14-21; T.400:12-24

⁶⁰⁵ T.400:25-T.401:11

⁶⁰⁶ See *Schwenke*, 222 P.3d at 773

⁶⁰⁷ 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."⁶⁰⁸

4 236. The existence of an agreement with Chanen Construction Company was a statement
 5 of fact, but it was false.⁶⁰⁹ 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.⁶¹⁰

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.⁶¹¹ This was a statement of fact, but it was false.⁶¹² 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.⁶¹³ 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.⁶¹⁴

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."⁶¹⁵ Control
 21 includes both actual control and legally enforceable control.⁶¹⁶ Kerrigan, Simmons, and Orr were

22 _____
 23 ⁶⁰⁸ S-59 at ACC5862

⁶⁰⁹ 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

⁶¹⁰ S-59 at ACC5862

⁶¹¹ T.222:20-3; T.224:2-5; T.245:9-22; S-35 at ACC993

⁶¹² S-35 at ACC993; S-58 at ACC5713

⁶¹³ S-35 at ACC993; S-58 at ACC5713

⁶¹⁴ T.223:21-22; T.224:6-13

⁶¹⁵ 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)

⁶¹⁶ See Eastern Vanguard, 206 Ariz. at 412 ¶ 41

1 control persons since at least February 1, 2013, and were therefore control persons at the time of each
 2 of the Barcelona Advisors investments except for Ms. Bair's \$20,000 investment on October 12,
 3 2012.⁶¹⁷

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

5 239. Pursuant to the terms of the Operating Agreements, a majority of the Executive
 6 Members must approve Barcelona Advisors' "Major Decisions," including decisions to incur
 7 liability for borrowed money, issue any note, or admit new company members.⁶¹⁸ This means that
 8 the Executive Members' approval was required for each of Barcelona Advisors' notes, so the
 9 Executive Members had the power to exclude any investor they did not approve.

10 240. The Second Operating Agreement expressly stated that, "the Executive Members
 11 have control of the company through their exclusive power to approve all 'Major Decisions.'"⁶¹⁹

12 241. The Executive Members were roughly equivalent to the directors of a corporation. They
 13 did not control day-to-day business like the President, but they controlled major decisions.⁶²⁰ Simmons
 14 described them in ways evoking the role of corporate directors, saying the role of the Executive
 15 Members was protecting the interests of the non-voting members of Barcelona Advisors, in other
 16 words, the equivalent of shareholders.⁶²¹

17 242. In addition to being Executive Members, Harkins, Kerrigan, Simmons, and Orr were
 18 Managers of Barcelona Advisors, which was a manager-managed company.⁶²²

19 243. Being Executive Members and Managers gave Harkins, Kerrigan, Simmons, and Orr
 20 legally enforceable control, which means that Harkins, Kerrigan, Simmons, and Orr had the power to
 21 control Barcelona Advisors, regardless of whether they exercised that power effectively.⁶²³ The
 22 testimony that Harkins made decisions with some Executive Member input but without formal votes
 23

24 ⁶¹⁷ S-5 at ACC7203, 7229-7230; S-31b

25 ⁶¹⁸ S-5 at ACC7268-7269; S-57 at ACC791-792

26 ⁶¹⁹ S-57 at ACC789

⁶²⁰ S-5 at ACC7214-7215, 7268-7269; S-57 at ACC737-738, 791-792

⁶²¹ T.1175:16-24

⁶²² S-3b

⁶²³ See Eastern Vanguard, 206 Ariz. at 412 ¶ 41, 42

1 does not prove that the other Executive Members lacked the power to control Barcelona Advisors.⁶²⁴ It
2 only shows that they failed to exercise the power they had, and does not excuse them from being
3 control persons of Barcelona Advisors.⁶²⁵

4 244. In additional to the legally enforceable control that all Executive Members had
5 pursuant to the Operating Agreements, Harkins and Kerrigan both exercised actual control as
6 company officers. As President, Harkins had “complete authority” to conduct business on behalf of
7 the company, and he did so, for example by executing all of the Notes.⁶²⁶

8 245. Simmons also had actual control of Barcelona Advisors. He was Executive Vice
9 President and Chief Operating Officer and had “all specific rights and powers required for or
10 appropriate to the management of the Company’s business, affairs and purposes ...” including the
11 power to operate and manage the company’s interests and execute agreements.⁶²⁷ He exercised
12 such power by signing Mr. Andrade’s subscription agreement, signing several independent
13 contractor agreements, offering jobs to McDonough and Mr. Eaves, and approving Orr’s expense
14 reports.⁶²⁸ Simmons sometimes took the lead in working on arrangements or relationships with
15 important third parties.⁶²⁹ Simmons also exercised control as an administrator who put the
16 company’s administrative structure into place and as a supervisor who developed the company’s
17 management program.⁶³⁰

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

19 246. An affirmative defense is available to control persons who acted in good faith and did
20 not induce the violations, but it is the controlling person's burden to prove those circumstances.⁶³¹ The
21 good faith element requires at a minimum that the control person exercised due care by taking
22

23 ⁶²⁴ T.1174:22–T.1175:12; S-136 p. 22:12–15, p.23:25–p.24:5, p.24:18–p.25:11

24 ⁶²⁵ See Eastern Vanguard, 206 Ariz. at 412 ¶ 41, 42

24 ⁶²⁶ S-5 at ACC7214–7215, 7268–7269; S-57 at ACC737–738, 791–792

25 ⁶²⁷ S-57 at ACC790-791; T.1186:4–6

25 ⁶²⁸ 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;

26 ⁶²⁹ T.1186:24–T.1187:2

26 ⁶³⁰ T.1141:21–T.1142:6; T.1178:14–T.1179:1; T.1183:18-22; T.1184:1–18

26 ⁶³¹ Eastern Vanguard, 206 Ariz. at 413 ¶ 46. See A.R.S. § 44-1999(B)

1 reasonable steps to maintain and enforce a reasonable and proper system of supervision and internal
2 controls.⁶³² Harkins, Kerrigan, Simmons, and Orr have not met that burden.

3 247. Barcelona Advisors did not supervise and control its securities salesmen. It did not
4 monitor what Kerrigan, its leading salesman, told investors about the company.⁶³³ Nor did Barcelona
5 Advisors have guidelines regarding what salesmen were required to tell investors.⁶³⁴ Therefore
6 none of them can prove good faith.

7 248. Harkins, Kerrigan, and Simmons also directly induced the acts underlying the fraud
8 violations because their acts were the fraud violations.⁶³⁵ As described above in Section F., Barcelona
9 Advisors' fraud violations were based on Harkins, Kerrigan, and Simmons' materially misleading
10 omissions to the Investors on Barcelona Advisors' behalf.

11 **H. Harkins and Simmons Were Controlling Persons of Barcelona Land Company and Are**
12 **Liabe for Its Anti-Fraud Violations**

13 249. Harkins and Simmons are liable as control persons for Barcelona Land Company's
14 anti-fraud violations because they had the power to directly or indirectly control Barcelona Land
15 Company's activities.⁶³⁶

16 250. Harkins was the President of Barcelona Land Company and had the power to oversee
17 the day-to-day activities of the company and make all decisions other than an enumerated list of
18 "Major Decisions" that required approval by the company's manager.⁶³⁷ However, major decisions
19 were not actually a limitation because Harkins was also the President of Barcelona Land Company's
20 manager.⁶³⁸

21 251. Simmons was the Executive Vice President of Barcelona Land Company and the
22 Executive Vice President of Barcelona Land Company's manager.⁶³⁹ As an officer of Barcelona

23 ⁶³² Eastern Vanguard, 206 Ariz. at 414 ¶ 50

24 ⁶³³ T.743:14-25; T.972:17-21; T.1202:18-T.1203:3; S-98 p.47:6-21

25 ⁶³⁴ T.743:14-25; T.1201:25-1202:4; S-98 p.47:6-21, p.48:23-p.49:1

26 ⁶³⁵ See A.R.S. § 44-1999(B)

⁶³⁶ Eastern Vanguard, 206 Ariz. at 412 ¶ 42. See also A.R.S. § 44-1999(B)

⁶³⁷ S-59 at ACC5902, 5909, 5917

⁶³⁸ S-59 at ACC5875

⁶³⁹ S-59 at ACC5875, 5917

1 Land Company, Simmons had the power to perform normal business functions and otherwise operate
 2 and manage the company's business, to keep all books, accounts, and other records of the company,
 3 to enforce obligations of third parties to the company, pay all debts and other obligations of the
 4 company, and to execute agreements in connection with the company's assets.⁶⁴⁰

5 252. The affirmative defense for control persons who acted in good faith and did not induce
 6 the violations is not available to either Harkins or Simmons.⁶⁴¹

7 253. Harkins directly induced Barcelona Land Company's fraud violations because he was
 8 the author of the May 2014 PPM that contained the untrue statement of material fact and materially
 9 misleading omission, as described above in Section F., and because it was Harkins who gave the May
 10 2014 PPM to Mr. Andrade.⁶⁴²

11 254. Simmons did not act in good faith because he failed to maintain a reasonable system
 12 of supervision and controls over Barcelona Land Company.⁶⁴³ He either failed to review the May
 13 2014 PPM and let Harkins give it to Mr. Andrade without knowing its accuracy or did review the May
 14 2014 PPM and let Harkins give it to Mr. Andrade despite the untrue statement of material fact and
 15 materially misleading omission in the PPM.

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

18 255. All property acquired by either husband or wife during the marriage is the community
 19 property of the husband and wife except for property that is acquired by gift, devise, descent or is
 20 acquired after service of a petition for dissolution of marriage, legal separation or annulment if the
 21 petition results in a decree of dissolution of marriage, legal separation, or annulment.⁶⁴⁴ During
 22 marriage, "the spouses have equal management, control and disposition rights over their community
 23 property and have equal power to bind the community."⁶⁴⁵ In addition, "... either spouse may contract

24 ⁶⁴⁰ S-59 at ACC5909

25 ⁶⁴¹ See A.R.S. § 44-1999(B)

26 ⁶⁴² T.392:2-14; T.418:5-15; S-32 p.35:22-p.36:6

⁶⁴³ Eastern Vanguard, 206 Ariz. at 414 ¶ 50

⁶⁴⁴ See A.R.S. § 25-211

⁶⁴⁵ A.R.S. § 25-214(B)

1 debts and otherwise act for the benefit of the community.”⁶⁴⁶ “(T)he presumption of law is, in the
2 absence of the contrary showing, that all property acquired and all business done and transacted during
3 coverture, by either spouse, is for the community.”⁶⁴⁷

4 256. Simmons, Orr, and Respondent Spouses failed to rebut the presumption that a debt
5 incurred during marriage is a community obligation. A debt incurred by a spouse during marriage is
6 presumed to be a community obligation, and a party contesting the community nature of a debt bears
7 the burden of overcoming that presumption by clear and convincing evidence.”⁶⁴⁸ Furthermore, a debt
8 is incurred at the time of the actions that give rise to the debt.⁶⁴⁹ Here, the actions giving rise to the
9 debt occurred while Simmons, Orr, and Respondent Spouses were married. Therefore, the debt was
10 incurred during marriage and is presumed to be a community debt. Since Simmons, Orr, and
11 Respondent Spouses failed to overcome this presumption, the debt remains a liability of their
12 respective marital communities.

13 257. Based on the foregoing, any restitution and administrative penalty is a community
14 debt. The Commission need not determine whether the Respondent Spouses had knowledge,
15 participation, or intent in order to bind the community for the debt incurred; the presumption of intent
16 is enough to bind the community, even if the Respondent Spouse was unaware or did not approve of
17 their participant spouses’ actions.⁶⁵⁰ Therefore, the marital communities of Simmons, Orr, and
18 Respondent Spouses are subject to any order of restitution, administrative penalties, or other
19 appropriate affirmative action.

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

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

23
24
25 ⁶⁴⁶ A.R.S. § 25-215(D)

⁶⁴⁷ Johnson v. Johnson, 131 Ariz. 38, 45 (1981)

⁶⁴⁸ Hrudka v. Hrudka, 186 Ariz. 84, 91 (Ct. App. 1995)

⁶⁴⁹ Arab Monetary Fund v. Hashim, 219 Ariz. 108, 111 (Ct. App. 2008)

⁶⁵⁰ See Ellsworth v. Ellsworth, 5 Ariz. App. 89, 92 (Ct. App. 1967)

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

4 260. Kerrigan violated A.R.S. §44-1962(A)(8) by being subject to an order of an SRO,
5 namely FINRA, denying, suspending, or revoking his membership for at least six months.⁶⁵¹

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

9 262. Specifically, Kerrigan's statement to Ms. Burleson that money would be "rolling in"
10 from an investment in Barcelona Advisors was a manipulative device to persuade her to invest.⁶⁵²

11 263. Kerrigan also 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 effectuating securities transactions
13 which have not been recorded on the records of the dealer with whom Kerrigan was registered at the
14 time of the transactions, contrary to R14-4-130(A)(17).

15 264. Specifically, none of Barcelona Advisors' securities that Kerrigan offered and
16 effectuated the sales of were recorded on the books and records of his dealer, FFEC.⁶⁵³

17 **V. CONCLUSION**

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

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

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

25 _____
26 ⁶⁵¹ S-175

⁶⁵² T.633:16-19, 23-24; T.988:6-8; S-98 p.169:18-p.170:4

⁶⁵³ S-2a; S-2b; S-98 p.65:9-p.66:1, p.71:14-17; T.1083:13-20

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

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

7 270. Harkins and Simmons directly or indirectly controlled Barcelona Land Company
8 within the meaning of A.R.S. § 44-1999, so that they are jointly and severally liable under A.R.S. §
9 44-1999 to the same extent as Barcelona Land Company for its violations of A.R.S. § 44-1991.

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

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

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

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

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

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

25 276. Order Kerrigan, Simmons, and Orr to pay, jointly and severally with Harkins and
26 Barcelona Advisors, restitution in the amount of \$1,302,223, plus pre-judgment interest from the date

1 of each investor's investment as set forth in Exhibit S-31b (interest to be calculated at the time of
2 judgment under A.R.S. § 44-1201).

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

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

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

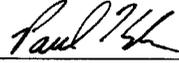
18 280. Order that the marital communities of Simmons and Orr, and their respective
19 Respondent Spouses, be subject to any order of restitution, rescission, administrative penalties, or
20 other appropriate affirmative action pursuant to A.R.S. § 25-215; and

21 281. Order the revocation of Kerrigan's registration as a securities salesman pursuant to
22 A.R.S. § 44-1962;

23 282. Order any other relief the Commission deems appropriate or just.
24
25
26

RESPECTFULLY SUBMITTED this 11th day of July, 2016.

ARIZONA CORPORATION COMMISSION

By: 

Paul Kitchin
Attorney for the Securities Division of the
Arizona Corporation Commission

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1 ORIGINAL AND SIX (6) COPIES of the foregoing
2 filed this 11th 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 11th 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 11th day of July, 2016, to:

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