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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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Arizona Corporation Commission

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In the matter of:

LOAN GO CORPORATION, a Utah corporation,

JUSTIN C. BILLINGSLEY and HEATHER BILLINGSLEY, husband and wife,

JEFFREY SCOTT PETERSON, an unmarried man,

JOHN KEITH AYERS and JENNIFER ANN BRINKMAN-AYERS, husband and wife,

Respondents.

DOCKET NO. S-20932A-15-0220

**LOAN GO CORPORATION,
BILLINGSLEYS, AND PETERSON
POST-HEARING BRIEF**

(Before the Hon. ALJ Mark Preny)

Respondents Justin and Heather Billingsley (“Billingsleys”), Loan Go Corporation (“Loan Go”) and Jeffrey Peterson, hereafter “Respondents”, submit its post-hearing brief in response to the Securities Division’s (“Division”) Post-Hearing Brief (“PHB”) filed on November 16, 2016, as follows:

I. RESPONSE TO DIVISION’S PHB

Based on the evidence in the record and the testimony provided at the hearing, the Commission should find that the Division has failed to meet its burden of proving the *prima facie* elements of its case against the Respondents:

1 **A. Credibility of Testimony and Documents**

2 The Division stated throughout its PHB that the testimony given by Mr. Billingsley and Mr.
3 Peterson was not credible. However, upon further examination, there are plenty of reasonable
4 explanations for why a witness could provide different answers than given previously or even
5 during the same examination. The Division has acknowledged none of these alternatives, but
6 instead has simply made unsupported conclusions. For example, the Division concluded that Mr.
7 Peterson's inability to remember or to be absolutely certain about specific alleged statements or
8 incidents, in contrast to his prior Examination Under Oath ("EUO") or subsequent testimony, can
9 only be explained by Mr. Peterson being untruthful. This conclusion is self-serving and fails to
10 recognize several more reasonable explanations, such as a witness' memory being refreshed¹, that
11 recollection may not always occur all at once, especially for incidents that occurred five years
12 prior, that document inconsistencies revealed during a hearing, such as a debit/credit column error²
13 in a financial ledger, could help refresh a witness' memory and/or cause them to reconsider their
14 previous assumptions. However, this reconsideration or refreshment does not necessarily mean
15 that a witness is being untruthful.
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18 Interestingly, the Division believes the testimony and documents provided by Mr. Ayers are
19 credible, even after the Division discovered a major defect in the documents during the hearing
20 itself when the Division asked Mr. Ayers about the Debit/Credit columns being switched around in
21 Exhibit S-26, which was provided to the Division by Mr. Stein, the attorney who represented Mr.
22 Ayers in his prior EUO³. Furthermore, Mr. Lowe, the Division's investigator in this case, testified
23 that he had never seen the FTC news release nor was he aware of the charges the FTC had brought
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26 ¹ The idea of "refreshing" a witness' memory is contemplated in the Arizona Rules of Evidence, including but not limited to Rule
27 612. Although this rule deals specifically with a writing refreshing a memory, surely other things, such as testimony of other
persons or even telling your story another time could have the same effect.

² T.202:8-203:7

³ Id. See also, T.200:15.

1 against Mr. Ayers before September 28, 2016⁴. Furthermore, when asked by ALJ Preny whether
2 additional “authentication procedures” would have been used if he had known about the FTC case
3 prior to today, Mr. Lowe responded in the affirmative⁵. If Mr. Ayers’ participation in this hearing
4 is given the same level of scrutiny that Mr. Peterson’s and Mr. Billingsley’s statements were given
5 by the Division, it is clear that Mr. Ayers’ testimony is far less credible than any other witness.

6 The fact that most of the key documents and evidence relied upon by the Division were
7 provided by Mr. Ayers (S-3, S-18, S-20, S-22, S-23, S-34, S-35, S-36, S-37), Ms. Minore (S-8, S-
8 9, S-10, S-11, S-12, S-13, S-14, S-15, S-16) a former attorney of Mr. Ayers⁶, or by Mr. Stein (S-
9 26), should be of dire concern to the trier of fact. To say that the documents provided by Mr.
10 Ayers’ counsel are somehow more credible based on that fact alone is without merit for the simple
11 fact that his counsel surely received these documents from Mr. Ayers.

12 The Division rests heavily on the conclusion that because some of the events and/or names in
13 the Skype Logs coincide with events/names consistent with Mr. Peterson’s (and others’)
14 testimony, that the entirety of the Skype Logs must therefore be credible/accurate. This conclusion
15 advances the Division’s interests while failing to acknowledge the possibility that only portions of
16 the Skype Logs could have been altered. The sheer irregularity in the format of the Skype Logs
17 (e.g., names/comments not lined up) and the fact that it was presented in text format only, which
18 cannot be verified for its authenticity, should alone discount any serious consideration of relying
19 upon the Skype Logs as a source of reliable information. The Division states that
20 “[o]verwhelming circumstantial evidence” confirms the credibility and authenticity of the Skype
21 Logs⁷. However, events/names mentioned in the Division’s PHB are not material to the allegations
22 the Division have made against the Respondents in the slightest. As such, there would have been
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26 ⁴ T:448:12-453:5

27 ⁵ Id.

⁶ T.73:20-24

⁷ Division’s PHB, p.12, ¶47

1 no reason for Mr. Ayers, or anyone else, to alter these names/dates/events in the Skype Logs. In
2 fact, retaining these minor, insignificant details serves only to provide an appearance of
3 authenticity for the documents as a whole since these details are inconsequential⁸ or are factual in
4 nature⁹, which could easily be verified. There is simply no rationale explanation for why anyone
5 would attempt to alter these types of details from the Skype Logs; therefore, their presence and
6 outside authentication alone does not authenticate the other more consequential portions of the
7 Skype Logs, which should not be relied upon.

8
9 Finally, most of the documentary evidence relied upon by the Division is alleged to be copies
10 of original documents, although none of the originals were provided. There were no assurances
11 provided by the Division that the Skype Logs, which were presented in a simple text format (not
12 the original Skype screen shots, for example, or the original Skype file), were not fabricated in
13 whole or in part. As such, the authenticity of the documents, as a whole, are in question. Despite
14 this being the “best evidence” available, given the aforementioned authenticity concerns, the
15 authenticity and reliability of the information contained in the documents stemming from Mr.
16 Ayers and/or his counsel should, at a minimum, be greatly scrutinized.

17
18 **B. \$15,000 Payment to Billingsley was a Loan, Not a Commission**

19 The Division concluded that an alleged conversation between Mr. Peterson and Mr. Ayers, as
20 displayed in the aforementioned Skype Logs, proves that a \$15,000 payment from LoanGo to
21 Billingsley was a commission disguised as a loan, or was a “sham loan” in other words. The
22 Skype Logs showed Mr. Peterson allegedly using quotation marks when referring to the money
23 being a “loan” because a commission could not be paid. Ignoring for a moment the authenticity of
24 the Skype Logs, the presence of quotation marks could be for several reasons. First, it could be
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26 ⁸ The Division provides examples of this “overwhelming” circumstantial evidence like the fact that Mr. Peterson referred to names
that were mentioned in the Skype Logs, such as “discussing personal named Ellen and Daisy). Division’s PHB, p.13, ¶ 48).

27 ⁹ Such as LoanGo being set up in Utah in June 2010, which is verifiable by public records, or bank records that were subpoenaed
from Bank of America. Id.

1 that Mr. Peterson was attempting to emphasize the fact that the money could not be a commission.
2 Next, quotation marks could be used simply to enclose the proper title/disposition for the money
3 that was to be paid to Billingsley. Finally, quotation marks could be present simply because they
4 were added to the Skype Logs after-the-fact— which would take little to no effort to
5 manipulate/add with a simple word processing program. In the end, the lack of credibility and
6 certainty leaves only speculation, which should not be relied upon to determine the outcome of this
7 case

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9 **C. Subscription Agreements Were Not Falsified**

10 Besides the testimony of Ms. Rowley that the check mark in the box on the LoanGo
11 subscription agreement “doesn’t look like her writing,” the Division has offered no proof
12 whatsoever that these documents were falsified or forged. It is extremely unlikely that Ms.
13 Rowley could identify an “x” in a subscription agreement from 2011 as not being her writing¹⁰. In
14 addition, Ms. Rowley’s signature was contained on the Subscription Agreement after the Investor
15 Questionnaire¹¹. In this section, the signer “represents and warrants that all of its answers to this
16 Investor Questionnaire are true¹²... .” Therefore, because it cannot be proved that Ms. Rowley did
17 not sign the Subscription Agreement or that these documents were otherwise altered, her signature
18 thus verifies the she did, in fact, mark the check box in question (stating that her individual or joint
19 net worth was, at the time, \$1M or more). There is no reliable evidence that Ms. Rowley was not
20 aware of the Investor Questionnaire, which was referenced directly above her signature, of which
21 she was attesting to its truthfulness. Given the lack of reliable evidence, the allegation that the
22 subscription documents were forged or altered by Mr. Billingsley is unsubstantiated and should be
23 ignored.
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¹⁰ S-8, p. ACC000523

27 ¹¹ S-8, p. ACC000524

¹² Id.

1 *Mr. Jordan:* I received a—well, I asked for a prospectus and one was provided for me.

2 *Mr. Kitchin:* And that was before you invested?

3 *Mr. Jordan:* It was after, I believe.¹⁶

4 Applying the same standard the Division used to evaluate the credibility of Respondents'
5 statements, Mr. Jordan's testimony is similarly unreliable and not credible. Or it is possible that
6 Mr. Jordan simply cannot recall five years later when he received the prospectus (or Private
7 Placement Memorandum, S-3). Either way, Mr. Jordan's testimony regarding whether he received
8 S-3 before or after investing is not reliable.

9 **II. CONCLUSION**

10 Based on the arguments submitted in this brief and the evidence admitted at the hearing,
11 Respondents respectfully requests that the Commission make the following conclusions:

12 **A. Mr. Billingsley Did Not Violate the Securities Act**

13 Mr. Billingsley, as an officer of LoanGo, was tasked with securing investments in LoanGo.
14 He made contact with prior annuity and insurance clients and told them about the possibility of
15 investing in LoanGo. Mr. Billingsley provided each investor with adequate disclosure documents
16 by various means, including providing a Private Placement Memorandum to at least the two
17 witnesses who were available for questioning at the hearing before making their investments in the
18 company. As part of all of this, LoanGo had spoken with Gilford Securities and was in consistent
19 discussions with them regarding the contemplated and then the actual private placement. These
20 measures were taken with the first funds put into the company by Mr. Peterson to attempt to avoid
21 these types of issues from the start, and manage LoanGo in the proper manner from inception.

22 **B. No Fraud in the Private Offering of LoanGo**

23 Despite any deficiencies in record-keeping and filings, some of which appear to have been
24 an oversight, there was no fraud perpetrated by Loango, Mr. Billingsley, or Mr. Peterson. For
25 example, an email dated August 3, 2011 between Mr. Peterson and Mr. Gary Agron (Noah Agron's
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¹⁶ T.105:24 – 106:4

1 father), discusses filing a Form D even though it appears that was never completed¹⁷. Mr. Agron
2 states “We’ll need to get SEC electronic ID numbers from the SEC so we can electronically (edgar)
3 file the Form D for the PPM. That’s necessary under fed and state law now. I can teach Stephan how
4 to handle that with the printers. I can also show him how to fill out the Form D.”¹⁸ This shows that
5 LoanGo, Mr. Billingsley, nor Mr. Peterson perpetrated fraud; rather, some corporate oversight
6 appears to have contributed to the collective neglect to properly file Form D.

7 **C. Mr. Peterson Acted in Good Faith**

8 As stated above, Mr. Peterson showed good faith by spending the first bit of money he
9 loaned to the corporation by hiring Gary Agron, an experience securities attorney, and engaging
10 with Noah Agron with Gilford Securities. In addition, it is clear that Mr. Billingsley had the
11 Private Placement Memorandum and was distributing that to the investors. These acts show that
12 Mr. Peterson was acting in good faith in all his interactions with and for the corporation.

13 **CONCLUSION**

14 This is the story of a startup that was not successful and was able to meet its obligations to
15 its investors. Couple that with a business dispute amongst former partners and you begin to see
16 that this was not some massive fraud (or any for that matter) on consumers as the Division would
17 have you believe. LoanGo began by consulting experienced securities professionals. Fraudulent
18 businesses do not tend to spend tens of thousands of dollars engaging professionals.

19 Given the foregoing, the evidence and testimony presented at the hearing by the
20 Respondents, and the lack of credible, authenticated evidence provided by Mr. Ayers or his
21 attorneys with which the Division based its entire case, the charges against the Respondents should
22 be dismissed in its entirety. In the event the Commission determines that filing deficiencies
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27 ¹⁷ Originally exchanged as Respondent’s Exhibit 14, which was renumbered during the hearing to include an “L” designation to distinguish it from the Division’s exhibits designated with an “S”.

¹⁸ Id.

1 warrant some penalty or restitution, the Commission should significantly reduce the amounts
2 sought by the Division as restitution and administrative penalties¹⁹.

3 Respondents should not be saddled with a proverbial death sentence, which is what a
4 finding of fraud and designation of "bad actor" would constitute. The evidence to conclude this
5 simply does not exist.

6
7 **RESPECTFULLY SUBMITTED** this 16th day of December, 2016.
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10 
11 Erie J. Jeide
12 Jeide Law, PLLC
13 5115 N. Dysart Rd., Ste. 202-213
14 Litchfield Park, AZ 85340
15 Attorney for Respondents Justin and Heather
16 Billingsley, Jeffrey Peterson and Loan Go Corp.
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22 **ORIGINAL** of the foregoing filed this 16th day of December, 2016 with:

23 Docket Control
24 Arizona Corporation Commission
25 1200 West Washington Street
26 Phoenix, AZ 85007

27 ¹⁹ Although not germane to the Commission's consideration of liability, Respondent's fail to see the reasoning for Mr. Ayers' proposed administrative penalties being \$10k less than LoanGo, Mr. Peterson, and Mr. Billingsley.

1 Hearing Officer
2 Hearing Division
3 Arizona Corporation Commission
4 1200 W. Washington Street
5 Phoenix, AZ 85007

6 **COPY** of the foregoing mailed or emailed this 16th day of December, 2016 to:

7 Paul Kitchin
8 Securities Division
9 Arizona Corporation Commission
10 1300 W. Washington, 3rd Floor
11 Phoenix, AZ 85007

12 **Consented to Service by Email**

13 Kevin Fallon McCarthy
14 McCarthy Law PLC
15 4250 N. Drinkwater Blvd., Suite 320
16 Scottsdale, AZ 85251
17 *Attorneys for Respondents Ayers*

18 **Consented to Service by Email**

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