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**BEFORE THE ARIZONA CORPORATION COMMISSION**

COMMISSIONERS

Arizona Corporation Commission

**DOCKETED**

TOM FORESE – Chairman  
BOB BURNS  
ANDY TOBIN  
BOYD DUNN  
JUSTIN OLSON

JAN 3 2018

DOCKETED BY

IN THE MATTER OF:

DOCKET NO. S-20938A-15-0308

USA BARCELONA REALTY ADVISORS, LLC, an  
Arizona limited liability company,

DECISION NO. 76529

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 S. ORR, husband and  
wife,

Respondents.

**OPINION AND ORDER**

DATE OF PRE-HEARING CONFERENCE:	October 13, 2015
DATES OF HEARING:	May 9, 10, 11, 16, 17, 18, and 19, 2016
PLACE OF HEARING:	Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE:	Mark Preny
APPEARANCES:	Mr. Richard C. Harkins, pro per;
	Mr. Robert J. Kerrigan, pro per;
	Mr. Charles R. Berry, Clark Hill, LLC, on behalf of Respondents George Simmons and Janet Simmons;
	Mr. Bruce L. Orr; pro per; and
	Mr. Paul Kitchin and Mr. James Burgess, Staff Attorneys, on behalf of the Securities Division of the Arizona Corporation Commission.

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1 **BY THE COMMISSION:**

2 On August 26, 2015, the Securities Division (“Division”) of the Arizona Corporation  
3 Commission (“Commission”) filed a Temporary Order to Cease and Desist and Notice of Opportunity  
4 for Hearing (“T.O. and Notice”) against USA Barcelona Realty Advisors, LLC (“Barcelona  
5 Advisors”), USA Barcelona Hotel Land Company I, LLC (“Barcelona Land Company”), Richard C.  
6 Harkins, Robert J. Kerrigan, George T. Simmons and Janet B. Simmons, husband and wife (the  
7 “Simmonses”), and Bruce Orr (collectively “Respondents”), in which the Division alleged violations  
8 of the Arizona Securities Act (“Act”) in connection with the offer and sale of securities in the form of  
9 promissory notes, and investment contracts or membership interests.

10 The spouse of George T. Simmons, Janet B. Simmons is joined in the action pursuant to A.R.S.  
11 § 44-2031(C) solely for the purpose of determining the liability of the marital community.

12 The Respondents were duly served with copies of the T.O. and Notice.

13 On September 11, 2015, Respondent George T. Simmons, individually and on behalf of his  
14 marital community, filed a Request for Hearing pursuant to A.A.C. R14-4-306.

15 On September 14, 2015, Respondent Robert J. Kerrigan filed a Request for Hearing pursuant  
16 to A.A.C. R14-4-306.

17 On September 15, 2015, Respondent Richard C. Harkins filed a Request for Hearing pursuant  
18 to A.A.C. R14-4-306.

19 On September 18, 2015, a Notice of Appearance and Request for Hearing, pursuant to A.R.S.  
20 § 44-1972, A.A.C. R14-4-306 and A.A.C. R14-4-307, was filed on behalf of Robert J. Kerrigan by  
21 counsel Robert D. Mitchell and Sarah K. Deutsch.

22 On September 23, 2015, by Procedural Order, a pre-hearing conference was scheduled to  
23 commence on October 13, 2015.

24 On September 28, 2015, a Notice of Appearance and Request for Hearing, pursuant to A.A.C.  
25 R14-4-306 and R14-4-307, was filed on behalf of George T. Simmons and Janet B. Simmons by  
26 counsel Charles R. Berry and Stanley R. Foreman.

27 On September 29, 2015, Respondent Robert J. Kerrigan filed an Answer to Temporary Order  
28 to Cease and Desist and Notice of Opportunity for Hearing.

1 Also on that day, Bruce Orr filed a letter. Mr. Orr's letter responded to assertions made in the  
2 T.O. and Notice. Mr. Orr further requested to "have my name removed from this complaint." To  
3 preserve Mr. Orr's due process rights, his September 29, 2015, letter was considered a request for  
4 hearing and answer to the T.O. and Notice.

5 On October 2, 2015, by Procedural Order, the pre-hearing conference remained scheduled for  
6 October 13, 2015.

7 Also on October 2, 2015, George T. Simmons, and the marital community of George T.  
8 Simmons and Janet B. Simmons, filed an Answer to the Temporary Order to Cease and Desist and  
9 Notice of Opportunity for Hearing.

10 On that same day, Richard Harkins filed a pro per Answer to the Temporary Order to Cease  
11 and Desist and Notice of Opportunity for Hearing. Mr. Harkins asserted the pro per answer to also be  
12 the answer of Barcelona Advisors and Barcelona Land Company.

13 On October 13, 2015, the pre-hearing conference was held as scheduled. The Division appeared  
14 through counsel, as did Mr. Kerrigan and the Simmonses. Mr. Harkins appeared on his own behalf  
15 and purportedly on behalf of Barcelona Advisors and Barcelona Land Company. The scheduling of a  
16 hearing date was discussed. Mr. Harkins was informed that because he is not an attorney, he cannot  
17 represent Barcelona Advisors and Barcelona Land Company.

18 On October 14, 2015, by Procedural Order, a hearing was scheduled to commence on March 7,  
19 2016.

20 On December 29, 2015, the parties, except Mr. Orr, filed a Stipulation Regarding Leave to  
21 Amend Temporary Order to Cease and Desist and Notice of Opportunity for Hearing and Regarding  
22 Continuing Hearing (the "Stipulation"). As stated in the Stipulation, the Division sought to amend the  
23 T.O. and Notice to add factual allegations arising from the Division's ongoing investigation. The  
24 parties, except Mr. Orr, stipulated that the Administrative Law Judge may allow for the Division to  
25 amend the T.O. and Notice under A.A.C. R14-3-106(E). The Stipulation further contained a request  
26 that the March 7, 2016 hearing be continued to commence on or after May 9, 2016, with a  
27 corresponding change of the January 8, 2016, deadline for the exchange of witness lists and copies of  
28 exhibits.

1 On December 30, 2015, by Procedural Order, the hearing scheduled to commence on March 7,  
2 2016, was vacated and rescheduled to commence on May 9, 2016. Mr. Orr was given until January  
3 13, 2016, to file a response to the Stipulation.

4 On January 20, 2016, by Procedural Order, the Division was granted leave to amend the T.O.  
5 and Notice, pursuant to A.A.C. R14-3-106(E).

6 On January 25, 2016, the Division filed an Amended Temporary Order to Cease and Desist and  
7 Notice of Opportunity for Hearing (“Amended T.O. and Notice”). Among other changes, the Amended  
8 T.O. and Notice added Susan S. Orr as a respondent. The spouse of Bruce L. Orr, Susan S. Orr is  
9 joined in the action pursuant to A.R.S. § 44-2031(C) solely for the purpose of determining the liability  
10 of the marital community (collectively, Ms. Orr and Ms. Simmons may be referred to as “Respondent  
11 Spouses,” and collectively, Mr. Orr and Ms. Orr may be referred to as the “Orrs”). The Respondents  
12 were duly served with copies of the Amended T. O. and Notice.

13 On February 1, 2016, Respondent Kerrigan filed a Request for Hearing, pursuant to A.R.S. §  
14 44-1972, A.A.C. R14-4-306, and A.A.C. R14-4-307. Mr. Kerrigan also filed an Answer to the  
15 Amended T. O. and Notice.

16 On February 22, 2016, the Simmonses filed a Request for Hearing pursuant to A.A.C. R14-4-  
17 306 and R-14-4-307.

18 On March 7, 2016, Respondent George T. Simmons filed an Answer to the Amended T. O. and  
19 Notice.

20 On March 10, 2016, Respondent Kerrigan filed a List of Witnesses and Exhibits.

21 On March 14, 2016, Respondent George T. Simmons “for himself and the marital community  
22 with his wife Janet B. Simmons,” filed a List of Witnesses and Documentary Evidence.

23 On March 15, 2016, Respondent Harkins filed an Answer to the Amended Temporary Order to  
24 Cease and Desist and Notice of Opportunity for Hearing. Mr. Harkins also filed a list of Witnesses and  
25 Exhibits.

26 On March 21, 2016, attorneys Robert D. Mitchell and Sarah K. Deutsch, and the law firm of  
27 Tiffany & Bosco, P.A., (collectively “Kerrigan Counsel”) filed a Motion to Withdraw as Counsel for  
28 Respondent Kerrigan, pursuant to Ariz. R. Civ. P. 5.1. Kerrigan Counsel contended that Respondent

1 Kerrigan “has failed to comply with his financial commitments to counsel and therefore good cause  
2 exists for counsel to be permitted to withdraw.” Kerrigan Counsel stated that Mr. Kerrigan had been  
3 advised of the scheduled hearing dates.

4 Also on March 21, 2016, the Division filed its Response to Motion to Withdraw as Counsel.  
5 The Division noted that Ariz. R. Civ. P. 5.1 does not apply in these proceedings as withdrawal is  
6 governed by A.A.C. R14-3-104(E). The Division stated that it did not object to the Motion to Withdraw  
7 as Counsel provided that the withdrawal would not affect the scheduling of the hearing.

8 On March 25, 2016, by Procedural Order, the Motion to Withdraw Robert D. Mitchell, Sarah  
9 K. Deutsch, and the law firm of Tiffany & Bosco, P.A. as counsel for the Respondent Kerrigan was  
10 granted.

11 On April 4, 2016, Respondent George T. Simmons filed a Supplemental List of Witnesses and  
12 Documentary Evidence.

13 On April 28, the Division filed a Motion to Set Deadline for Objections to Potential Conflicts.

14 On May 2, 2016, Respondent Bruce Orr filed a Motion to Suspend Hearing May 11, 2016  
15 Afternoon through May 13, 2016. Mr. Orr contended that some of the scheduled hearing dates  
16 conflicted with a Public Planning Commission meeting that he needed to attend in Rohnert Park,  
17 California,

18 On May 4, 2016, the Division filed an Opposition to Respondent Bruce Orr’s, Motion to  
19 Suspend Hearing May 11, 2016 Afternoon through May 13, 2016. The Division contended that Mr.  
20 Orr did not establish good cause for delay in the hearing schedule.

21 On May 9, 2016, a full public hearing commenced before a duly authorized Administrative Law  
22 Judge of the Commission at its offices in Phoenix, Arizona. The Division and Respondents George T.  
23 Simmons and Janet B. Simmons were represented by counsel. Respondents Richard C. Harkins, Robert  
24 J. Kerrigan and Bruce L. Orr appeared on their own behalf. No appearances were made by Respondents  
25 Barcelona Advisors, Barcelona Land Company, and Susan S. Orr. Additional days of hearing were  
26 held on May 10, 11, 16, 17, 18, and 19, 2016. At the conclusion of the hearing, a schedule for the filing  
27 of post-hearing briefs was established whereby the Division would file an initial brief by July 8, 2016,  
28 the Respondents would file a response by August 8, 2016, and the Division would file a reply by August

1 23, 2014.

2 On July 8, 2016, the Division filed its Post-Hearing Brief.

3 On July 11, 2016, the Division filed an Amended Post-Hearing Brief. The Amended Post-  
4 Hearing Brief stated that it corrected the Post-Hearing Brief filed on July 8, 2016, to reflect that Mr.  
5 Kerrigan, Mr. Simmons, and Mr. Orr were not control persons for Barcelona Advisors at the time of  
6 the first investment in the company.

7 On August 5, 2016, the Division filed a Consent to Email Service.

8 Also on August 5, 2016, the Division filed a Response to George T. Simmons and Janet B.  
9 Simmons Motion to Maintain Judge Preny's Order that All Respondents' Post-hearing Briefs Be Filed  
10 Simultaneously. The Division argued that an extension of the briefing deadline to accommodate Mr.  
11 Harkins for medical reasons did not provide good cause to extend the briefing deadline for other  
12 Respondents.

13 On August 9, 2016, the Division and Mr. Harkins filed a Stipulated Motion to Continue Date  
14 for Filing Brief for Respondent Richard C. Harkins ("Stipulated Motion"). Due to a health related  
15 matter, the Division and Mr. Harkins stipulated to extend the due date of Mr. Harkins' Post-Hearing  
16 Brief until August 22, 2016. The Division argued that if the other Respondents were somehow  
17 prejudiced by the later filing date of Mr. Harkins, they could ask for leave to file sur-reply briefs.

18 Also on August 9, 2016, the Simmonses filed a Response to a Stipulated Motion to Continue  
19 Date for Filing Brief for Respondent Richard C. Harkins and Motion to Maintain Judge Preny's Order  
20 that All Respondents' Post-hearing Briefs Be Filed Simultaneously. The Simmonses did not object to  
21 the Stipulated Motion, provided that all Respondents receive the same extension to file their briefs  
22 simultaneously. The Simmonses contended that if one Respondent filed his brief later, he would have  
23 an opportunity to review the other Respondents' briefs.

24 Further on August 9, 2016, the Simmonses filed a Reply to Securities Division's Response to  
25 Respondents' Motion to Maintain Judge Preny's Order that All Respondents' Post-hearing Briefs be  
26 Filed Simultaneously. The Simmonses argued that an extension for all Respondents would not be a  
27 hardship to the Division while sur-replies would waste time and money for the parties.

28 Additionally, on August 9, 2016, the Simmonses filed their Post-Hearing Brief.

1 Also on August 9, 2016, Mr. Orr filed his Post-Hearing Brief.

2 On August 10, 2016, by Procedural Order, the Stipulated Motion was granted, allowing Mr.  
3 Harkins to file his Post-Hearing Brief by August 22, 2016. The Division was allowed until September  
4 6, 2016, to file a reply to Mr. Harkins' Post-Hearing Brief. As Mr. Orr and the Simmonses had filed  
5 their briefs contemporaneously with the Simmonses' motion, the issue of simultaneous filings for all  
6 Respondents was found moot. Mr. Kerrigan was found to stand on his closing statement as he failed  
7 to file a Post-Hearing Brief or request an extension of time.

8 On August 11, 2016, Mr. Kerrigan filed his Post-Hearing Brief.

9 On August 19, 2016, Mr. Harkins filed his Post-Hearing Brief.

10 On August 22, 2016, Mr. Harkins filed an Amended Post-Hearing Brief.

11 Also on August 22, 2016, the Division filed a Reply to the Post-Hearing Briefs of Respondents  
12 George T. Simmons and Bruce L. Orr.

13 On September 2, 2016, the Division filed a Reply to the Post-Hearing Brief of Respondent  
14 Richard C. Harkins.

15 Also on September 2, 2016, Respondents George T. Simmons and Bruce L. Orr filed a  
16 Response to the Securities Division's Reply to Post-Hearing Briefs.

17 On February 16, 2017, an email from Mr. Harkins to the Commission was filed requesting the  
18 status of the case.

19 \* \* \* \* \*

## 20 DISCUSSION

### 21 I. Brief Summary

22 This is an enforcement action brought against Respondents USA Barcelona Realty Advisors,  
23 LLC, USA Barcelona Hotel Land Company I, LLC, Richard C. Harkins, Robert J. Kerrigan, George  
24 T. Simmons, and Bruce L. Orr for alleged violations of the Arizona Securities Act. The Division  
25 alleges that the Respondents offered and/or sold unregistered securities, in violation of A.R.S. § 44-  
26 1841. Respondents Barcelona Advisors, Barcelona Land Company, Mr. Harkins, Mr. Simmons and  
27 Mr. Orr are alleged to have made offers and/or sales of unregistered securities while not registered as  
28 dealers or salesmen, in violation of A.R.S. § 44-1842. The alleged offers and sales include eighteen

1 investments in Barcelona Advisors from ten different investors. Barcelona Advisors made offerings  
2 named after the payouts promised on its notes, including a 12-6-12 Offering, a 10-5-10 Offering, and  
3 an 8-8 Offering, as well as selling other stand-alone transactions, all of which the Division argues are  
4 properly integrated for the purpose of determining whether any exemptions apply to the alleged  
5 registration violations.

6 The Division further alleges fraud against some of the Respondents for failure to disclose that:  
7 1) Mr. Harkins' prior real estate venture had failed; 2) Mr. Harkins was assisted by a person with a  
8 felony conviction in connection with an investment fraud scheme; 3) Mr. Kerrigan owed unpaid taxes  
9 and had been sued regarding a bank loan; 4) Barcelona Advisors had moved to a "Plan B" business  
10 plan after failing to raise necessary capital to fund its original business model; 5) Barcelona Advisors  
11 failed to repay promissory notes to Mr. Kerrigan; 6) Barcelona Advisors promised to use 12-6-12  
12 investment funds obtained after October 1, 2013, to repay a \$70,000 note to Mr. Kerrigan; 7) Barcelona  
13 Advisors failed to make timely payments to 12-6-12 investors; and 8) 10-5-10 Offering proceeds would  
14 be used to pay interest to prior 12-6-12 Offering investors. The Division also alleges fraud against  
15 some of the Respondents for disclosing false statements of fact that: 1) the Barcelona entities had a  
16 business agreement with Chanen Construction Company; and 2) Barcelona Advisors was a low-risk  
17 investment. The Division alleges that Mr. Harkins, Mr. Kerrigan, Mr. Simmons and Mr. Orr are all  
18 control persons of Barcelona Advisors, and that Mr. Harkins and Mr. Simmons are control persons of  
19 Barcelona Land Company.

20 Respondent Spouses, Janet B. Simmons, the spouse of George T. Simmons, and Susan S. Orr,  
21 the spouse of Bruce L. Orr, are joined in this action solely for the purpose of determining the liability  
22 of their respective marital communities. The Division requests that Respondents be ordered to pay  
23 administrative penalties of varying amounts and restitution in a total amount of \$1,318,124. The  
24 Division further requests the revocation of Mr. Kerrigan's registration as a securities salesman for  
25 multiple violations of A.R.S. § 44-1962.

26 Mr. Harkins contends that the Barcelona Advisors' transactions were a mix of securities that  
27 were exempt from registration requirements and transactions that were not securities. Mr. Harkins  
28 contends that the Division has failed to establish the elements required to prove fraud. The Respondents

1 contend that Mr. Harkins was the only control person for Barcelona Advisors. Mr. Simmons and Mr.  
2 Orr argue that violations alleged against them in a direct capacity, rather than as control persons, should  
3 be dismissed as the Division did not properly allege these violations in the Amended T.O. and Notice,  
4 but rather sought to add alleged violations at the hearing by making a motion to conform the notice to  
5 the evidence. Mr. Harkins, Mr. Simmons and Mr. Orr all request monetary awards against the Division  
6 arising from this matter.

## 7 **II. Testimony**

### 8 Patrick McDonough

9 Patrick McDonough testified that he worked for Barcelona Advisors through an independent  
10 contractor's agreement beginning November 1, 2013.<sup>1</sup> Mr. McDonough testified that he was hired to  
11 assist Barcelona Advisors in raising capital, and subsequently, following a conversation with Mr.  
12 Simmons and Mr. Harkins, learned that he would be tasked with trying to develop a network of  
13 brokers/dealers for the purpose of raising capital.<sup>2</sup> Mr. McDonough had no experience working with  
14 brokers/dealers but he had previously been the executive director of a foundation known for its  
15 successful-fundraising as well as its wealthy and prominent volunteers.<sup>3</sup> Mr. McDonough's past work  
16 experience had been in the healthcare business, and the healthcare real estate development business,  
17 but he had no prior experience in raising capital.<sup>4</sup> Mr. McDonough worked full time for Barcelona  
18 Advisors as the vice president of retail markets, and he was encouraged by Mr. Harkins to raise capital  
19 from "anybody and everybody" he could.<sup>5</sup> Mr. McDonough's work for Barcelona Advisors concluded  
20 when he resigned on June 12, 2014.<sup>6</sup>

21 Mr. McDonough testified that he received from Mr. Harkins a copy of what Harkins said was  
22 the final memorandum for a new product, regarding the business plan B, a confidential private  
23 placement offering memorandum for USA Barcelona Hotel Land Company I, LLC, (the "Barcelona  
24 Land Company PPM") a few days after its stated date of May 5, 2014.<sup>7</sup> Mr. McDonough testified he

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25 <sup>1</sup> Tr. at 60, 124-125.

26 <sup>2</sup> Tr. at 60-61, 113, 132. Mr. McDonough failed to bring any brokers/dealers into the network. Tr. at 132.

27 <sup>3</sup> Tr. at 61-62, 112-113.

28 <sup>4</sup> Tr. at 126-127, 129.

<sup>5</sup> Tr. at 150.

<sup>6</sup> Tr. at 63-64.

<sup>7</sup> Tr. at 66-67, 138; Exh. S-59.

1 did not know if any sales or offers were made under the Barcelona Land Company PPM.<sup>8</sup>

2       The Barcelona Land Company PPM contained a map of the United States displaying several  
3 land parcels “that have passed the Company’s initial due diligence process, and are under consideration  
4 for purchase.”<sup>9</sup> Mr. McDonough testified that this statement was incorrect as a number of the sites  
5 depicted were not sites where due diligence was done, or even visited as possible parcels for purchase.<sup>10</sup>  
6 The Barcelona Land Company PPM further stated that Barcelona Land Company had “established  
7 what we believe are mutually acceptable terms and conditions for the purchase of ... seven Qualified  
8 Land parcels with their respective owners, and we expect to have signed letters of intent for those  
9 Qualified Land parcels by June 1, 2014.”<sup>11</sup> Mr. McDonough testified that he had never seen any  
10 documentation or communication regarding a number of sites on the map, and that he had no  
11 knowledge of anybody visiting many of them.<sup>12</sup> Mr. McDonough testified that since it was a small  
12 company of eight to ten people and everyone always talked, it would be “almost impossible” for him  
13 to have no knowledge of these parcels if they were close to making a decision to purchase.<sup>13</sup>

14       The Barcelona Land Company PPM went on to state that “[f]or each Qualified Land Parcel, we  
15 have completed preliminary financial reviews and, in most cases, site visits with a representative of our  
16 selected franchisor.”<sup>14</sup> Mr. McDonough testified that he believed these assertions were not true because  
17 he had seen no pro formas of financial analysis, and he had heard no discussion in the office about site  
18 visits, though Mr. McDonough thought it possible that four sites in southern California were visited as  
19 there had been brief discussion about going there.<sup>15</sup> When Mr. McDonough asked Mr. Harkins about  
20 the presence of sites on the map that hadn’t been discussed, Mr. Harkins told him that those markets  
21 are where the investors expect them to be and that their counsel had approved it.<sup>16</sup> On cross  
22 examination, Mr. McDonough admitted that he didn’t know for sure whether Mr. Orr had done due  
23

24 \_\_\_\_\_  
<sup>8</sup> Tr. at 138-139.

25 <sup>9</sup> Exh. S-59 at ACC005854.

26 <sup>10</sup> Tr. at 67-68.

27 <sup>11</sup> Exh. S-59 at ACC005854.

28 <sup>12</sup> Tr. at 68, 70-71.

<sup>13</sup> Tr. at 68-69, 71, 151.

<sup>14</sup> Exh. S-59 at ACC005854.

<sup>15</sup> Tr. at 69-72, 106-107.

<sup>16</sup> Tr. at 73.

1 diligence on sites in Florida and he was not aware of a trip to Las Vegas that Mr. Orr may have made.<sup>17</sup>  
 2 Mr. McDonough also admitted that he did not know about meetings of the Executive Committee and  
 3 conceded it possible they had conversations of which he was not aware.<sup>18</sup>

4 The Barcelona Land Company PPM also contained a section regarding the selection of a general  
 5 contractor, Chanen Construction Company (“Chanen”). The Barcelona Land Company PPM stated  
 6 that “[o]ur Parent Company has reached agreement with Chanen Construction Company to coordinate  
 7 with us in the Entitlement work and handle all site development and construction requirements of the  
 8 New Build Affiliates.”<sup>19</sup> Mr. McDonough testified that there was, in fact, no agreement made with  
 9 Chanen at least through his resignation on June 12, 2014.<sup>20</sup> Mr. McDonough testified that he had made  
 10 the initial contact with Chanen through Steve Betts, Chanen’s vice president of business development.<sup>21</sup>  
 11 After that, a series of meetings and discussions took place involving Steve Chanen, Mr. Betts, Mr.  
 12 Harkins, Mr. Simmons and Mr. McDonough.<sup>22</sup> Mr. McDonough testified that by the time he left, no  
 13 conclusion had been reached from these discussions.<sup>23</sup>

14 Mr. McDonough testified that Barcelona Advisors also had 12-6-12 and 10-5-10 note  
 15 offerings.<sup>24</sup> Mr. McDonough testified that he was encouraged by Mr. Harkins and, to a lesser extent,  
 16 Mr. Simmons, to take a 10-5-10 offering memorandum to interested potential investors.<sup>25</sup> Under  
 17 pressure from Mr. Harkins to raise capital, Mr. McDonough presented the 10-5-10 offering  
 18 memorandum to three people, although Mr. McDonough testified that he was not comfortable with the  
 19 product and promptly notified the three people that the investment was no longer available to them.<sup>26</sup>  
 20 Mr. McDonough testified that he believed the investment was “Ponzi-like” and that he knew previous  
 21

22 <sup>17</sup> Tr. at 108-109.

<sup>18</sup> Tr. at 110, 133-134, 145.

23 <sup>19</sup> Exh. S-59 at ACC005862.

<sup>20</sup> Tr. at 75.

24 <sup>21</sup> Tr. at 75, 136.

<sup>22</sup> Tr. at 137.

25 <sup>23</sup> Tr. at 137.

26 <sup>24</sup> Tr. at 77. The 12-6-12 note paid 12% interest at the end of the first year, a 6% “kicker,” and another 12% interest at the  
 end of the two-year note. Tr. at 86. Similarly, the 10-5-10 note paid 10% interest at the end of the first year, a 5% “kicker,”  
 and another 10% interest at the end of the two year note. *Id.*

27 <sup>25</sup> Tr. at 78.

28 <sup>26</sup> Tr. at 79-80. Under cross-examination, Mr. McDonough testified that he did not send the 10-5-10 note to three friends,  
 but rather he sent the 12-6-12 note to them sometime before May 5, 2014. Tr. at 140-141, 143. On further examination,  
 Mr. McDonough testified he believed it was the 12-6-12 note, but may not have been. Tr. at 149.

1 investors had yet to be paid their interest or the capital.<sup>27</sup> Mr. McDonough testified that Barcelona  
2 Advisors maintained a sign out sheet to note which memorandum was taken, to whom it was being  
3 sent, and the date.<sup>28</sup> Mr. McDonough did not recall Barcelona Advisors having any system to monitor  
4 what was being told to people who were given the memorandum, and he testified that the company  
5 gave no specific guidance, other than rehearsals, on what could be said to potential investors, although  
6 he thought that based upon everyone's experience level that "the general consensus was we all knew  
7 what we should say or nor say."<sup>29</sup>

8       Regarding the management structure of Barcelona Advisors, Mr. McDonough testified that Mr.  
9 Harkins was the president and Mr. Simmons was an executive vice president, but he was not sure about  
10 the titles of Mr. Orr and Mr. Kerrigan.<sup>30</sup> Mr. McDonough further testified that Barcelona Advisors  
11 also had an Executive Committee consisting of four individuals: Mr. Kerrigan, Mr. Harkins, Mr. Orr,  
12 and Mr. Simmons.<sup>31</sup> When asked as to what Mr. Harkins' work as president consisted of, Mr.  
13 McDonough testified that "any decisions that seemed to be made, he made them" and that he spent  
14 most of his time writing the memorandums.<sup>32</sup> Mr. McDonough testified that Mr. Kerrigan's role was  
15 primarily to raise capital, mostly by marketing 12-6-12 and 10-5-10 notes to his existing clients, and  
16 that he was not in the office frequently.<sup>33</sup> Mr. McDonough described Mr. Simmons as "the face of the  
17 organization" since he dealt with staff and was "the front guy" in dealing with Chanen and outside  
18 relationships.<sup>34</sup> Mr. McDonough believed that Mr. Simmons was keenly aware of everything going on  
19 in the organization, had decision making authority, and was part of the decision making process, though  
20 it was not unusual for Mr. Harkins to overrule him.<sup>35</sup> Mr. McDonough testified that Mr. Simmons  
21 signed his contract and made decisions pertaining to him, but did not make decisions regarding the  
22

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23 <sup>27</sup> Tr. at 81-82.

24 <sup>28</sup> Tr. at 82.

25 <sup>29</sup> Tr. at 82-83.

26 <sup>30</sup> Tr. at 84.

27 <sup>31</sup> Tr. at 84.

28 <sup>32</sup> Tr. at 84-85. On cross-examination, Mr. McDonough testified that he understood that decisions were generally discussed with the Executive Committee, "to a lesser degree with [Mr. Orr] and [Mr. Kerrigan], more so with [Mr. Simmons], but ultimately [Mr. Harkins] made the final decision." Tr. at 144.

<sup>33</sup> Tr. at 85-86.

<sup>34</sup> Tr. at 86.

<sup>35</sup> Tr. at 88, 90, 153-154.

1 offer and sale of securities.<sup>36</sup> Mr. McDonough testified that Mr. Harkins and Mr. Simmons would  
 2 conduct rehearsal sessions with him and another person who was brought in to market the product.<sup>37</sup>  
 3 During these rehearsal sessions, Mr. Harkins and Mr. Simmons would pretend to be the investor and  
 4 would critique the presentations of the product.<sup>38</sup> Mr. McDonough could only recall one instance in  
 5 which Mr. Simmons specifically discussed a potential investor, when Mr. Simmons had lunch with an  
 6 investment advisor and afterwards asked Mr. McDonough to follow up with him.<sup>39</sup> Mr. McDonough  
 7 also testified that Mr. Simmons had suggested introducing Mr. McDonough to people he knew at his  
 8 country club to talk about the investments, but this never materialized.<sup>40</sup>

9 Mr. McDonough testified that Mr. Orr was the contact person on the California land parcels.<sup>41</sup>  
 10 Though Mr. Orr was a member of the Executive Committee, Mr. McDonough testified that he believed  
 11 Mr. Orr was not much included in the decision making.<sup>42</sup> Mr. McDonough testified that Paul Meka  
 12 functioned as an office manager and kept the memorandums, though he was not involved in drafting  
 13 them.<sup>43</sup> Mr. McDonough believed that Mr. Meka and Mr. Harkins had a close relationship and that  
 14 they knew each other prior to Barcelona Advisors.<sup>44</sup> Mr. McDonough testified that while working for  
 15 Barcelona Advisors, he had heard comments from Mr. Orr and the Chief Financial Officer implying  
 16 that Mr. Meka had something in his past where he had “gotten ... in a little bit of a fix.”<sup>45</sup>

17 Mr. McDonough testified that he met Rodney Eaves at a meeting in Sedona in 2013 when Mr.  
 18 Eaves was an investor.<sup>46</sup> According to Mr. McDonough, Mr. Eaves began attending meetings  
 19 involving Chanen and was coming on board as vice president of construction about the time Mr.  
 20 McDonough left.<sup>47</sup> Mr. McDonough acknowledged that the Barcelona Land Company PPM lists Mr.

21 \_\_\_\_\_  
 22 <sup>36</sup> Tr. at 155-156.

23 <sup>37</sup> Tr. at 89.

24 <sup>38</sup> Tr. at 89-90, 142-143.

25 <sup>39</sup> Tr. at 91.

26 <sup>40</sup> Tr. at 92, 139.

27 <sup>41</sup> Tr. at 93.

28 <sup>42</sup> Tr. at 93. When asked on cross-examination as to why he thought Mr. Simmons and Mr. Orr made decisions, Mr. McDonough provided no specific examples of decision-making by either Simmons or Orr, but rather, Mr. McDonough testified that they had daily conversations about “deals, deal points, contracts and so forth.” Tr. at 135.

<sup>43</sup> Tr. at 94, 123-124.

<sup>44</sup> Tr. at 95.

<sup>45</sup> Tr. at 95.

<sup>46</sup> Tr. at 96-97.

<sup>47</sup> Tr. at 96-98.

1 Eaves as the vice president of development and construction management.<sup>48</sup>

2 Mr. McDonough testified that he left Barcelona Advisors because he was concerned about  
 3 “legal exposure” he may face arising from the misstatements and omissions he discovered in the  
 4 Barcelona Land Company PPM and his finding out that Mr. Meka had previously been sanctioned by  
 5 the Commission and had been charged with misprision of a felony.<sup>49</sup> On cross-examination, Mr.  
 6 McDonough testified that the day before he sent in his resignation letter, he had a discussion with Mr.  
 7 Harkins wherein Mr. Harkins told Mr. McDonough to meet with Mr. Simmons the next morning to  
 8 show that he “had value and worth in the organization.”<sup>50</sup> Mr. McDonough did not think he was going  
 9 to be discharged, but felt that he “had about all of [Mr. Harkins] that [he] could stomach.”<sup>51</sup> After  
 10 leaving Barcelona Advisors, Mr. McDonough met with Mr. Simmons several times to seek a resolution  
 11 regarding the money Barcelona Advisors owed Mr. McDonough, however it appeared to McDonough  
 12 that Mr. Simmons was not in a position to make a decision for repayment as the Executive Committee  
 13 would not agree.<sup>52</sup> Mr. McDonough testified that he later received a letter and exchanged emails with  
 14 Mr. Harkins, who informed Mr. McDonough that he would be treated as an employee and they would  
 15 set up a deferred compensation plan for the money owed him.<sup>53</sup> Mr. McDonough testified that he also  
 16 filed a lien in June 2014, in an attempt to protect the money he believed was owed to him, although he  
 17 released the lien after discussions with Mr. Simmons.<sup>54</sup> Mr. McDonough testified that he never  
 18 received the pay owed him.<sup>55</sup> Mr. McDonough testified that his concern about possible felony exposure  
 19 led him to contact the Commission and submit a letter to begin an investigation.<sup>56</sup>

20 William Jordan

21 Mr. Jordan testified that he is an Arizona resident who invested \$50,000 in a promissory note  
 22 in Barcelona Advisors.<sup>57</sup> Mr. Jordan first learned about Barcelona Advisors around October 2013

24 <sup>48</sup> Tr. at 130-131; Exh. S-59 at ACC005877.

25 <sup>49</sup> Tr. at 98, 101-102.

26 <sup>50</sup> Tr. at 114-115.

27 <sup>51</sup> Tr. at 145.

28 <sup>52</sup> Tr. at 99, 155.

<sup>53</sup> Tr. at 100.

<sup>54</sup> Tr. at 119-120.

<sup>55</sup> Tr. at 101.

<sup>56</sup> Tr. at 102-103.

<sup>57</sup> Tr. at 158-159.

1 through his investment advisor, Mr. Kerrigan.<sup>58</sup> They discussed the Barcelona Advisors investment  
 2 opportunity in Mr. Kerrigan's office in Arizona.<sup>59</sup> Mr. Jordan testified that Mr. Kerrigan gave him a  
 3 12-6-12 private placement offering memorandum, told him that Mr. Harkins was involved in the  
 4 business and that "it looked like a good, easy, quick return."<sup>60</sup> Mr. Jordan understood that the business  
 5 would be buying, and possibly building, hotels.<sup>61</sup> Mr. Jordan invested the \$50,000 under the name of  
 6 Cheyenne Kassie, LLC, and gave Mr. Kerrigan the check for \$50,000 during the meeting in Mr.  
 7 Kerrigan's office.<sup>62</sup> Mr. Jordan subsequently received a signed promissory note reflecting his  
 8 investment.<sup>63</sup> Mr. Jordan testified he did not know either Mr. Orr or Mr. Simmons, and he did not  
 9 know Mr. Harkins.<sup>64</sup>

10 Mr. Jordan testified that he received two checks from Barcelona Advisors for interest payments  
 11 in the total amount of \$4,552, and no payments for principal.<sup>65</sup> Mr. Jordan also testified that he received  
 12 a status report letter in the mail from Barcelona Advisors.<sup>66</sup> The letter was signed by Mr. Harkins, Mr.  
 13 Simmons, Mr. Orr, and Mr. Kerrigan.<sup>67</sup>

14 Prior to investing, Mr. Jordan was not informed that Mr. Harkins' previous real estate venture  
 15 had failed.<sup>68</sup> Mr. Jordan testified this information would have been significant to his decision to invest  
 16 as he would have been concerned about a previous failure.<sup>69</sup> Prior to investing, Mr. Jordan was not  
 17 informed that Barcelona Advisors had an employee who was previously convicted for his role in an  
 18 investment fraud scheme.<sup>70</sup> Mr. Jordan testified this information would have been significant to his  
 19 decision to invest and he would have wanted to know more information about the circumstances.<sup>71</sup>

20 \_\_\_\_\_  
 21 <sup>58</sup> Tr. at 159-160, 166.

<sup>59</sup> Tr. at 160-161.

<sup>60</sup> Tr. at 161-162; Exh. S-57.

<sup>61</sup> Tr. at 161.

<sup>62</sup> Tr. at 165, 168, 170; Exhs. S-11; S-158.

<sup>63</sup> Tr. at 168-169; Exh. S-45.

<sup>64</sup> Tr. at 178, 182.

<sup>65</sup> Tr. at 171-172; Exhs. S-150 at ACC001561, S-163.

<sup>66</sup> Tr. at 172-173.

<sup>67</sup> Exh. S-27.

<sup>68</sup> Tr. at 173.

<sup>69</sup> Tr. at 173. On cross-examination, when presented with additional information regarding the prior business failure, Mr. Jordan testified that he would not have been bothered by it. Tr. at 182-183. However, Mr. Jordan testified that he would have wanted to know this information before he decided to invest. Tr. at 186-187.

<sup>70</sup> Tr. at 173-174.

<sup>71</sup> Tr. at 174. On cross-examination, when presented with additional information regarding Mr. Meka's conviction and his role with the company, Mr. Jordan testified that he would have to think as to whether this information may have prevented

1 Prior to investing, Mr. Jordan was not informed that Mr. Kerrigan had a large judgment and a large tax  
 2 lien against him a few years earlier.<sup>72</sup> Mr. Jordan testified this information would have been significant  
 3 to his decision to invest and he would have wanted to know more about it.<sup>73</sup> Prior to investing, Mr.  
 4 Jordan was not told that Barcelona Advisors had changed its business plan in September 2013, because  
 5 it failed to raise enough money under its first plan.<sup>74</sup> Mr. Jordan testified that this information would  
 6 not have been significant to his decision to invest because business plans evolve over time.<sup>75</sup> Prior to  
 7 investing, Mr. Jordan was not told that Barcelona Advisors failed to pay back money owed to Mr.  
 8 Kerrigan.<sup>76</sup> Mr. Jordan testified that this information would have been significant to his decision to  
 9 invest.<sup>77</sup> Prior to investing, Mr. Jordan was not told whether Barcelona Advisors had promised to repay  
 10 Mr. Kerrigan with Mr. Jordan's investment funds.<sup>78</sup> Mr. Jordan testified that this information would  
 11 have been significant to his decision to invest.<sup>79</sup> Mr. Jordan testified that he would not have invested  
 12 in Barcelona Advisors had he been told this series of facts.<sup>80</sup> Mr. Jordan acknowledged that the offering  
 13 memorandum stated that a prospective purchaser could ask questions of the management of Barcelona  
 14 Advisors or review the company's records.<sup>81</sup>

15 Rodney Eaves -

16 Mr. Eaves testified that he is an Arizona resident who made six investments in Barcelona  
 17 Advisors totaling \$780,000.<sup>82</sup> Mr. Eaves first learned about Barcelona Advisors in December 2012,  
 18 from Mr. Kerrigan at the latter's office in Arizona.<sup>83</sup> Mr. Eaves testified that Mr. Kerrigan told him  
 19 Barcelona Advisors was a start-up company in the select service hotel industry.<sup>84</sup> At the time, Mr.

20 \_\_\_\_\_  
 21 him from making an investment. Tr. at 183-184. Mr. Jordan testified that he would have wanted to know this information  
 22 before he decided to invest. Tr. at 187.

22 <sup>72</sup> Tr. at 174.

23 <sup>73</sup> Tr. at 174. On cross-examination, when presented with additional information regarding Mr. Kerrigan, Mr. Jordan  
 24 testified that he would have needed to know more about the situation and, if Mr. Kerrigan had explained it, he probably  
 25 would not have been worried about the matter. Tr. at 180-181, 185-186.

24 <sup>74</sup> Tr. at 175-176.

25 <sup>75</sup> Tr. at 176.

26 <sup>76</sup> Tr. at 176.

27 <sup>77</sup> Tr. at 176.

28 <sup>78</sup> Tr. at 176.

<sup>79</sup> Tr. at 177.

<sup>80</sup> Tr. at 177.

<sup>81</sup> Tr. at 188.

<sup>82</sup> Tr. at 189-190, 281, 309.

<sup>83</sup> Tr. at 190-191, 328.

<sup>84</sup> Tr. at 191-192.

1 Kerrigan had been Mr. Eaves' registered investment advisor for over 12 years and Mr. Eaves testified  
2 that Mr. Kerrigan seemed to think Barcelona Advisors was a good investment opportunity.<sup>85</sup> Mr. Eaves  
3 testified that at a later meeting, Mr. Kerrigan gave him a summary sheet of the investment with bios  
4 for Mr. Harkins, Mr. Simmons, Mr. Orr, and Allen Weintraub.<sup>86</sup> Mr. Eaves was invited to, and  
5 attended, a business meeting at Talking Stick Resort, on January 15, 2013, with those four and other  
6 persons working with Barcelona Advisors.<sup>87</sup> Mr. Eaves understood that Mr. Simmons was a vice  
7 president and that he was on the Executive Committee with Mr. Harkins.<sup>88</sup> Later, in February 2013,  
8 Mr. Eaves received a private placement memorandum for a million dollar offering from Mr. Kerrigan.<sup>89</sup>  
9 Mr. Eaves testified that he relied on the information in the private placement memorandum in making  
10 each of his investments.<sup>90</sup> Mr. Eaves testified that he made his first investment in Barcelona Advisors  
11 on March 11, 2013, in the amount of \$250,000, because he believed he would receive a good return in  
12 a short term and because the team at Barcelona Advisors "seemed like they had the power and the  
13 ability, and seemed like they had successful careers in each of their own ... fields."<sup>91</sup> Mr. Eaves signed  
14 a subscription agreement stating that he was an accredited investor.<sup>92</sup> The subscription agreement  
15 contained several representations of Mr. Eaves including that he understood numerous risks involved  
16 in the investment, that he had read the offering memorandum, and that he had an opportunity to ask  
17 questions and review documents pertaining to the company.<sup>93</sup> Pursuant to the investment, Mr. Eaves  
18 received a 12-6-12 promissory note signed by Mr. Harkins and twenty-five units of Class B shares of  
19 Barcelona Advisors.<sup>94</sup>

20 Mr. Eaves testified that he made a second investment on July 12, 2013, after it was proposed  
21 by Mr. Kerrigan, and after Mr. Eaves had timely received interest payments on his first investment.<sup>95</sup>

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23 <sup>85</sup> Tr. at 192.

24 <sup>86</sup> Tr. at 192-193, 196, 331; Exh. S-170.

25 <sup>87</sup> Tr. at 196-197, 330.

26 <sup>88</sup> Tr. at 198.

27 <sup>89</sup> Tr. at 192-194, 333; Exh. S-5.

28 <sup>90</sup> Tr. at 297.

<sup>91</sup> Tr. at 199-201; Exh. S-33.

<sup>92</sup> Exh. S-33.

<sup>93</sup> Tr. at 337-339; Exh. S-33.

<sup>94</sup> Tr. at 201-202, 333, 370; Exh. S-38.

<sup>95</sup> Tr. at 203, 206, 341; Exh. S-7.

1 Mr. Eaves signed a loan and investment agreement concurrent to making his second investment.<sup>96</sup> Mr.  
 2 Eaves testified that the second investment was a loan agreement with the same interest rates as the first,  
 3 but this time it was attached to Class A shares rather than Class B shares.<sup>97</sup> Mr. Eaves testified that he  
 4 relied on the information in the private placement memorandum when he made his second  
 5 investment.<sup>98</sup> Mr. Eaves again received a signed promissory note for his investment.<sup>99</sup>

6 Mr. Eaves testified that he made a third investment on December 30, 2013, after being told by  
 7 Mr. Kerrigan that expected capital had been delayed and money was needed to bridge the gap.<sup>100</sup> Mr.  
 8 Eaves testified that he made the investment to protect his prior investments of \$500,000.<sup>101</sup> Mr. Eaves'  
 9 third investment was \$125,000 for a promissory note.<sup>102</sup> Mr. Eaves' fourth investment, made on  
 10 February 28, 2014, was also \$125,000 for a promissory note.<sup>103</sup> Mr. Eaves made the fourth investment  
 11 after receiving a phone call from Mr. Simmons asking for an additional \$125,000 while the company  
 12 was again expecting capital to come in shortly.<sup>104</sup>

13 Mr. Eaves testified that he made a fifth investment after being asked by Mr. Harkins for a loan  
 14 to the company to pay rent on office space and other outstanding bills.<sup>105</sup> Mr. Eaves' fifth investment,  
 15 made on July 14, 2014, was in the amount of \$15,000 for a promissory note.<sup>106</sup> Mr. Eaves testified that  
 16 he made a sixth investment a few weeks later when Mr. Harkins again asked for funds to cover  
 17 outstanding bills.<sup>107</sup> Mr. Eaves' sixth investment, made on August 1, 2014, was in the amount of  
 18 \$15,000 for a promissory note.<sup>108</sup> Mr. Eaves paid for both the fifth and sixth investments by check to  
 19 Mr. Harkins in Arizona.<sup>109</sup>

20 Mr. Eaves testified that he received some interest payments from Barcelona Advisors.<sup>110</sup> Mr.

21 \_\_\_\_\_  
 22 <sup>96</sup> Tr. at 339-340; Exh. S-7.

23 <sup>97</sup> Tr. at 203-204, 341.

24 <sup>98</sup> Tr. at 205.

25 <sup>99</sup> Tr. at 207, 371-372; Exh. S-42.

26 <sup>100</sup> Tr. at 282, 345.

27 <sup>101</sup> Tr. at 282-283.

28 <sup>102</sup> Tr. at 284; Exh. S-53.

<sup>103</sup> Tr. at 285; Exh. S-54.

<sup>104</sup> Tr. at 287-288, 346-347.

<sup>105</sup> Tr. at 289, 291.

<sup>106</sup> Tr. at 291-293; Exhs. S-55, S-168.

<sup>107</sup> Tr. at 293-294.

<sup>108</sup> Tr. at 294-295; Exhs. S-56, S-167.

<sup>109</sup> Tr. at 296-297.

<sup>110</sup> Tr. at 298.

1 Eaves received five checks for interest payments, for a total amount of \$38,157.41.<sup>111</sup> Mr. Eaves  
 2 testified that he has not received any principal payments from Barcelona Advisors.<sup>112</sup>

3 Prior to his first four investments, Mr. Eaves was not informed that Mr. Harkins had a previous  
 4 real estate venture that failed, although Mr. Eaves subsequently discovered this information prior to  
 5 making his fifth and sixth investments.<sup>113</sup> Mr. Eaves testified that had he known this information  
 6 originally, he would never have invested, but by the time of his last two investments, he felt that he had  
 7 to protect his earlier investments.<sup>114</sup> Prior to making his first five investments, Mr. Eaves was not  
 8 informed that one of Barcelona Advisors' employees had been convicted for his role in an investment  
 9 fraud scheme.<sup>115</sup> Mr. Eaves testified that had he known this information originally, he would not have  
 10 wanted to invest in Barcelona Advisors, but by the time of his sixth investment, he was trying to protect  
 11 the significant amount of money he had already invested.<sup>116</sup> Prior to investing, Mr. Eaves was not told  
 12 that Mr. Kerrigan had a judgment and a tax lien against him.<sup>117</sup> Mr. Eaves testified that this information  
 13 may have been important to his decision whether or not to invest, and that he would have wanted to  
 14 ask more questions about the circumstances.<sup>118</sup> Prior to investing, Mr. Eaves was not told whether  
 15 Barcelona Advisors had previously defaulted on promissory notes to Mr. Kerrigan.<sup>119</sup> Mr. Eaves  
 16 testified that this information would have been significant in making his decision to invest as he would  
 17 think that his own notes would also be likely to default.<sup>120</sup>

18 Mr. Eaves testified that in May 2014, he began to work for Barcelona Advisors as vice president  
 19 of construction management, pursuant to a labor contract.<sup>121</sup> Mr. Eaves testified that Mr. Simmons  
 20 signed the independent contractor agreement.<sup>122</sup> Mr. Eaves initially researched potential properties for

21 \_\_\_\_\_  
 22 <sup>111</sup> Tr. at 298-303; Exhs. S-149, S-154, S-155, S-159.

23 <sup>112</sup> Tr. at 303.

24 <sup>113</sup> Tr. at 303-305.

25 <sup>114</sup> Tr. at 304-306.

26 <sup>115</sup> Tr. at 306.

27 <sup>116</sup> Tr. at 306-307. Mr. Eaves acknowledged that Mr. Meka's duties involved answering the phones, maintaining files and  
 28 assembling the offering memorandums, but testified that knowledge of Mr. Meka's history would have prevented him from  
 investing. Tr. at 350-351.

<sup>117</sup> Tr. at 307.

<sup>118</sup> Tr. at 307-308.

<sup>119</sup> Tr. at 308.

<sup>120</sup> Tr. at 308.

<sup>121</sup> Tr. at 310, 347-348, 366, 369. Mr. Eaves testified that Mr. Simmons offered him the position but Mr. Harkins had  
 previously suggested the company could use his experience in the construction industry. Tr. at 368-369, 374.

<sup>122</sup> Tr. at 372.

1 the company, and he later became a member of the Executive Committee in the first week of August,  
 2 2014.<sup>123</sup> Mr. Eaves testified that as an Executive Member, he had a voting right on any company  
 3 decision.<sup>124</sup> Mr. Eaves testified that Mr. Harkins was president of Barcelona Advisors and primarily  
 4 made the company decisions on day-to-day business activities, and conducted staff meetings.<sup>125</sup> Mr.  
 5 Eaves testified that Mr. Kerrigan's primary role was to find investors.<sup>126</sup> Mr. Eaves testified that Mr.  
 6 Simmons was the vice president of operations and that during staff meetings Mr. Simmons had  
 7 discussed potential investors he had spoken with but who had decided not to invest.<sup>127</sup> Staff meetings  
 8 were generally informal discussions often about the upcoming agenda and bringing in capital, and did  
 9 not involve voting on decisions.<sup>128</sup> Mr. Eaves testified that Mr. Orr had relationships with some of the  
 10 major hotel brands and that they had met with representatives from hotel chains.<sup>129</sup> Mr. Orr never  
 11 asked Mr. Eaves to make any investment.<sup>130</sup>

12 Mr. Eaves also testified that he was present for three or four meetings with general contractor,  
 13 Chanen.<sup>131</sup> Mr. Eaves testified that as of his last meeting, Chanen and Steve Chanen were considering  
 14 being a contractor for a fee, but they were not interested in participating as an investor.<sup>132</sup>

15 Pam Stewart

16 Ms. Stewart testified that she is an Arizona resident who invested \$100,000 in Barcelona  
 17 Advisors.<sup>133</sup> Ms. Stewart testified that she learned about the investment through a phone conversation  
 18 with her broker, Mr. Kerrigan, who recommended the investment, telling her that it was a low risk and  
 19 it would be very profitable in the short term.<sup>134</sup> Ms. Stewart testified that Mr. Kerrigan had been her  
 20 investment advisor for over sixteen years at the time, and that he was working for First Financial Equity  
 21

22 \_\_\_\_\_  
 23 <sup>123</sup> Tr. at 311, 349.

24 <sup>124</sup> Tr. at 313. Mr. Eaves testified that he was on the Executive Committee for approximately 30 business days, during  
 25 which time he voted on no major decisions. Tr. at 351.

26 <sup>125</sup> Tr. at 313-314.

27 <sup>126</sup> Tr. at 317.

28 <sup>127</sup> Tr. at 317-320.

<sup>128</sup> Tr. at 319, 326, 352.

<sup>129</sup> Tr. at 320-321, 327.

<sup>130</sup> Tr. at 325.

<sup>131</sup> Tr. at 321.

<sup>132</sup> Tr. at 322.

<sup>133</sup> Tr. at 221-222.

<sup>134</sup> Tr. at 222-223, 225, 269.

1 Corporation (“FFEC”).<sup>135</sup> Ms. Stewart testified that she is “very, very low risk” in her investments,  
2 which Mr. Kerrigan knew, as it was mentioned in her portfolio.<sup>136</sup> Ms. Stewart testified that she and  
3 her husband completed and signed a subscription agreement given to them by Mr. Kerrigan at a  
4 restaurant in Arizona on March 20, 2014, about a week after Ms. Stewart’s phone conversation with  
5 Mr. Kerrigan.<sup>137</sup> Ms. Stewart testified the funds for her investment came from her retirement account  
6 managed by FFEC and she assumed that because Mr. Kerrigan worked at FFEC, the investment had  
7 been fully vetted.<sup>138</sup> Ms. Stewart relied upon her long relationship with Mr. Kerrigan and his assurance  
8 that this was a low-risk investment.<sup>139</sup> At the time of her investment, Ms. Stewart was an accredited  
9 investor.<sup>140</sup>

10 Ms. Stewart testified that she has not received any principal or interest payments on her  
11 investment.<sup>141</sup> She did receive a June 11, 2014, letter signed by Mr. Harkins requesting a total of  
12 \$150,000 from current Barcelona Advisors note-holders for an asserted short-term capital need.<sup>142</sup> Ms.  
13 Stewart testified that she signed a document on or about August 19, 2014, consenting to a deferment  
14 of her interest payments.<sup>143</sup> Ms. Stewart testified that the investment cost her an extra \$35,000 in taxes,  
15 and that the loss of her funds has caused significant hardship as she has other investments that have  
16 failed.<sup>144</sup> Ms. Stewart testified that Mr. Kerrigan did not advise her of the tax costs prior to her  
17 investment, but said that her accountant considered it to be a good investment, all though the accountant  
18 later told Ms. Stewart he never had such a conversation with Mr. Kerrigan.<sup>145</sup>

19 Ms. Stewart testified that she signed and initialed the subscription agreement, which included  
20 acknowledgement of having read the offering memorandum and an understanding of the risks involved  
21 in the investment.<sup>146</sup> However, when presented with a copy of the offering memorandum at hearing,  
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23 <sup>135</sup> Tr. at 223.

24 <sup>136</sup> Tr. at 224.

25 <sup>137</sup> Tr. at 225-227, 268-269; Exh. S-35.

26 <sup>138</sup> Tr. at 227-228, 237, 271.

27 <sup>139</sup> Tr. at 237.

28 <sup>140</sup> Tr. at 256.

<sup>141</sup> Tr. at 228.

<sup>142</sup> Tr. at 228-229; Exh. S-60.

<sup>143</sup> Tr. at 276.

<sup>144</sup> Tr. at 233, 267, 272.

<sup>145</sup> Tr. at 272-273, 277-278.

<sup>146</sup> Tr. at 235-236; Exh. S-35.

1 Ms. Stewart testified that she had never seen such a document before.<sup>147</sup> The subscription agreement  
2 also included a representation that stated: “I (i) have adequate means of providing for my current needs  
3 and possible contingencies, and I have no need for liquidity of my investment in the Series B 10-5-10  
4 Notes, (ii) can bear the economic risk of losing the entire amount of my investment in Series B 10-5-  
5 10 Notes, and (iii) have such knowledge and experience that I am capable of evaluating the relative  
6 risks and merits of this investment.”<sup>148</sup> Ms. Stewart testified that she did not consider that to have been  
7 true at the time she signed.<sup>149</sup> The subscription agreement also contained a representation stating that  
8 “I have received and read, and am familiar with the Offering Memorandum” and been provided with  
9 any requested documents pertaining to the Company and the notes.<sup>150</sup> Ms. Stewart testified that such  
10 representation was not true at the time she signed the subscription agreement.<sup>151</sup> The subscription  
11 agreement also contained a representation stating that, “I have had an opportunity to ask questions of  
12 and receive answers from the Company’s President and its representatives concerning the Company’s  
13 affairs generally and the terms and conditions of my proposed investment in the Series B 10-5-10  
14 Notes.”<sup>152</sup> Ms. Stewart testified this was true as she had the opportunity to speak to Mr. Kerrigan.<sup>153</sup>  
15 The subscription agreement contained representations as to understanding that the company’s business  
16 involves substantial risks, and that the notes are speculative, but Ms. Stewart testified that she did not  
17 understand the risks.<sup>154</sup> Although the subscription agreement stated an understanding that the interest  
18 was not readily transferable and may not be liquidated, Ms. Stewart testified that she was not aware of  
19 this.<sup>155</sup> The subscription agreement contained a representation that no person represented a length of  
20 time required to hold the notes, although Ms. Stewart testified that was not true.<sup>156</sup> Ms. Stewart testified  
21 that when she met Mr. Kerrigan at the restaurant, she did not read the subscription agreement but he  
22 gave her an overview of it, told her what to check and then initial and sign.<sup>157</sup> Ms. Stewart testified

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23 <sup>147</sup> Tr. at 247-248, 256, 279-280.

24 <sup>148</sup> Exh. S-35 at ACC000992.

25 <sup>149</sup> Tr. at 258.

26 <sup>150</sup> Exh. S-35 at ACC000992.

27 <sup>151</sup> Tr. at 261.

28 <sup>152</sup> Exh. S-35 at ACC000992.

<sup>153</sup> Tr. at 261-262.

<sup>154</sup> Tr. at 262-263; Exh. S-35 at ACC000992-ACC000993.

<sup>155</sup> Tr. at 263; Exh. S-35 at ACC000993.

<sup>156</sup> Tr. at 263; Exh. S-35 at ACC000993.

<sup>157</sup> Tr. at 269-271.

1 that she felt comfortable signing after only a brief opportunity to review it because she trusted Mr.  
 2 Kerrigan.<sup>158</sup> Ms. Stewart testified that she received a packet of glossy advertising materials that had  
 3 no information about the structure of officers of the company.<sup>159</sup>

4 Prior to investing, Ms. Stewart was not informed that Mr. Harkins' previous real estate venture  
 5 had failed.<sup>160</sup> Ms. Stewart testified that had she known about this past venture she would not have  
 6 invested in Barcelona Advisors because she believes that "history demonstrates the future."<sup>161</sup> Prior to  
 7 investing, Ms. Stewart was not informed that Barcelona Advisors had an employee who was previously  
 8 convicted for his role in an investment fraud scheme.<sup>162</sup> Ms. Stewart testified this information would  
 9 have been significant to her decision to invest as it would not "sound like a solid investment."<sup>163</sup> Prior  
 10 to investing, Ms. Stewart was not told that Barcelona Advisors had changed its business plan in  
 11 September 2013, because it failed to raise enough money under its first plan.<sup>164</sup> Ms. Stewart testified  
 12 that this information would have kept her from investing in Barcelona Advisors because if the first plan  
 13 failed, "then surely this one doesn't have much of a chance either."<sup>165</sup> Prior to investing, Ms. Stewart  
 14 was not told that Barcelona Advisors failed to pay back money owed to Mr. Kerrigan.<sup>166</sup> Ms. Stewart  
 15 testified that this information would have led her to ask more questions before investing, including  
 16 whether her \$100,000 would be his repayment.<sup>167</sup> Prior to investing, Ms. Stewart was not told that  
 17 Barcelona Advisors failed to make interest payments to previous investors.<sup>168</sup> Ms. Stewart testified  
 18 that this information would have stopped her from making her investment.<sup>169</sup> Prior to investing, Ms.  
 19 Stewart was not told whether her funds would be used to make payments to earlier investors.<sup>170</sup> Ms.  
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21 <sup>158</sup> Tr. at 273.

22 <sup>159</sup> Tr. at 269-270, 276-277.

23 <sup>160</sup> Tr. at 229.

24 <sup>161</sup> Tr. at 229. On cross-examination, when presented with additional information regarding the prior business failure, Ms.  
 25 Stewart testified that this information would not change her decision that she would not have invested. Tr. at 242.

26 <sup>162</sup> Tr. at 229-230.

27 <sup>163</sup> Tr. at 230. On cross-examination, when presented with additional information regarding the employee's role with the  
 28 company, Ms. Stewart testified that she would have considered the employment of such a person "very odd." Tr. at 243.

<sup>164</sup> Tr. at 230.

<sup>165</sup> Tr. at 230. On cross-examination, when presented with an explanation that the business plan was not changed but  
 executed in a different order based on market conditions, Ms. Stewart testified that she would not have invested. Tr. at 243.

<sup>166</sup> Tr. at 230-231.

<sup>167</sup> Tr. at 231.

<sup>168</sup> Tr. at 232.

<sup>169</sup> Tr. at 232.

<sup>170</sup> Tr. at 232.

1 Stewart testified that had she known that her funds would be used for this purpose, she would not have  
2 invested because “it sounds like a scheme.”<sup>171</sup>

3 Ms. Stewart testified that she did not know Mr. Orr or Mr. Simmons.<sup>172</sup> Ms. Stewart testified  
4 that she did not know who Mr. Harkins was at the time she signed her subscription agreement.<sup>173</sup> Ms.  
5 Stewart was unaware of Mr. Kerrigan’s role as an Executive Member of Barcelona Advisors.<sup>174</sup>

6 Richard Andrade

7 Mr. Andrade testified that he is an Arizona resident who made two investments, totaling  
8 \$55,000, in Barcelona Advisors.<sup>175</sup> Mr. Andrade testified that he learned about the investment when  
9 he met Mr. Simmons, whom he had known from their previous employment at Intel Corporation, for  
10 lunch in Scottsdale on December 23, 2013.<sup>176</sup> The lunch meeting had been set up by an investment  
11 professional, Mr. Wilkerson, whom Mr. Andrade had been working with for the purpose of discussing  
12 an investment opportunity, which turned out to be Barcelona Advisors.<sup>177</sup> Mr. Andrade testified that  
13 at lunch, Mr. Simmons spoke of his successful business ventures since leaving Intel, which Mr.  
14 Andrade interpreted as bringing value to, and Mr. Simmons vouching for, the Barcelona Advisors  
15 opportunity.<sup>178</sup> Mr. Andrade testified that Mr. Simmons also said that Mr. Harkins was managing  
16 Barcelona Advisors and that Mr. Harkins had a long and successful history in real estate type  
17 businesses.<sup>179</sup> Mr. Andrade testified that Mr. Simmons told him Barcelona Advisors was a good  
18 investment based upon the track record of the individuals involved.<sup>180</sup> Mr. Andrade testified that Mr.  
19 Simmons asked him to invest at the lunch meeting.<sup>181</sup>

20 At the lunch meeting, or shortly before or thereafter, Mr. Andrade received a copy of a  
21 Barcelona Advisors private placement offering memorandum for the 10-5-10 promissory notes.<sup>182</sup>

22 \_\_\_\_\_  
23 <sup>171</sup> Tr. at 233.

24 <sup>172</sup> Tr. at 255.

25 <sup>173</sup> Tr. at 271.

26 <sup>174</sup> Tr. at 254.

27 <sup>175</sup> Tr. at 376.

28 <sup>176</sup> Tr. at 376, 378, 380.

<sup>177</sup> Tr. at 377, 404-405. Mr. Wilkerson subsequently began working for Barcelona Advisors days before Mr. Andrade’s first investment. Tr. at 407.

<sup>178</sup> Tr. at 379.

<sup>179</sup> Tr. at 380.

<sup>180</sup> Tr. at 382.

<sup>181</sup> Tr. at 387.

<sup>182</sup> Tr. at 384, 410, 413-414; Exh. S-58.

1 After the meeting, Mr. Simmons sent an email on January 7, 2014, to Mr. Andrade asking him to stop  
2 by the Barcelona Advisors office to meet more of the team and discuss the company's capital fund  
3 raising.<sup>183</sup> Mr. Andrade responded that he was not in a position to make an investment at the time.<sup>184</sup>  
4 On April 5, 2014, in Arizona, Mr. Andrade initialed and signed a subscription agreement and made an  
5 initial investment of \$50,000.<sup>185</sup> The agreement was also signed by Mr. Simmons for Barcelona  
6 Advisors.<sup>186</sup> Mr. Andrade testified that he used money from an IRA to make the investment.<sup>187</sup> Mr.  
7 Andrade testified that he was motivated to invest because of the high interest rate and because he was  
8 to receive the principal plus interest in a relatively short time.<sup>188</sup> In the subscription agreement, Mr.  
9 Andrade indicated that he was an accredited investor, with net worth exceeding \$1,000,000.<sup>189</sup> Mr.  
10 Andrade testified that he read the warranties and representations contained in the subscription  
11 agreement<sup>190</sup> and they were correct.<sup>191</sup>

12 Mr. Andrade testified that on June 13, 2014, he received an email stating that Barcelona  
13 Advisors needed extra money to keep the office open and make payroll.<sup>192</sup> On or about June 16, 2014,  
14 Mr. Andrade met with Mr. Harkins and Mr. Simmons at Barcelona Advisors' offices in Scottsdale.<sup>193</sup>  
15 Mr. Andrade testified that Mr. Harkins and Mr. Simmons informed him that they were confident that  
16 a delayed investment was coming through and they just needed money to tide them over to pay their  
17 staff.<sup>194</sup> Mr. Andrade testified that he made his second investment at this meeting when he gave a  
18 \$5,000 check to Mr. Harkins.<sup>195</sup> This second investment was not made pursuant to an offering  
19 memorandum and no subscription agreement was completed.<sup>196</sup> Mr. Andrade testified that he made  
20

21 <sup>183</sup> Tr. at 382-383; Exh. S-171.

22 <sup>184</sup> Tr. at 382; Exh. S-171.

23 <sup>185</sup> Tr. at 384-386, 388, 408; Exh. S-36.

24 <sup>186</sup> Tr. at 386; Exh. S-36.

25 <sup>187</sup> Tr. at 388, 412.

26 <sup>188</sup> Tr. at 388.

27 <sup>189</sup> Tr. at 409, 415-416; Exh. S-36. Mr. Andrade testified that this information was correct. Tr. at 409.

28 <sup>190</sup> These representations of Mr. Andrade included, among other things, that he understood numerous risks involved in the investment, that he had read the offering memorandum, and that he had an opportunity to ask questions and review documents pertaining to the company. Exh. S-36.

<sup>191</sup> Tr. at 409-410; Exh. S-36.

<sup>192</sup> Tr. at 389, 411.

<sup>193</sup> Tr. at 389, 411.

<sup>194</sup> Tr. at 390-391.

<sup>195</sup> Tr. at 391, 393-396; Exhs. S-51, S-169.

<sup>196</sup> Tr. at 411.

1 the second investment to help keep the company successful so he could recoup the principal plus  
2 interest from his \$50,000 investment.<sup>197</sup> While at the meeting, Mr. Andrade picked up a copy of the  
3 Barcelona Land Company PPM because he wanted to see the future plans of the company beyond the  
4 initial offering in which he invested.<sup>198</sup> On September 4, 2014, Mr. Andrade received an email from  
5 Mr. Simmons in response to his request for an update on the status of the company.<sup>199</sup> Mr. Andrade  
6 testified that he has never received any payments of interest or principal on his investments.<sup>200</sup>

7 Prior to investing, Mr. Andrade was not informed that Mr. Harkins' previous real estate venture  
8 had failed.<sup>201</sup> Mr. Andrade testified that this information would have been significant to his decision  
9 to invest because he considered past performance to be an indicator of future performance.<sup>202</sup> Prior to  
10 investing, Mr. Andrade was not informed that Barcelona Advisors had an employee who was  
11 previously convicted for his role in an investment fraud scheme.<sup>203</sup> Mr. Andrade testified that this  
12 information would have been significant to his decision to invest as someone who commits fraud would  
13 not be a good candidate to work with on an investment.<sup>204</sup> Prior to investing, Mr. Andrade was not  
14 told that Barcelona Advisors had changed its business plan in September 2013, because it failed to raise  
15 enough money under its first plan.<sup>205</sup> Mr. Andrade testified that this information would have been  
16 significant to his decision to invest because if the company was unsuccessful in the initial round, it  
17 would have less likelihood of being successful later.<sup>206</sup> Prior to investing, Mr. Andrade was not told  
18 that Barcelona Advisors failed to pay back money owed to one of its officers or members.<sup>207</sup> Mr.  
19 Andrade testified that this information would have been significant to his decision to invest because a  
20 company that cannot make its payments wouldn't be a good candidate for investment.<sup>208</sup> Prior to  
21 investing, Mr. Andrade was not told that Barcelona Advisors promised to repay one of the company's

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22 <sup>197</sup> Tr. at 396.

23 <sup>198</sup> Tr. at 392, 411, 418; Exh. S-59. Mr. Andrade testified that he considered his receipt of the USA Barcelona Hotel Land  
Company to be in response to his request for information, not that he was being offered an investment. Tr. at 418.

24 <sup>199</sup> Tr. at 396; Exh. S-172.

25 <sup>200</sup> Tr. at 397.

26 <sup>201</sup> Tr. at 397.

27 <sup>202</sup> Tr. at 397.

28 <sup>203</sup> Tr. at 398.

<sup>204</sup> Tr. at 398.

<sup>205</sup> Tr. at 398.

<sup>206</sup> Tr. at 398-399.

<sup>207</sup> Tr. at 399.

<sup>208</sup> Tr. at 399.

1 directors with his investment funds.<sup>209</sup> Mr. Andrade testified that this information would have been  
 2 significant to his decision to invest because it would have indicated the investment opportunity was not  
 3 being represented truthfully.<sup>210</sup> Prior to investing, Mr. Andrade was not told that Barcelona Advisors  
 4 had failed to make interest payments to previous investors.<sup>211</sup> Mr. Andrade testified that this  
 5 information would have been significant to his decision to invest because failure to meet previous  
 6 agreements would indicate lower odds of them performing in the future.<sup>212</sup> Prior to investing, Mr.  
 7 Andrade was not told that his funds would be used to make payments to earlier investors.<sup>213</sup> Mr.  
 8 Andrade testified that this information would have been significant to his decision to invest because it  
 9 was not presented as the use of his investment funds.<sup>214</sup> Mr. Andrade testified that had he been aware  
 10 of the things that were not presented to him, he would not have invested.<sup>215</sup>

11 Kathleen Ann Carolin

12 Ms. Carolin testified that she is a certified public accountant and an Arizona resident who made  
 13 two investments, totaling \$50,000, in Barcelona Advisors, and that she also did some accounting work  
 14 for them.<sup>216</sup> Ms. Carolin testified that she first learned about the Barcelona Advisors investment  
 15 through her boyfriend, Mr. Kerrigan.<sup>217</sup> Mr. Kerrigan recommended Barcelona Advisors as a good  
 16 investment paying a high rate of interest.<sup>218</sup> Ms. Carolin knew that Mr. Kerrigan had invested money  
 17 in Barcelona Advisors, and that he was actively soliciting investors.<sup>219</sup> Ms. Carolin testified that she  
 18 received a copy of the private placement memorandum after she made her investments.<sup>220</sup> Ms. Carolin  
 19 testified that she signed a subscription agreement when she made her first investment of \$25,000 on  
 20 June 30, 2013.<sup>221</sup> Ms. Carolin testified that she believed she received the subscription agreement from  
 21

22 <sup>209</sup> Tr. at 399-400.

<sup>210</sup> Tr. at 400.

23 <sup>211</sup> Tr. at 400.

<sup>212</sup> Tr. at 400.

24 <sup>213</sup> Tr. at 400-401.

<sup>214</sup> Tr. at 401.

25 <sup>215</sup> Tr. at 401.

<sup>216</sup> Tr. at 425-426, 462.

26 <sup>217</sup> Tr. at 426, 462.

<sup>218</sup> Tr. at 426-427.

27 <sup>219</sup> Tr. at 447.

<sup>220</sup> Tr. at 429, 463; Exh. S-57.

28 <sup>221</sup> Tr. at 429-430; Exh. S-10. The investment was made from Ms. Carolin's IRA, under the name of Carolin Group, LLC.  
 Tr. at 430-431, 465; Exh. S-10.

1 Mr. Harkins.<sup>222</sup> Ms. Carolin testified that she may have met Mr. Orr at the office of Barcelona Advisors  
2 in 2013, but that he never discussed investments with her.<sup>223</sup>

3 Ms. Carolin testified that when she made her investments, she was unmarried, had a net worth  
4 less than \$1,000,000, and had an annual income below \$200,000.<sup>224</sup> Ms. Carolin testified that she  
5 believed Mr. Kerrigan was aware of her income and approximate net worth when she invested because  
6 they were dating off and on for five years at that time, and he knew of her finances.<sup>225</sup> Ms. Carolin's  
7 subscription agreement has an "X" marked next to the statement that she earned \$200,000 per year, but  
8 Ms. Carolin testified that she did not write the "X."<sup>226</sup> Ms. Carolin testified that Mr. Harkins told her  
9 that she had to qualify and to check one of the lines, but she said that she did not qualify under any of  
10 the lines as an accredited investor.<sup>227</sup> Ms. Carolin testified that she thought they "let me in because I  
11 was a friend."<sup>228</sup> Ms. Carolin signed the subscription agreement, but admitted that she probably did  
12 not read all of it.<sup>229</sup> Pursuant to the investment, Ms. Carolin received a 12-6-12 promissory note.<sup>230</sup>

13 On July 14, 2015, Ms. Carolin made a second investment of \$25,000.<sup>231</sup> The subscription  
14 agreement for Ms. Carolin's second investment again shows an "X" marked next to the statement that  
15 she earned \$200,000 per year, but Ms. Carolin testified that she did not write the "X."<sup>232</sup> Pursuant to  
16 the investment, Ms. Carolin again received a 12-6-12 promissory note.<sup>233</sup> Ms. Carolin testified that  
17 she made a second investment because she was friends with most of the principals of the company, Ms.  
18 Burleson was investing, and "it seemed like a good thing to do."<sup>234</sup> Ms. Carolin testified that she made  
19 her investments to earn income for retirement.<sup>235</sup> Ms. Carolin testified that her investment experience  
20 comprised of having 401(k) plans and that she had never invested in anything similar to Barcelona

21 \_\_\_\_\_  
22 <sup>222</sup> Tr. at 431.

23 <sup>223</sup> Tr. at 448-449.

24 <sup>224</sup> Tr. at 431-432.

25 <sup>225</sup> Tr. at 432.

26 <sup>226</sup> Tr. at 432-433, 450-451, 458-459, 466, 473; Exh. S-10 at ACC000881.

27 <sup>227</sup> Tr. at 433, 449-450.

28 <sup>228</sup> Tr. at 473.

<sup>229</sup> Tr. at 469.

<sup>230</sup> Tr. at 434-435; Exh. S-40.

<sup>231</sup> Tr. at 436; Exh. S-34.

<sup>232</sup> Tr. at 435-436, 459; Exh. S-34 at ACC000871. The second investment was also made under the name of Carolin Group, LLC. Tr. at 436; Exh. S-34.

<sup>233</sup> Tr. at 437-438; Exh. S-43.

<sup>234</sup> Tr. at 438-439.

<sup>235</sup> Tr. at 439.

1 Advisors before.<sup>236</sup>

2 Ms. Carolin received five checks for interest payments from Barcelona Advisors, for a total  
3 amount of \$5,793.<sup>237</sup> Ms. Carolin also received two checks from Barcelona Advisors, in a total amount  
4 of \$3,375, paid to her accounting services company for accounting work she performed in late July and  
5 late October, 2013.<sup>238</sup> Ms. Carolin testified that she never received any principal payments from  
6 Barcelona Advisors.<sup>239</sup> Ms. Carolin testified that the loss of her investments caused her financial  
7 hardships as she was forced to sell her home and her retirement funds were cut in half.<sup>240</sup>

8 Prior to investing, Ms. Carolin was not informed that Mr. Harkins' previous real estate venture  
9 had failed.<sup>241</sup> Ms. Carolin testified that this information would have been significant to her decision to  
10 invest as she has experience with clients having similar issues and it would have raised a red flag.<sup>242</sup>  
11 Prior to investing, Ms. Carolin was not informed that Mr. Kerrigan had a large judgment and tax lien  
12 against him a few years earlier.<sup>243</sup> Ms. Carolin testified that this information would have been  
13 significant to her decision to invest because Mr. Kerrigan represented himself as an upstanding citizen  
14 and this information makes that sound untrue.<sup>244</sup> Prior to investing, Ms. Carolin testified that she was  
15 not informed that Barcelona Advisors had failed to pay back money to Mr. Kerrigan.<sup>245</sup> Ms. Carolin  
16 testified that this information may not have been significant to her decision to invest, but she would  
17 have wanted to know about it, and weigh the information in making a decision.<sup>246</sup> Ms. Carolin testified  
18 that had she been aware of the things that were not presented to her, she did not think she would have  
19 invested.<sup>247</sup> Ms. Carolin testified that she did know Mr. Meka had a previous conviction, but she did

20  
21 <sup>236</sup> Tr. at 445.

<sup>237</sup> Tr. at 439-442; Exhs. S-150 at ACC001557-ACC001558, S-160, S-164.

22 <sup>238</sup> Tr. at 442-445; Exhs. S-157, S-161.

23 <sup>239</sup> Tr. at 444.

<sup>240</sup> Tr. at 448.

24 <sup>241</sup> Tr. at 446.

<sup>242</sup> Tr. at 446. When presented with additional information regarding the prior business failure, Ms. Carolin testified that since she did not know the whole story, she did not know what she would have thought at the time, but she would have wanted to know this information before investing. Tr. at 453-455, 474-475.

25 <sup>243</sup> Tr. at 446.

26 <sup>244</sup> Tr. at 446. When presented with additional information that the judgments had been satisfied, Ms. Carolin testified that she was not sure if that would have affected her investment in the company, but she "probably" would have wanted to know this before investing. Tr. at 457, 476.

27 <sup>245</sup> Tr. at 447.

28 <sup>246</sup> Tr. at 447.

<sup>247</sup> Tr. at 447.

1 not believe his presence was detrimental to Barcelona Advisors as she understood him to have a very  
2 small role.<sup>248</sup>

3 Steve Chanen

4 Mr. Chanen testified that he is president and CEO of Chanen Construction Company, an  
5 Arizona based general contracting firm.<sup>249</sup> Mr. Chanen testified that he was introduced to Barcelona  
6 Advisors for the prospect of building sixteen hotels.<sup>250</sup> Mr. Chanen testified that he was present for  
7 numerous meetings with Barcelona Advisors beginning in the spring or early summer of 2014.<sup>251</sup> Mr.  
8 Chanen testified that Mr. Harkins usually ran the meetings for Barcelona Advisors.<sup>252</sup> At the initial  
9 meeting, Barcelona Advisors discussed their plan to build sixteen hotels in sixteen different cities,  
10 however no architectural plans were ever provided.<sup>253</sup> Barcelona Advisors initially said they would be  
11 raising money for the hotels from their broker-dealer network, but at various times they sought Chanen  
12 to contribute money or act as a joint venture partner.<sup>254</sup> Mr. Chanen testified that Chanen had no  
13 interest in these financing propositions and so informed Barcelona Advisors.<sup>255</sup>

14 Mr. Chanen testified that Mr. Harkins brought in copies of a draft private offering memorandum  
15 for his review.<sup>256</sup> After showing the memorandum to his attorney, Mr. Chanen rewrote part of the draft  
16 to limit Chanen's involvement and include risk factors specific to construction, and gave it to Mr.  
17 Harkins to forward to counsel for Barcelona Advisors.<sup>257</sup> Mr. Chanen testified that he ended  
18 discussions with Barcelona Advisors in August 2014, because Barcelona Advisors had no assets or  
19 resources to make the project successful.<sup>258</sup>

20 A confidential private placement offering memorandum for USA Barcelona Hotel Land  
21 Company I, LLC, dated May 5, 2014, asserted that Chanen "and USA Barcelona Realty Holding  
22

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23 <sup>248</sup> Tr. at 452-453.

24 <sup>249</sup> Tr. at 504.

25 <sup>250</sup> Tr. at 507.

26 <sup>251</sup> Tr. at 508.

27 <sup>252</sup> Tr. at 509. Mr. Chanen testified that Mr. Orr was present at these meetings only for his hotel experience. Tr. at 508-509,  
533.

28 <sup>253</sup> Tr. at 510-512.

<sup>254</sup> Tr. at 512-513, 530. Mr. Chanen testified that Mr. Harkins is the individual who presented the idea. Tr. at 513.

<sup>255</sup> Tr. at 514-515, 538.

<sup>256</sup> Tr. at 516, 530-531.

<sup>257</sup> Tr. at 518-519.

<sup>258</sup> Tr. at 514, 519.

1 Company, LLC have reached an agreement that Chanen will coordinate with [USA Barcelona Hotel  
 2 Land Company I, LLC] the Entitlement work<sup>259</sup> on the Land Parcels and handle all site development  
 3 and construction requirements for the New Build Affiliates.”<sup>260</sup> The May 5, 2014, memorandum goes  
 4 on to say that, “Our Parent Company has reached agreement with Chanen Construction Company to  
 5 coordinate with us in the Entitlement work and handle all site development and construction  
 6 requirements of the New Build Affiliates.”<sup>261</sup> Mr. Chanen testified that as of May 5, 2014, Chanen had  
 7 no agreement to do anything with any Barcelona entity and the statements in the May 5, 2014,  
 8 memorandum regarding Chanen coordinating entitlement work were false.<sup>262</sup> The May 5, 2014,  
 9 memorandum also contained an image of Chanen’s company logo and a description of the company.<sup>263</sup>  
 10 Mr. Chanen testified that he never authorized Barcelona Land Company to use this information or the  
 11 Chanen logo in a private offering memorandum, but rather he had specifically drafted certain  
 12 information which was all that he authorized to be used.<sup>264</sup> Mr. Chanen did not know whether the May  
 13 5, 2014, memorandum had ever been used in an offering or whether any offers or sales were made for  
 14 Barcelona Land Company.<sup>265</sup>

15 Darius Taylor

16 Mr. Taylor testified that he is a special investigator employed by the Securities Division of the  
 17 Arizona Corporation Commission.<sup>266</sup> Mr. Taylor testified that he took over the Barcelona Advisors  
 18 case from Dulance Morin several weeks prior to the hearing and that he has maintained the files.<sup>267</sup>

19 Mr. Taylor testified that he was present for the preparation of Richard Woods for the hearing.<sup>268</sup>

20 \_\_\_\_\_  
 21 <sup>259</sup> Mr. Chanen testified that entitlement work involves those things leading up to the design and construction of a project,  
 possibly including such things as obtaining permits, addressing zoning issues and designing or installing off-site  
 improvements. Tr. at 522.

22 <sup>260</sup> Exh. S-59 at ACC005822. The memorandum identifies USA Barcelona Realty Holding Company, LLC (also referred  
 23 to as USA Realty Holding Company, LLC), as a parent company that owns USA Barcelona Hotel Holding Company, LLC,  
 which is the manager of USA Barcelona Hotel Land Company I, LLC. Exh. S-59 at ACC005819, ACC005891. Mr.  
 Chanen testified that he had not seen the May 5, 2014, memorandum until it was shown to him by the Division. Tr. at 543.

24 <sup>261</sup> Exh. S-59 at ACC005862.

25 <sup>262</sup> Tr. at 522-523, 544. However, Mr. Chanen did prepare a draft construction contract, a model contract that could be a  
 template for each of the hotels, which he gave to Mr. Harkins. Tr. at 523, 532.

26 <sup>263</sup> Exh. S-59 at ACC005862.

27 <sup>264</sup> Tr. at 524-526, 536. The authorized language also appears in the May 5, 2014, memorandum. Tr. at 525-526; Exh. S-  
 59 at ACC005862.

28 <sup>265</sup> Tr. at 531-532.

<sup>266</sup> Tr. at 556-557.

<sup>267</sup> Tr. at 558.

<sup>268</sup> Tr. at 659, 666. Mr. Woods did not testify at the hearing.

1 Mr. Taylor testified that Mr. Woods is an investor from Scottsdale, Arizona.<sup>269</sup> Mr. Taylor testified  
 2 that Mr. Woods said Mr. Kerrigan had been a family friend and his financial advisor for 30 years.<sup>270</sup>  
 3 Mr. Taylor testified that Mr. Woods said he had a conversation with Mr. Kerrigan, in Mr. Woods' home  
 4 in Scottsdale, where Mr. Kerrigan recommended Barcelona Advisors as a good investment for him.<sup>271</sup>  
 5 Mr. Taylor testified that Mr. Woods understood Mr. Kerrigan was an advisor to Barcelona Advisors  
 6 who had invested \$300,000 in the company.<sup>272</sup> Mr. Taylor testified that Mr. Woods said he spoke only  
 7 with Mr. Kerrigan from Barcelona Advisors and that Mr. Kerrigan gave him written material about the  
 8 investment.<sup>273</sup> Mr. Taylor testified that Mr. Woods cashed in a \$100,000 annuity to make his  
 9 investment and that he had received a promissory note.<sup>274</sup> Mr. Taylor testified that Mr. Woods was an  
 10 accredited investor and signed a subscription agreement pursuant to his investment.<sup>275</sup> Mr. Taylor  
 11 testified that Mr. Woods said he had received approximately \$10,000 in interest but none of his  
 12 principal was returned.<sup>276</sup>

13 Mr. Taylor testified that, prior to investing, Mr. Woods was not informed that Mr. Harkins'  
 14 previous real estate venture had failed.<sup>277</sup> Mr. Taylor testified that Mr. Woods said this information  
 15 would have been significant to him.<sup>278</sup> Mr. Taylor testified that, prior to investing, Mr. Woods was not  
 16 informed that Barcelona Advisors had an employee who had been convicted for his role in an  
 17 investment fraud scheme.<sup>279</sup> Mr. Taylor testified that this information would have been significant to  
 18 Mr. Woods.<sup>280</sup> Mr. Taylor testified that, prior to investing, Mr. Woods was not informed whether Mr.  
 19 Kerrigan had a large judgment and tax lien against him a few years earlier.<sup>281</sup> Mr. Taylor testified that  
 20 Mr. Woods would have wanted to talk with Mr. Kerrigan about this had he known.<sup>282</sup> Mr. Taylor

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21 <sup>269</sup> Tr. at 659-660.

22 <sup>270</sup> Tr. at 661.

23 <sup>271</sup> Tr. at 661-662.

24 <sup>272</sup> Tr. at 662, 668-669.

25 <sup>273</sup> Tr. at 662-663. Mr. Taylor later clarified that the written material was an offering memorandum, but he was not sure  
 26 which memorandum it was. Tr. at 668.

27 <sup>274</sup> Tr. at 663, 668-669.

28 <sup>275</sup> Tr. at 671-672; Exh. S-9.

<sup>276</sup> Tr. at 664.

<sup>277</sup> Tr. at 664.

<sup>278</sup> Tr. at 664.

<sup>279</sup> Tr. at 664.

<sup>280</sup> Tr. at 665.

<sup>281</sup> Tr. at 665.

<sup>282</sup> Tr. at 665.

1 testified that, prior to investing, Mr. Woods was not informed that Barcelona Advisors had failed to  
 2 pay back money it owed to Mr. Kerrigan.<sup>283</sup> Mr. Taylor testified that this information would have been  
 3 significant to Mr. Woods.<sup>284</sup> Mr. Taylor testified that Mr. Woods would not have invested had he  
 4 known these things as he was not interested in taking risks.<sup>285</sup>

5 Mr. Taylor testified that Mr. Woods did not come in to testify because he did not want anything  
 6 bad to happen to his friend, Mr. Kerrigan, as a result of the hearing.<sup>286</sup>

7 Dulance Morin

8 Mr. Morin testified that he was a special investigator with the Securities Division of the Arizona  
 9 Corporation Commission through February 2016, and he is currently working as a special agent for the  
 10 Attorney General's Office.<sup>287</sup> While employed by the Securities Division, Mr. Morin was the primary  
 11 investigator on the Barcelona Advisors case.<sup>288</sup> Mr. Morin testified that the Division retrieved  
 12 documents pertinent to the case from Barcelona Advisors' office.<sup>289</sup>

13 Mr. Morin testified that, pursuant to his investigation, he interviewed Roberta Burleson, an  
 14 Arizona resident who invested in Barcelona Advisors.<sup>290</sup> Mr. Morin testified that Ms. Burleson  
 15 invested \$50,000 on two different occasions in 2013, for a total of \$100,000.<sup>291</sup> Ms. Burleson told Mr.  
 16 Morin that she learned about the Barcelona Advisors opportunity from Mr. Harkins, who was a  
 17 personal friend, and that her financial advisor, Mr. Kerrigan, sold her the investment.<sup>292</sup> Mr. Morin  
 18 testified that Ms. Burleson told him she made her investment in Arizona, and that she was told by Mr.  
 19 Kerrigan that the money would be rolling in, while Mr. Harkins said her investment would be good as  
 20 long as the economy was stable.<sup>293</sup>

21 Avi Beliak

22 Mr. Beliak testified that he is a forensic accountant employed by the Securities Division of the

23 <sup>283</sup> Tr. at 665.

24 <sup>284</sup> Tr. at 665.

25 <sup>285</sup> Tr. at 665.

26 <sup>286</sup> Tr. at 667.

27 <sup>287</sup> Tr. at 627-628.

28 <sup>288</sup> Tr. at 628-629

<sup>289</sup> Tr. at 629-632.

<sup>290</sup> Tr. at 632.

<sup>291</sup> Tr. at 633.

<sup>292</sup> Tr. at 633.

<sup>293</sup> Tr. at 633-634.

1 Arizona Corporation Commission.<sup>294</sup> Mr. Beliak testified that he worked on the Barcelona Advisors  
 2 case by preparing a report based upon his examination of approximately 500 pages of documents and  
 3 bank statements.<sup>295</sup> Based upon his review of documents, Mr. Beliak testified that Barcelona Advisors  
 4 raised approximately \$1.4 million from approximately ten investors.<sup>296</sup> Mr. Beliak further testified that  
 5 approximately \$87,000 was paid back to investors, leaving approximately \$1.3 million owed to the  
 6 investors.<sup>297</sup> Mr. Beliak testified that nothing in his investigation showed any money going into  
 7 Barcelona Land Company, and therefore, to his knowledge, there are no investors in that company.<sup>298</sup>

8 Bruce Orr

9 Mr. Orr testified that he is a self-employed California resident who has worked as a consultant  
 10 for over twenty years.<sup>299</sup> Mr. Orr has been married to Susan Orr for 32 years.<sup>300</sup> Mr. Orr first heard  
 11 about Barcelona Advisors in 2012, from Mr. Harkins who was starting the company and sought to use  
 12 Mr. Orr's expertise.<sup>301</sup> Initially, Mr. Orr occasionally consulted on some of the work involving the  
 13 hotel industry, but later he was asked to come over weekly by Mr. Harkins.<sup>302</sup> Mr. Orr worked as an  
 14 independent contractor for Barcelona Advisors and took the lead on looking for hotel development  
 15 opportunities.<sup>303</sup> Mr. Orr testified that he became an Executive Member once he started coming over  
 16 full-time in summer 2013, but his role did not change.<sup>304</sup> Mr. Orr would spend a couple days each  
 17 week in Arizona but most of his work was outside the Barcelona Advisors offices, such as visiting  
 18 sites, doing due diligence, and meeting with hotel companies.<sup>305</sup> Mr. Orr testified that after he found  
 19 feasible development opportunities, others at Barcelona Advisors would become involved: Mr.  
 20 Simmons would sometimes be involved in discussions and assist in due diligence, Mr. Harkins was

21 \_\_\_\_\_  
 22 <sup>294</sup> Tr. at 675.

<sup>295</sup> Tr. at 676-685; Exhs. S-31(a), S-31(b).

23 <sup>296</sup> Tr. at 684. Mr. Beliak also testified that an additional \$210,000 was invested by Mr. Kerrigan and Mr. Orr. Tr. at 696.

<sup>297</sup> Tr. at 683-684; Exh. S-31(b).

24 <sup>298</sup> Tr. at 694.

<sup>299</sup> Tr. at 706, 710.

25 <sup>300</sup> Tr. at 768.

<sup>301</sup> Tr. at 707.

26 <sup>302</sup> Tr. at 708.

<sup>303</sup> Tr. at 708.

27 <sup>304</sup> Tr. at 709. Mr. Orr's role with Barcelona Advisors began in November 2012. Tr. at 755-756. Mr. Orr testified that he  
 was an Executive Member until July 2014. Tr. at 715. The evidence of record establishes that Mr. Orr's last day as an  
 Executive Member was August 8, 2014. Exh. S-30 at ACC006360.

28 <sup>305</sup> Tr. at 710.

1 involved in discussions, and later, Mr. Eaves worked with Mr. Orr on opportunities and due  
 2 diligence.<sup>306</sup> Mr. Orr testified that most meetings at Barcelona Advisors were staff meetings, with  
 3 occasional meetings of Executive Members that were mostly informational and advisory.<sup>307</sup> Mr. Orr  
 4 testified that he did not recall major decisions being discussed in general staff meetings.<sup>308</sup>

5 Mr. Orr testified that he knew Patrick McDonough from working in the Barcelona Advisors  
 6 office.<sup>309</sup> Mr. Orr testified that he did not work directly with Mr. McDonough, but understood him to  
 7 work with Mr. Harkins to raise funds.<sup>310</sup> Mr. Orr testified that he attended staff meetings with Mr.  
 8 McDonough, but not meetings Mr. McDonough had with investors.<sup>311</sup> Mr. Orr testified that Mr.  
 9 McDonough's testimony, that nobody visited sites or did due diligence, was untrue.<sup>312</sup> Mr. Orr testified  
 10 that he had due diligence packages on every site they looked at and that he had visited several.<sup>313</sup> Mr.  
 11 Orr testified that he would go through the due diligence packages with Mr. Simmons before discussing  
 12 them with Mr. Harkins or at staff meetings.<sup>314</sup>

13 Mr. Orr testified that he met Rodney Eaves at a January 15, 2013, meeting, but he did not see  
 14 Mr. Eaves again until the September 2013, meeting in Sedona.<sup>315</sup> Mr. Orr saw more of Mr. Eaves when  
 15 Mr. Eaves began working for Barcelona Advisors.<sup>316</sup> Mr. Eaves became an Executive Member after  
 16 Mr. Orr was no longer an Executive Member.<sup>317</sup> Mr. Orr testified that the role of an Executive Member  
 17 was not a control position, but rather an advisory position to discuss things and try to reach a consensus  
 18 on good projects.<sup>318</sup> Mr. Orr testified that, as an Executive Member, he did not make any decisions  
 19 regarding the offer and sale of securities.<sup>319</sup> Mr. Orr testified that he did not consider himself a control  
 20

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21 <sup>306</sup> Tr. at 709.

22 <sup>307</sup> Tr. at 709-710.

23 <sup>308</sup> Tr. at 761-762.

24 <sup>309</sup> Tr. at 711-712.

25 <sup>310</sup> Tr. at 712.

26 <sup>311</sup> Tr. at 712.

27 <sup>312</sup> Tr. at 712-713.

28 <sup>313</sup> Tr. at 713.

<sup>314</sup> Tr. at 713-714.

<sup>315</sup> Tr. at 714, 719, 768. Mr. Orr was not an Executive Member at the time of the January 15, 2013 meeting. Tr. at 719.  
 Mr. Orr testified that he did not believe Mr. Simmons was in attendance at the January 15, 2013 meeting. Tr. at 720.

<sup>316</sup> Tr. at 714.

<sup>317</sup> Tr. at 715.

<sup>318</sup> Tr. at 718-719.

<sup>319</sup> Tr. at 720.

1 person of Barcelona Advisors and that he had to report to other people.<sup>320</sup> Specifically, Mr. Orr testified  
 2 that Mr. Simmons signed his expense reports and that Mr. Harkins “was the one that kind of called the  
 3 shots for me.”<sup>321</sup> Mr. Orr testified that Mr. Harkins, as president, was in control of the day-to-day  
 4 business of Barcelona Advisors.<sup>322</sup> Mr. Orr testified that he understood the Executive Committee to  
 5 be a forum for discussion and that major decisions had usually already been made before being brought  
 6 for discussion.<sup>323</sup>

7 Mr. Orr testified that he had never met William Jordan, Pam Stewart, or Richard Andrade.<sup>324</sup>  
 8 Mr. Orr testified that he met Kathleen Carolin once at the Barcelona Advisors office when she was  
 9 doing accounting work.<sup>325</sup> Mr. Orr testified that he knew Ms. Burleson because she dated Mr. Hawkins,  
 10 and that he knew Mr. Kerrigan through Barcelona Advisors, but he did not know any of the other  
 11 investors.<sup>326</sup> Mr. Orr testified that he was not in town on December 30, 2013, and February 28, 2014,  
 12 when he and other Respondents are alleged to have offered and sold promissory notes to Mr. and Mrs.  
 13 Eaves.<sup>327</sup> Mr. Orr testified that, as a hotel expert, he attended some of the Barcelona Advisors’ meetings  
 14 with Mr. Chanen.<sup>328</sup>

15 Mr. Orr testified that Mr. Simmons was the Executive Vice President and Chief Operating  
 16 Officer.<sup>329</sup> Mr. Orr testified that he reported to Mr. Simmons but the office was informal enough that  
 17 he could go directly to Mr. Harkins if he had something for him.<sup>330</sup> Mr. Orr testified that he made  
 18 presentations to Mr. Simmons on hotel development, due diligence, and profitability potential.<sup>331</sup>

19 Mr. Orr testified that he would provide projections with initial estimates of cost to Mr. Harkins,  
 20  
 21

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22 <sup>320</sup> Tr. at 720.

23 <sup>321</sup> Tr. at 721-722.

24 <sup>322</sup> Tr. at 762.

25 <sup>323</sup> Tr. at 763.

26 <sup>324</sup> Tr. at 714-716.

27 <sup>325</sup> Tr. at 716.

28 <sup>326</sup> Tr. at 716-717.

<sup>327</sup> Tr. at 718. Mr. Orr’s expense reports show that for the month of December 2013, he was in town on the 17th through 19th and the 26th through 27th. Exh. S-173 at ACC007315. For the month of February 2014, the expense reports show that he was in town on the 4th through 6th, 11th through 13th, 18th through 20th, and 24th through 26th. Exh. S-173 at ACC007318-ACC007319.

<sup>328</sup> Tr. at 717.

<sup>329</sup> Tr. at 722.

<sup>330</sup> Tr. at 722-723.

<sup>331</sup> Tr. at 723.

1 who would make them “more formal” for inclusion in the private offering memoranda.<sup>332</sup> Mr. Orr  
 2 testified that Mr. Harkins would add fees to the financial projections that would make the projections  
 3 look more profitable for Barcelona Advisors.<sup>333</sup> Mr. Orr “sometimes” objected to the way Mr. Harkins  
 4 presented these figures as being unrealistic.<sup>334</sup> Mr. Orr testified that he did not know whether Mr.  
 5 Harkins corrected the draft memoranda before they were given to investors.<sup>335</sup> Mr. Orr testified that  
 6 he could not find any real estate projections within the 12-6-12 or 10-5-10 private placement offering  
 7 memoranda.<sup>336</sup>

8 Mr. Orr testified that he made a \$2,500 loan to Barcelona Advisors after Mr. Harkins emailed  
 9 the Executive Members in June 2014, requesting \$10,000 to cover rent and payroll that month.<sup>337</sup> Mr.  
 10 Orr testified that in July 2014, Barcelona Advisors’ CFO told him that the company was again behind  
 11 in rent because of a payment made to Mr. Harkins.<sup>338</sup> On June 16, 2014, the same day that Mr. Orr  
 12 wired the \$2,500 loan to Barcelona Advisors, Mr. Harkins received a \$2,000 check from the company,  
 13 which he told Mr. Orr he used to make his car payment.<sup>339</sup> Mr. Orr testified that, at the time, Mr.  
 14 Kerrigan stated that several hundred thousand dollars would be coming in to the company in the near  
 15 future.<sup>340</sup> Mr. Orr testified that he previously made a loan of \$5,000 to Barcelona Advisors in 2012,  
 16 which was repaid with interest.<sup>341</sup>

17 Mr. Orr testified that the Executive Member role was supposed to be an advisory one.<sup>342</sup>  
 18 Previously, at an examination under oath (“EUO”), Mr. Orr testified that he was told the Executive  
 19 Members would handle major decisions, which was also stated in the operating agreement as a power  
 20 of the Executive Members, along with hiring the president.<sup>343</sup> At the hearing, Mr. Orr testified that he  
 21 was involved in an advisory capacity, but he did not have a voting role.<sup>344</sup>

22 \_\_\_\_\_  
 23 <sup>332</sup> Tr. at 724.

<sup>333</sup> Tr. at 725-726.

<sup>334</sup> Tr. at 726.

<sup>335</sup> Tr. at 726, 770.

<sup>336</sup> Tr. at 758, 759, 761; Exh. S-57, S-58.

<sup>337</sup> Tr. at 726-728; Exhs. S-179, S-180.

<sup>338</sup> Tr. at 728-729.

<sup>339</sup> Tr. at 729-730.

<sup>340</sup> Tr. at 770.

<sup>341</sup> Tr. at 730-731.

<sup>342</sup> Tr. at 731-732.

<sup>343</sup> Tr. at 732-734; Exh. S-136 at 22-23.

<sup>344</sup> Tr. at 761.

1 Mr. Orr testified that he was familiar with the 12-6-12 notes, through which Barcelona Advisors  
 2 borrowed money to be paid back at 12 percent interest, with a six percent bonus at the end of the first  
 3 year, and 12 percent at the end of the second.<sup>345</sup> Mr. Orr testified that he and the other Executive  
 4 Members discussed how the notes were structured.<sup>346</sup> Mr. Orr testified that they also discussed the  
 5 company would have to pay similar interest and bonuses on the 10-5-10 notes.<sup>347</sup> Mr. Orr testified that  
 6 he had proposed adding Mr. Eaves as an Executive Member.<sup>348</sup>

7 Mr. Orr testified that he did not meet with investors.<sup>349</sup> Mr. Orr testified that he had authorized  
 8 Mr. Simmons to sign a December 31, 2013, letter to investor William Jordan on his behalf.<sup>350</sup> Mr. Orr  
 9 testified that he signed an April 16, 2014, letter to investor Kathleen Carolin in which he and the other  
 10 Respondents thanked her for becoming an investor.<sup>351</sup>

11 Mr. Orr attended a dinner with investors in October 2014, where he was present to answer  
 12 questions regarding the hotel projects.<sup>352</sup> Mr. Orr's expense report for Barcelona Advisors contained  
 13 an entry for drinks with prospective investors on January 14, 2014.<sup>353</sup> Mr. Orr testified that he did not  
 14 solicit investments at that meeting but turned them over to Mr. McDonough or Mr. Wilkerson.<sup>354</sup> Mr.  
 15 Orr testified that he could not recall Tom Eaton or the purpose of an expense report that noted having  
 16 met for drinks with him on April 30, 2014.<sup>355</sup> Mr. Orr initially testified that he could not recall Robert  
 17 LaMacchia, another individual named on his expense report for drinks on May 20, 2014, before stating  
 18 Mr. LaMacchia was a "guy that [he] met playing golf that day."<sup>356</sup> Mr. Orr's expense report also  
 19 contained a July 23, 2014, entry for drinks with M. Coons, who Mr. Orr testified as being Maureen  
 20 Coons, a friend of his from Chicago who works for JP Morgan Private Banking.<sup>357</sup> Mr. Orr testified

21 \_\_\_\_\_  
 22 <sup>345</sup> Tr. at 737.

<sup>346</sup> Tr. at 738.

<sup>347</sup> Tr. at 739.

<sup>348</sup> Tr. at 739.

<sup>349</sup> Tr. at 740.

<sup>350</sup> Tr. at 740-741; Exh. S-65.

<sup>351</sup> Tr. at 741-742; Exh. S-26.

<sup>352</sup> Tr. at 748; Exh. S-173 at ACC007311.

<sup>353</sup> Tr. at 749; Exh. S-173 at ACC007316.

<sup>354</sup> Tr. at 750.

<sup>355</sup> Tr. at 751; Exh. S-173 at ACC007324. The expense report noted "RBC Wealth Mgmt." for this entry, which did not trigger Mr. Orr's recollection. Tr. at 751; Exh. S-173 at ACC007324

<sup>356</sup> Tr. at 752-753; Exh. S-173 at ACC007326. The entry on the expense report read "R. LaMacchia – Clark Assoc." Exh. S-173 at ACC007326.

<sup>357</sup> Tr. at 753; Exh. S-173 at ACC007328.

1 that he never met with investors to solicit money.<sup>358</sup> Mr. Orr testified that any potential investors he  
 2 met were passed on to Mr. McDonough or Mr. Wilkerson.<sup>359</sup> Mr. Orr testified that on May 21, 2014,  
 3 he was copied on an email Mr. McDonough sent to Robert LaMacchia inviting Mr. LaMacchia to come  
 4 to the Barcelona Advisors offices where he can be presented with the company's products.<sup>360</sup>

5 Mr. Orr testified that at the Sedona meeting in September 2013, Mr. Weintraub assured the  
 6 group that the company would reach "escrow break" on Barcelona Advisors' \$70 million offering  
 7 within a month.<sup>361</sup> Mr. Orr testified that in late November 2013, Mr. Weintraub revealed to the  
 8 company that he had brought in no capital.<sup>362</sup> Mr. Orr testified that at that time, Mr. Harkins declared  
 9 that Barcelona Advisors would not be acquiring hotels or apartments but would move to the  
 10 construction mode of its business plan.<sup>363</sup> Mr. Orr testified that he believed that if Mr. Weintraub had  
 11 brought in the capital he said he would, then the company would have been well positioned to execute  
 12 its business plan in November.<sup>364</sup>

13 Richard Harkins

14 Mr. Harkins testified that he is self-employed, presently developing computer programs for real  
 15 estate applications.<sup>365</sup> Mr. Harkins testified that he has been self-employed in the formation of  
 16 companies, most recently Barcelona Advisors beginning in 2009, and Arizona Village Communities  
 17 ("AVC") from 2000 to 2009.<sup>366</sup> Mr. Harkins was President and Chief Executive Officer of AVC.<sup>367</sup>  
 18 Mr. Harkins testified that AVC was owned in thirds by (1) Mr. Harkins' company, Desert Fox, which  
 19 would find sites and arrange financing; (2) a general contracting company, which was to do site  
 20 development; and (3) a real estate holding company and development marketing service, which was to  
 21 market and sell the homes.<sup>368</sup> AVC moved forward on several sites and by September 2007 had  
 22

23 <sup>358</sup> Tr. at 756-757.

24 <sup>359</sup> Tr. at 822-824.

25 <sup>360</sup> Tr. at 822, 824; Exh. O-1.

26 <sup>361</sup> Tr. at 768-769.

27 <sup>362</sup> Tr. at 769.

28 <sup>363</sup> Tr. at 770.

<sup>364</sup> Tr. at 771.

<sup>365</sup> Tr. at 782-783.

<sup>366</sup> Tr. at 783.

<sup>367</sup> Tr. at 783, 858.

<sup>368</sup> Tr. at 785. Mr. Harkins testified that he owned 16.66 percent of Arizona Village Communities Operating Company. Tr. at 859.

1 approximately \$12 million of note holders for its \$50 million offering.<sup>369</sup> Mr. Harkins testified that the  
 2 recession hit and the board of directors for AVC decided to put three of its four single purpose assets  
 3 under the protection of Chapter 11 bankruptcy with the hope that they could bring the properties out of  
 4 bankruptcy after the economy improved.<sup>370</sup> Mr. Harkins testified that the fourth property, which had  
 5 been acquired from the state, was eventually surrendered voluntarily to the State of Arizona Land  
 6 Department when it was determined that the property had no future viability at the basis AVC had in  
 7 it.<sup>371</sup> Afterwards, Mr. Harkins refocused his attention to the hotel acquisition and development industry  
 8 and commenced the activities of Barcelona Advisors in 2009.<sup>372</sup>

9 Mr. Harkins testified that initial efforts in Barcelona Advisors suffered from capital market  
 10 specialists who did not perform.<sup>373</sup> In October 2012, the effort was “reignited” with the capital markets  
 11 expertise of Allen Weintraub and some “internal capabilities” of Barcelona Advisors to raise working  
 12 capital.<sup>374</sup> Mr. Weintraub was supposed to raise capital for construction and acquisition and believed  
 13 he could raise \$70 million over 12 months.<sup>375</sup> Meanwhile, working capital would be the responsibility  
 14 of “the advisor level” and Mr. Kerrigan felt that he could “make introductions to the company of  
 15 people” who could generate about \$1 million, which would satisfy the company’s needs, in addition to  
 16 the fees to come from the properties through acquisition and construction.<sup>376</sup> However, Mr. Weintraub  
 17 failed to provide capital, and thereby changed the staging of the Barcelona Advisors business plan from  
 18 acquisition to construction.<sup>377</sup> Mr. Harkins testified that Barcelona Advisors sought a major partner  
 19 that could assist with capital, and selected Chanen Construction Company.<sup>378</sup> Mr. Harkins testified  
 20 that Barcelona Advisors met with Chanen several times through the summer of 2014, and that they  
 21 reached a general agreement where Chanen would be the general contractor for Barcelona Advisors  
 22 and would do what Mr. Harkins labeled entitlement work and which Chanen called architectural

23 \_\_\_\_\_  
 24 <sup>369</sup> Tr. at 788-789.

<sup>370</sup> Tr. at 789-790.

<sup>371</sup> Tr. at 791-792, 857-858, 917. AVC’s subsidiary, AVC Carefree Village Development defaulted on the obligation to the State regarding the property. Tr. at 918; Exh. S-61.

<sup>372</sup> Tr. at 792.

<sup>373</sup> Tr. at 792-793.

<sup>374</sup> Tr. at 793.

<sup>375</sup> Tr. at 795.

<sup>376</sup> Tr. at 795.

<sup>377</sup> Tr. at 793.

<sup>378</sup> Tr. at 793.

1 predesign work.<sup>379</sup> Mr. Harkins also testified that private placement memorandums were sent to Mr.  
 2 Chanen's office including information built around Mr. Chanen's input, through his attorney, regarding  
 3 disclosure of Chanen's company that Mr. Chanen approved.<sup>380</sup> Mr. Harkins testified that Mr. Chanen  
 4 asked Steve Betts to find a suitable investor for Barcelona Advisors "that was strong and substantial  
 5 and could do the things for us we described."<sup>381</sup>

6 Mr. Kerrigan first became involved with Barcelona Advisors after meeting Mr. Harkins at a  
 7 social club in early 2012.<sup>382</sup> Mr. Harkins testified that Mr. Kerrigan agreed to put in some of the early  
 8 capital in Barcelona Advisors and felt he could raise up to \$1 million.<sup>383</sup> Mr. Harkins testified that he  
 9 knew Mr. Simmons as he had been married to Mr. Simmons' sister.<sup>384</sup> Mr. Harkins testified that Mr.  
 10 Simmons was not involved in the solicitation of investors.<sup>385</sup> Mr. Harkins testified that Mr. Orr initially  
 11 found Barcelona Advisors as he was working on a project that needed an investor and he met with  
 12 Barcelona Advisors, which led to future meetings every several months.<sup>386</sup>

13 Mr. Harkins testified that the Division misclassified the investments in Barcelona Advisors.<sup>387</sup>  
 14 Mr. Harkins testified that the investments under the 12-6-12 program raised a total of \$670,000, not  
 15 \$720,000 as the Division claims.<sup>388</sup> Mr. Harkins testified that Ms. Burleson had one \$50,000  
 16 investment in the 12-6-12 program, and a \$50,000 investment in another instrument that has "options  
 17 to put the note to the company at certain intervals of time," making it a distinct investment from the  
 18 12-6-12 investments.<sup>389</sup> Mr. Harkins testified that the second \$250,000 invested by Mr. and Mrs. Eaves  
 19 was not part of the 12-6-12 category, but a different security.<sup>390</sup> The initial \$250,000 invested by Mr.  
 20 and Mrs. Eaves is in the 12-6-12 program as it has the 12-6-12 note interest features and carries Class  
 21

22 <sup>379</sup> Tr. at 794.

23 <sup>380</sup> Tr. at 888-889. Mr. Harkins conceded that an email exchange between him and Mr. Chanen did not indicate that there  
 was an agreement between the two companies or that Mr. Chanen had authorized the use of his corporate logo. Tr. at 935-  
 936; Exh. H-8.

24 <sup>381</sup> Tr. at 984.

25 <sup>382</sup> Tr. at 796.

26 <sup>383</sup> Tr. at 796.

27 <sup>384</sup> Tr. at 796.

28 <sup>385</sup> Tr. at 1256-1258.

<sup>386</sup> Tr. at 797.

<sup>387</sup> Tr. at 801-803.

<sup>388</sup> Tr. at 801, 842; Exh. H-5.

<sup>389</sup> Tr. at 802, 804, 855-856, 1008; Exhs. H-5, S-184.

<sup>390</sup> Tr. at 801-802, 868; Exh. H-5.

1 B member interest.<sup>391</sup> However, the second \$250,000 invested by Mr. and Mrs. Eaves is in a note that  
 2 features 12-6-12 interest characteristics but carries Class A member interest.<sup>392</sup> Mr. Harkins testified  
 3 that the Class A member interest has a stronger per share ownership of the company and is a voting  
 4 share while the Class B member interest has preferred distribution but no voting rights.<sup>393</sup> Mr. Harkins  
 5 agreed with the Division's allegation that Mr. Harkins, Mr. Kerrigan and Mr. Simmons met with Mr.  
 6 Eaves on December 30, 2013, at which meeting Mr. Eaves invested \$125,000 in a Barcelona Advisors  
 7 note offering 12% annual interest with a maturity date of March 31, 2014, and the rights to purchase  
 8 membership interests in Barcelona Advisors.<sup>394</sup> Mr. Harkins agreed with the Division's allegation that  
 9 Mr. Harkins, Mr. Kerrigan, Mr. Simmons and Mr. Orr met with Mr. Eaves on February 28, 2014, where  
 10 they offered and sold him a Barcelona Advisors note offering 12% annual interest with a maturity date  
 11 of May 31, 2014, and the rights to purchase membership interests in Barcelona Advisors.<sup>395</sup> Mr.  
 12 Harkins acknowledged that Mr. Eaves made two additional investments of \$15,000 each on July 14,  
 13 2014, and August 1, 2014.<sup>396</sup> Mr. Harkins testified that it was at least partially true that Mr. Eaves  
 14 would have relied upon the October 2012 private placement memorandum in making his  
 15 investments.<sup>397</sup>

16 Mr. Harkins testified that he first met Rodney Eaves as a possible investor in October 2012,  
 17 through Mr. Kerrigan.<sup>398</sup> Mr. Harkins testified that Mr. Eaves first invested in the 12-6-12 offering on  
 18 March 11, 2013.<sup>399</sup> Mr. Eaves attended Barcelona Advisors meetings, became a vice president in the  
 19 company, and accepted a role as Executive Member in the summer of 2014.<sup>400</sup> Mr. Eaves resigned his  
 20 position as Executive Member when Barcelona Advisors closed its office.<sup>401</sup>

21 Mr. Harkins testified that Barcelona Advisors never advertised for the 12-6-12 program, rather  
 22

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23 <sup>391</sup> Tr. at 805, 845.

24 <sup>392</sup> Tr. at 805, 845, 856.

25 <sup>393</sup> Tr. at 805, 844-845.

26 <sup>394</sup> Tr. at 869; Amended T.O. and Notice at 9. Mr. Harkins noted that, contrary to the Division's allegation, Mr. Orr had  
 testified to not being present at this meeting. Tr. at 869.

27 <sup>395</sup> Tr. at 869-870; Amended T.O. and Notice at 9.

28 <sup>396</sup> Tr. at 870; Amended T.O. and Notice at 9.

<sup>397</sup> Tr. at 870; Amended T.O. and Notice at 10.

<sup>398</sup> Tr. at 967.

<sup>399</sup> Tr. at 969.

<sup>400</sup> Tr. at 968-972.

<sup>401</sup> Tr. at 973.

1 the advertisements in the *Arizona Republic* were for a different “8-8” program that offered 8 percent  
 2 interest with an 8 percent bonus.<sup>402</sup> Mr. Harkins testified that by June 1, 2013, after Roberta Burleson  
 3 invested in the 12-6-12 program, \$470,000 of investor capital had been raised in the 12-6-12  
 4 program.<sup>403</sup> At that time, the members did not appear capable of bringing more capital into Barcelona  
 5 Advisors, so Mr. Harkins proposed advertising pursuant to A.A.C. R14-4-140, by which they could  
 6 raise up to an additional \$530,000 for their 12 month offering period.<sup>404</sup> Mr. Harkins testified that  
 7 Barcelona Advisors made no offers or sales under the 8-8 program.<sup>405</sup> Instead, Mr. Kerrigan informed  
 8 Mr. Harkins that he could make some introductions to persons to invest in the 12-6-12 program, and  
 9 Barcelona Advisors brought in three additional investors under the 12-6-12 program, Mr. Jordan, Mr.  
 10 Ramirez and Ms. Chaimson.<sup>406</sup> Mr. Harkins testified that at this time Barcelona Advisors filed a Form  
 11 D with the SEC and concluded the offering, in part because the premium, paid at the end of the year,  
 12 was not set up to be prorated based upon the date of an investor’s entry.<sup>407</sup> The original principal  
 13 investment amount of \$250,000 was due on the Series A 12-6-12 note term of December 31, 2014, as  
 14 stated in the private placement memorandum, amended February 1, 2013.<sup>408</sup> Mr. Harkins testified that  
 15 the purpose of the offering was to raise working capital, and this was the same offering as in the  
 16 amended private placement memorandum dated April 29, 2013.<sup>409</sup> Mr. Harkins testified that the 8-8  
 17 program was also intended to raise working capital.<sup>410</sup> As advertised, the principal and accrued interest  
 18 for the 8-8 investments would be due and payable on December 31, 2014.<sup>411</sup>

19 Mr. Harkins testified that at this time, Barcelona Advisors went to a different part of its business  
 20 plan, away from acquisition, because Mr. Weintraub didn’t bring in capital needed to land acquisition  
 21 and construction.<sup>412</sup> Mr. Harkins testified that Barcelona Advisors started its 10-5-10 program which  
 22

23 <sup>402</sup> Tr. at 806, 808, 844; Exhs. S-25, H-5.

24 <sup>403</sup> Tr. at 806; Exh. H-5.

25 <sup>404</sup> Tr. at 807, 929.

26 <sup>405</sup> Tr. at 807-808, 841.

27 <sup>406</sup> Tr. at 808.

28 <sup>407</sup> Tr. at 808-809, 899, 908. Mr. Harkins testified that he did not file a notice of the Form D filing with the Commission.  
 Tr. at 908.

<sup>408</sup> Tr. at 925; Exh. S-5 at ACC007213.

<sup>409</sup> Tr. at 925, 927-928; Exh. S-57.

<sup>410</sup> Tr. at 929-930.

<sup>411</sup> Tr. at 930; Exh. S-25 at ACC006216.

<sup>412</sup> Tr. at 809.

1 “reset the clock” for the date of entry by investors.<sup>413</sup> Mr. Harkins testified that Mr. Kerrigan  
 2 represented that he had investors that could come in soon with \$500,000 or more, but by September,  
 3 Barcelona Advisors did not have capital and needed to close its office.<sup>414</sup> Mr. Harkins testified that he  
 4 continued to work on the Barcelona Advisors business from his home office.<sup>415</sup>

5 Mr. Harkins testified that Mr. McDonough became involved in Barcelona Advisors after  
 6 meeting Mr. Kerrigan.<sup>416</sup> Mr. Harkins testified that Mr. McDonough worked for Barcelona Advisors  
 7 as an independent contractor, a position offered by Mr. Harkins, and he reported to Mr. Harkins.<sup>417</sup>  
 8 Mr. Harkins testified that Mr. McDonough’s role with Barcelona Advisors was to work with Mr.  
 9 Harkins and develop real estate selling relationships with broker/dealers, although Barcelona Advisors  
 10 was also initially interested in the possibility that Mr. McDonough could make some introductions to  
 11 wealthy investors.<sup>418</sup> Mr. Harkins testified that Mr. McDonough was not successful in his efforts with  
 12 the broker-dealer community and Mr. McDonough suddenly quit his work with the company as they  
 13 were planning to reassign him to work with Mr. Simmons.<sup>419</sup> Mr. Harkins testified that Mr.  
 14 McDonough later told Mr. Simmons he would “make it as miserable for us as he possibly could” and  
 15 that he was going to get in touch with the Commission.<sup>420</sup> Mr. Harkins testified that Mr. McDonough  
 16 testified falsely because he did, in fact, file a lien against Mr. Harkins and Barcelona Advisors, and  
 17 because the lien was mailed to Mr. Harkins on Barcelona Advisors stationary.<sup>421</sup>

18 Mr. Harkins testified that he believes he is the sole control person of Barcelona Administration  
 19 Company.<sup>422</sup> Mr. Harkins testified that he developed the business plan and the organizational  
 20 structure.<sup>423</sup> Mr. Harkins also testified as to other bases of his control: he authored the offering  
 21

22 <sup>413</sup> Tr. at 809, 872-873.

23 <sup>414</sup> Tr. at 810, 873.

24 <sup>415</sup> Tr. at 810.

25 <sup>416</sup> Tr. at 960.

26 <sup>417</sup> Tr. at 961-962.

27 <sup>418</sup> Tr. at 960-961.

28 <sup>419</sup> Tr. at 962-967.

<sup>420</sup> Tr. at 966.

<sup>421</sup> Tr. at 825-826; Exhs H-6, H-6a. Contrary to Mr. Harkins’ assertions, Mr. McDonough did testify he filed a lien, but he denied filing one as recently as two months before the hearing. Tr. at 119. The lien in evidence was recorded on December 3, 2015. Exh. H-6a. The Barcelona Advisors envelope addressed to Mr. Harkins is dated December 7, 2015. Exh. H-6a.

<sup>422</sup> Tr. at 835, 902, 1260. Barcelona Advisors was originally organized under the name Barcelona Administration Company, LLC. Tr. at 912; Exhs. S-3a, S-3b.

<sup>423</sup> Tr. at 835.

1 memorandums; he orchestrated the written business plan; he conceptualized a marketing brochure; he  
2 authored, individually or with others, all communications to investors; he conducted Monday morning  
3 meetings for the entirety of the company's business that involved all employees and Executive  
4 Members when present; and he delegated responsibility.<sup>424</sup> Mr. Harkins testified that Mr. Orr rarely  
5 attended the Monday meetings.<sup>425</sup>

6 Mr. Harkins testified that while the operating agreement set forth major decisions requiring the  
7 vote of Executive Members, almost no cause for such a vote came, except for the agreement to close  
8 the office space.<sup>426</sup> As there were four Executive Members, Mr. Harkins carried the tie breaking  
9 vote.<sup>427</sup>

10 Mr. Harkins testified that at or about the time of the creation of two \$30,000 notes to Mr.  
11 Kerrigan, he brought to Mr. Kerrigan's attention that while the notes stated he would be repaid from  
12 future investor capital, the operating agreement prohibited such payment.<sup>428</sup> The offering  
13 memorandum stated that Executive Member loans are to be repaid from the net cash flow of the  
14 company.<sup>429</sup> However, Mr. Harkins testified that the definition of net cash flow does not include  
15 member loans.<sup>430</sup> Mr. Harkins testified that they could not pay interest on Mr. Kerrigan's loan based  
16 on the paragraph that prohibited paying interest on member loans.<sup>431</sup> Mr. Harkins testified that there  
17 was no default as Mr. Kerrigan made no demand for payment and the operating memorandum did not  
18 allow for payment.<sup>432</sup>

19 Mr. Harkins testified that Mr. Kerrigan invested an additional \$70,000, and that a promissory  
20 note was executed on October 1, 2013, stating that principal and interest shall be paid from proceeds  
21 received from new investors in the Series A 12-6-12 note offering.<sup>433</sup> Mr. Harkins testified that when  
22 Mr. Jordan invested \$50,000 on October 4, 2013, he was not informed that Mr. Kerrigan was not paid

23 \_\_\_\_\_  
24 <sup>424</sup> Tr. at 836-838.

25 <sup>425</sup> Tr. at 836.

26 <sup>426</sup> Tr. at 836-837.

27 <sup>427</sup> Tr. at 971.

28 <sup>428</sup> Tr. at 838-840, 867, 936-938; Exhs. S-133, S-134. The notes were due June 30, 2013. Exhs. S-133, S-134.

<sup>429</sup> Tr. at 839, 940; Exh. S-58 at ACC005781.

<sup>430</sup> Tr. at 839; Exh. S-58 at ACC005763.

<sup>431</sup> Tr. at 840.

<sup>432</sup> Tr. at 864, 940-941.

<sup>433</sup> Tr. at 943; Exh. S-135.

1 the principal previously due to him on June 30, 2013, or that Mr. Kerrigan was to be repaid on another  
 2 note by the proceeds received from new investors.<sup>434</sup> Mr. Harkins testified that there was no need to  
 3 inform investors that Mr. Kerrigan was not repaid on June 30, 2013, as there was no default due to a  
 4 verbal agreement between the company and Mr. Kerrigan.<sup>435</sup>

5 Mr. Harkins provided testimony in response to specific allegations in the Division's Amended  
 6 T.O. and Notice. Mr. Harkins admitted that Barcelona Advisors "probably" offered and sold  
 7 promissory notes and investment contracts in the form of membership interests in Barcelona Advisors  
 8 from at least October 26, 2012, until at least November 25, 2013, within and from Arizona.<sup>436</sup> Mr.  
 9 Harkins testified that the offerings were not registered with the Commission, but that he believed the  
 10 12-6-12 and 10-5-10 offerings were exempt from registration because Barcelona Advisors had not  
 11 made a public offering.<sup>437</sup> Mr. Harkins testified that he believed true the Division's assertion that  
 12 investors in the October 2012 offering received a return of \$90,251 in interest payments but none had  
 13 received a refund of principal.<sup>438</sup> Mr. Harkins testified that the role of Barcelona Advisors was to be  
 14 an advisor to affiliates, and that the entity that would be a real estate investment trust was Barcelona  
 15 Realty, Inc.<sup>439</sup>

16 Mr. Harkins testified that in April 2014, two investors invested a collective total of \$150,000  
 17 in Barcelona Advisors' January 2014 Offering.<sup>440</sup> Mr. Harkins testified that these two investors had  
 18 not received any interest or principal on their investments but noted that they had consented to deferral  
 19 of payments.<sup>441</sup> Mr. Harkins testified that Barcelona Advisors' stated business plan was to be advisor  
 20 to a series of private funds that were raising capital to acquire hotels and other real property.<sup>442</sup> Mr.  
 21 Harkins acknowledged that a December 31, 2013 letter, signed by Mr. Harkins, Mr. Kerrigan, Mr.  
 22 Simmons, and Mr. Orr, was sent to existing Barcelona Advisors investors alerting them about the new  
 23

24 <sup>434</sup> Tr. at 943.

<sup>435</sup> Tr. at 944, 946.

<sup>436</sup> Tr. at 842; Amended T.O. and Notice at 5.

<sup>437</sup> Tr. at 842, 902.

<sup>438</sup> Tr. at 843; Amended T.O. and Notice at 5.

<sup>439</sup> Tr. at 843.

<sup>440</sup> Tr. at 871; Amended T.O. Notice at 10.

<sup>441</sup> Tr. at 872; Exh. H-3. Mr. Harkins testified that eight of ten noteholders signed documents to forebear paying interest  
 28 for a period of six months. Tr. at 993; Exh. H-3.

<sup>442</sup> Tr. at 872; Amended T.O. and Notice at 10.

1 \$1 million offering, paying 10% annual interest for two years, a 5 percent premium on December 31,  
2 2014, and a ten percent premium on December 31, 2015.<sup>443</sup> Mr. Harkins testified that at least one  
3 offeree was given a January 1, 2014 private placement memorandum about the 10-5-10 Offering.<sup>444</sup>  
4 Mr. Harkins testified that he signed at least one of the subscription agreements and at least two of the  
5 notes for the January 2014 Offering.<sup>445</sup> Mr. Harkins testified that Mr. Simmons signed the subscription  
6 agreement for the Richard Andrade \$50,000 investment after calling Mr. Harkins and asking for  
7 approval, which Mr. Simmons “really didn’t need.”<sup>446</sup> Mr. Harkins admitted that the January 2014  
8 private placement memorandum did not disclose that Barcelona Advisors failed to make interest  
9 payments from the October 2012 Offering when due on December 31, 2013, but he testified that  
10 investors had been informed of the deferral, consented to it and the deferral was paid on a timely basis  
11 with a premium.<sup>447</sup> Mr. Harkins testified that the January 2014 private placement memorandum failed  
12 to disclose that Barcelona Advisors intended to use 2014 offering proceeds to make payments to  
13 investors from the October 2012 offering.<sup>448</sup> However, Mr. Harkins noted that the January 2014 private  
14 placement memorandum stated that 10-5-10 note sales proceeds that are not used for expenses related  
15 to the offering are reapportioned to the company’s working capital.<sup>449</sup> Working capital is further  
16 defined as the cash reserves of the company to cover normal operating costs and expenditures.<sup>450</sup> Mr.  
17 Harkins testified that the payment of principal and interest on indebtedness is a normal operating  
18 expense.<sup>451</sup> However, Mr. Harkins testified that Barcelona Advisors’ operating agreement prevented  
19 the company from making principal or interest payments from anything other than net cash flow, and  
20

21 \_\_\_\_\_  
<sup>443</sup> Tr. at 872; Amended T.O. and Notice at 10.

22 <sup>444</sup> Tr. at 873-874; Amended T.O. and Notice at 10.

23 <sup>445</sup> Tr. at 874; Amended T.O. and Notice at 11.

24 <sup>446</sup> Tr. at 874, 913; Amended T.O. and Notice at 11.

25 <sup>447</sup> Tr. at 874; Amended T.O. and Notice at 11.

26 <sup>448</sup> Tr. at 875; Amended T.O. and Notice at 11.

27 <sup>449</sup> Tr. at 876; Exh. S-58 at ACC005714.

28 <sup>450</sup> Tr. at 877; Exh. S-58 at ACC005766. The January 2014 private placement memorandum also stated the following:

Sales commissions on Unit sales will be paid from Offering Proceeds at the time Offering Proceeds are received by the Company. An additional \$30,000 will be used to pay expenses to third party professionals for expenses relating to the organization of the Company and conducting this Offering including, among other expenses, legal, printing, mailing, and accounting fees. After deduction of those expenses, all other Offering Proceeds will be used by the Company to pursue the business plan outlined in this Memorandum.

Exh. S-58 at ACC005751.

<sup>451</sup> Tr. at 877.

1 no payments of interest or principal were made on member loans.<sup>452</sup>

2 Mr. Harkins testified that he provided Ms. Bair with a private placement memorandum for the  
3 purpose of investing.<sup>453</sup> Mr. Harkins testified that he was introduced to Ms. Bair by a mutual insurance  
4 agent, Mr. Austin, and that she was “the only individual I made a solicitation of.”<sup>454</sup>

5 Mr. Harkins testified that he was told by Mr. Kerrigan that Ms. Carolin wanted to invest \$50,000  
6 in the 12-6-12 offering in two \$25,000 increments.<sup>455</sup> Mr. Harkins further testified that he “did deal  
7 with Ms. Carolin” on behalf of Mr. Kerrigan, of whom she was a client, at a meeting where Mr.  
8 Kerrigan arrived late.<sup>456</sup> Mr. Harkins testified that he did not mark her as an accredited investor on her  
9 subscription document, and that he had no idea where the mark came from, but he believed it looked  
10 like the same pen she had used.<sup>457</sup>

11 Mr. Harkins also testified that his significant other, Ms. Burleson, made her investment through  
12 her investment advisor, Mr. Kerrigan, with no urging from Mr. Harkins.<sup>458</sup> Mr. Harkins testified that  
13 at the time of Ms. Burleson’s investment, they lived together and had been in a relationship for four  
14 years, but he “knew nothing of her financial status.”<sup>459</sup> Mr. Harkins testified that Ms. Burleson made  
15 two \$50,000 investments, one in the 12-6-12 Offering and a second on or about the same date in a  
16 stand-alone note with the same interest rate but with a unique opportunity to select the date for  
17 repayment.<sup>460</sup> Mr. Harkins testified that he accepted and signed all subscription agreements and notes  
18 for the October 2012 Offering.<sup>461</sup> Mr. Harkins testified that it was his job to review each subscription  
19 agreement and ascertain that the subscriber was an accredited investor.<sup>462</sup> Ms. Burleson wrote on her  
20 subscription agreement that she qualified as an accredited investor based on “relationship with  
21 sponsor.”<sup>463</sup> Mr. Harkins testified that he accepted Ms. Burleson as an accredited investor based upon  
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23 <sup>452</sup> Tr. at 877.

24 <sup>453</sup> Tr. at 844.

25 <sup>454</sup> Tr. at 844.

26 <sup>455</sup> Tr. at 978-979.

27 <sup>456</sup> Tr. at 844, 979.

28 <sup>457</sup> Tr. at 979-980.

<sup>458</sup> Tr. at 844, 989, 1007-1008.

<sup>459</sup> Tr. at 990.

<sup>460</sup> Tr. at 987-988, 1008; Exh. S-184.

<sup>461</sup> Tr. at 845; Amended T.O. and Notice at 6.

<sup>462</sup> Tr. at 845, 990-991.

<sup>463</sup> Tr. at 992; Exh. S-8 at ACC000891.

1 Mr. Kerrigan’s representation of knowledge of her net worth, as Ms. Burluson was unsure if she would  
2 qualified.<sup>464</sup>

3 Mr. Harkins testified that Mr. Meka began working for Barcelona Advisors in approximately  
4 April 2013, and that he created a filing system for the company.<sup>465</sup> Mr. Harkins denied the Division’s  
5 allegation that Mr. Meka maintained the company’s records and prepared financial projections,  
6 although Mr. Harkins conceded that for a month or two, Mr. Meka did keep a list of accounts payable  
7 which he presented weekly to Mr. Harkins.<sup>466</sup> Mr. Harkins agreed with the Division’s allegations that  
8 Mr. Meka had experience evaluating land parcels and commercial property, gave Barcelona Advisors  
9 input on acquiring multifamily projects, and that Barcelona Advisors expected Mr. Meka to eventually  
10 have a significant role in helping to locate land parcels, evaluate them, and do land entitlement work.<sup>467</sup>  
11 Mr. Harkins testified that Mr. Meka had no dealing with investors.<sup>468</sup> Regarding Mr. Meka’s felony  
12 conviction, Mr. Harkins testified that Mr. Meka had “nothing to do with any of that” and that this was  
13 an instance where “a bad thing happened to a good person.”<sup>469</sup>

14 Mr. Harkins admitted stating in a letter he wrote to investors, dated April 21, 2015, that in  
15 September 2013, Barcelona Advisors shelved its \$50 million offering plan for nonperformance and  
16 was evaluating a Plan B.<sup>470</sup> However, Mr. Harkins testified that they were not at that point in September  
17 2013, and that the decision was actually made in late November or December when they “stepped up”  
18 their plans to go to another part of their business plan with Hotel Operating Company I and Hotel Land  
19 Company I.<sup>471</sup> Mr. Harkins testified that the Barcelona entities had one business plan that was “big  
20 and voluminous” covering periods of acquisition, construction, and sale of matured properties to a  
21 control real estate investment trust, culminating in taking the real estate investment trust public.<sup>472</sup> Mr.  
22 Harkins testified that they went to another part of their business plan due to “changing conditions” and  
23

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24 <sup>464</sup> Tr. at 991-992.

25 <sup>465</sup> Tr. at 860-861, 1255-1256.

26 <sup>466</sup> Tr. at 861, 863, 1254-1255; Exh. H-11; Amended T.O. and Notice at 7.

27 <sup>467</sup> Tr. at 861-862, 1255; Exh. H-11; Amended T.O. and Notice at 7.

28 <sup>468</sup> Tr. at 863, 1255; Exh. H-11.

<sup>469</sup> Tr. at 863, 1255-1256.

<sup>470</sup> Tr. at 865, 948-950; Exhs. S-67, S-80.

<sup>471</sup> Tr. at 865-866, 950.

<sup>472</sup> Tr. at 865.

1 he saw no need to make such a disclosure in the January 2014 private placement memorandum.<sup>473</sup> Mr.  
 2 Harkins testified that, to his knowledge, no disclosure of this change in business plan was made to Ms.  
 3 Chamson, Ms. Stewart, or Mr. Andrade.<sup>474</sup>

4 Regarding the Division's allegations of a Barcelona Land Company offering, Mr. Harkins  
 5 testified that Mr. Andrade would be the only individual outside the company who had a draft of the  
 6 private placement memorandum.<sup>475</sup> Mr. Harkins testified that while in his office, Mr. Andrade asked  
 7 about the business plan of Barcelona Land Company and requested a copy of the memorandum to learn  
 8 more about it.<sup>476</sup> Mr. Harkins testified that no units were ever offered in Barcelona Land Company.<sup>477</sup>

9 Mr. Harkins testified that the only major decision made by the Executive Members was to close  
 10 the office.<sup>478</sup> Mr. Harkins testified that Executive Member elections were never held to choose a  
 11 president, and that he served in the role continuously, even though the operating memorandum stated  
 12 that officers were to be elected.<sup>479</sup> Mr. Harkins testified that the authority to manage the affairs of  
 13 Barcelona Advisors was vested in the president except for major decisions.<sup>480</sup>

14 Robert Kerrigan

15 Mr. Kerrigan testified that he has owned several companies, serves on several boards, and has  
 16 worked as a financial advisor for 30 years.<sup>481</sup> Mr. Kerrigan testified that he was not presently registered  
 17 as a securities salesman in any state, but he previously had been registered in multiple states including  
 18 Arizona.<sup>482</sup> At the time of the Barcelona Advisors investment, Mr. Kerrigan was a registered salesman  
 19 with FFEC, but he did not discuss Barcelona Advisors with FFEC, nor obtain approval of the Barcelona  
 20 Advisors investment from the broker/dealer.<sup>483</sup> Mr. Kerrigan testified that a client, Roberta Burleson,  
 21

22 \_\_\_\_\_  
 23 <sup>473</sup> Tr. at 878, 953; Amended T.O. and Notice at 11.

<sup>474</sup> Tr. at 950-954.

<sup>475</sup> Tr. at 881-882.

<sup>476</sup> Tr. at 882, 977, 1258.

<sup>477</sup> Tr. at 901.

<sup>478</sup> Tr. at 898-899. Mr. Harkins testified that the vote included himself, Mr. Simmons, Mr. Eaves and Mr. Kerrigan; Mr. Orr was no longer an Executive Member at the time. Tr. at 898-899.

<sup>479</sup> Tr. at 900.

<sup>480</sup> Tr. at 910.

<sup>481</sup> Tr. at 1012.

<sup>482</sup> Tr. at 1013.

<sup>483</sup> Tr. at 1067-1068, 1082-1083. Mr. Kerrigan testified that he told George Fischer of FFEC that there was a possibility \$70 million could be coming into the office. Tr. at 1088.

1 introduced him to Mr. Harkins.<sup>484</sup> Mr. Kerrigan testified that he first learned of Barcelona Advisors in  
 2 2011 through Mr. Harkins, who asked if he would manage \$70 million that was being raised by a broker  
 3 for Barcelona Advisors until the money was ready to be used to buy and build hotels.<sup>485</sup> As to his  
 4 relationship with Barcelona Advisors, Mr. Kerrigan testified that he was never an employee, never a  
 5 control person, never on their board as a member, and never maintained an office with the company.<sup>486</sup>  
 6 Mr. Kerrigan testified that when the expected funds did not come in to Barcelona Advisors, he invested  
 7 \$30,000, then another \$30,000, and eventually, a total of over \$200,000, for which he has not received  
 8 any interest or principal back.<sup>487</sup> Mr. Kerrigan received an initial \$30,000 Barcelona Advisors  
 9 promissory note on February 14, 2013, and a second \$30,000 note on February 22, 2013.<sup>488</sup> The two  
 10 notes had maturity dates of June 30, 2013.<sup>489</sup> Mr. Kerrigan testified that after investing his initial  
 11 \$60,000, he told Mr. Harkins he would approach some of his clients to generate interest in the  
 12 investment.<sup>490</sup>

13 Mr. Kerrigan testified that one of the first clients he spoke with about Barcelona Advisors was  
 14 Mr. Eaves, who was approaching retirement at the beginning of 2013, and would be receiving over a  
 15 million dollars in retirement benefits.<sup>491</sup> Mr. Kerrigan testified that he discussed the payback structure  
 16 of the 12-6-12 investment with Mr. Eaves and he gave him the subscription agreement, but he could  
 17 not recall if an offering memorandum was given as well.<sup>492</sup> Mr. Kerrigan testified that Mr. Eaves made  
 18 his initial investment of \$250,000 in March of 2013.<sup>493</sup> Mr. and Mrs. Eaves made a second investment  
 19 of \$250,000 on July 18, 2013.<sup>494</sup> Mr. and Mrs. Eaves made an additional investment of \$125,000 on  
 20 December 30, 2013.<sup>495</sup> On December 31, 2013, Mr. Kerrigan received a check from Barcelona

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21 <sup>484</sup> Tr. at 1013.

22 <sup>485</sup> Tr. at 1013-1014, 1068, 1088.

23 <sup>486</sup> Tr. at 1014, 1039.

24 <sup>487</sup> Tr. at 1014-1015, 1040. On cross examination, Mr. Kerrigan testified that he has received medical treatment for memory  
 25 difficulties that have been ongoing for several years, and he expressed some confusion as to the timeframe of his investments  
 26 relative to the \$70 million offering. Tr. at 1041-1044. Mr. Kerrigan testified that he believed his recollection was accurate  
 27 as to his testimony. Tr. at 1065.

28 <sup>488</sup> Tr. at 1090-1091; Exhs. S-133, S-134.

<sup>489</sup> Tr. at 1091-1092; Exhs. S-133, S-134.

<sup>490</sup> Tr. at 1016, 1093.

<sup>491</sup> Tr. at 1016-1017, 1074.

<sup>492</sup> Tr. at 1017-1018.

<sup>493</sup> Tr. at 1074.

<sup>494</sup> Tr. at 1095; Exh. S-31b.

<sup>495</sup> Tr. at 1102; Exh. S-31b.

1 Administration Company, LLC, for \$4,200.<sup>496</sup> On February 28, 2014, Mr. and Mrs. Eaves made  
 2 another investment of \$125,000.<sup>497</sup> On March 3, 2014, Mr. Kerrigan received a check from Barcelona  
 3 Administration Company, LLC, for \$4,200.<sup>498</sup> On April 1, 2014, Mr. Kerrigan received a check from  
 4 Barcelona Administration Company, LLC, for \$4,200.<sup>499</sup>

5 Mr. Kerrigan testified that he told other potential investors about Barcelona Advisors, referring  
 6 them to the company to answer specific questions, and that he never received any fees or  
 7 commission.<sup>500</sup> Mr. Kerrigan testified that there “may be a couple” of his clients who subscribed to  
 8 Barcelona Advisors without reviewing the offering memorandum.<sup>501</sup> Mr. Kerrigan could not recall  
 9 whether he gave an offering memorandum to all of his clients who subscribed in Barcelona Advisors  
 10 and he believed that the majority of his clients, whom he had advised for years, would have invested  
 11 on the basis of trust with Mr. Kerrigan stating that he believed in the offering and that he invested in it  
 12 himself.<sup>502</sup>

13 Mr. Kerrigan testified that he did not know investors Kelly Bair or Richard Andrade.<sup>503</sup> Mr.  
 14 Kerrigan testified that he thought Mr. Andrade came to Barcelona Advisors as a client of Jim  
 15 Wilkerson.<sup>504</sup>

16 Mr. Kerrigan testified that Ms. Burleson was a client of his whom he told about Barcelona  
 17 Advisors and the 12-6-12 investment.<sup>505</sup> Mr. Kerrigan testified that, at the time, Ms. Burleson had a  
 18 net worth in excess of \$1 million, making her an accredited investor.<sup>506</sup> Mr. Kerrigan testified that he  
 19 gave Ms. Burleson subscription paperwork, and that she received other information and an offering  
 20 memorandum from Mr. Harkins.<sup>507</sup> Ms. Burleson invested \$100,000 on May 31, 2013.<sup>508</sup>

21 Mr. Kerrigan testified that Mr. Woods was a client of his whom he gave “the basic facts”

22 <sup>496</sup> Tr. at 1102; Exh. S-129.

23 <sup>497</sup> Tr. at 1102; Exh. S-31b.

24 <sup>498</sup> Tr. at 1102-1103; Exh. S-130.

25 <sup>499</sup> Tr. at 1103; Exh. S-132.

26 <sup>500</sup> Tr. at 1018-1019.

27 <sup>501</sup> Tr. at 1063-1064.

28 <sup>502</sup> Tr. at 1064-1065, 1083.

<sup>503</sup> Tr. at 1019, 1034, 1076.

<sup>504</sup> Tr. at 1077.

<sup>505</sup> Tr. at 1020.

<sup>506</sup> Tr. at 1020-1021.

<sup>507</sup> Tr. at 1021.

<sup>508</sup> Tr. at 1095; Exh. S-31(b).

1 regarding the 12-6-12 investment.<sup>509</sup> Mr. Kerrigan testified that Mr. Woods' net worth would have  
2 been over \$1 million at the time, making him an accredited investor.<sup>510</sup> Mr. Kerrigan testified that he  
3 gave Mr. Woods subscription agreements for him and his wife.<sup>511</sup> Mr. Woods invested \$100,000 on  
4 July 2, 2013.<sup>512</sup>

5 Mr. Kerrigan testified that Kathleen Carolin was not his client, but that he had been dating her  
6 for over a year at the time of her investment.<sup>513</sup> Mr. Kerrigan testified that he told Ms. Carolin about  
7 the Barcelona Advisors investment and told her that Mr. Harkins needed some accounting help in the  
8 office.<sup>514</sup> Mr. Kerrigan testified that he recommended the investment to Ms. Carolin.<sup>515</sup> Mr. Kerrigan  
9 testified that he never spoke about net worth or income with Ms. Carolin but he believed she had a  
10 worth over \$1 million as she received funds through a divorce and she lived in a home close to his.<sup>516</sup>  
11 Mr. Kerrigan testified that he did not give any documentation about Barcelona Advisors to Ms. Carolin  
12 but she would have received a subscription agreement and offering memorandum from Mr. Harkins.<sup>517</sup>  
13 Mr. Kerrigan denied marking the box on Ms. Carolin's subscription agreement stating that she was an  
14 accredited investor.<sup>518</sup> Mr. Kerrigan testified that Ms. Carolin discussed with him making two  
15 investments totaling \$50,000, but that she did not have the full amount available at one time so she  
16 made an initial investment of \$25,000.<sup>519</sup> Ms. Carolin invested \$25,000 on July 5, 2013, and another  
17 \$25,000 on July 30, 2013.<sup>520</sup> On July 31, 2013, Mr. Kerrigan received a check from Barcelona Advisors  
18 for \$4,200.<sup>521</sup> On August 30, 2013, Mr. Kerrigan received a check from Barcelona Administration  
19 Company, LLC, for \$4,200.<sup>522</sup>

20 Mr. Kerrigan testified that Mr. Jordan was referred by a client and became a friend prior to his  
21

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22 <sup>509</sup> Tr. at 1022.

<sup>510</sup> Tr. at 1023.

23 <sup>511</sup> Tr. at 1023.

<sup>512</sup> Tr. at 1095; Exh. S-31(b).

24 <sup>513</sup> Tr. at 1023, 1046.

<sup>514</sup> Tr. at 1024, 1046.

25 <sup>515</sup> Tr. at 1047.

<sup>516</sup> Tr. at 1024.

26 <sup>517</sup> Tr. at 1025.

<sup>518</sup> Tr. at 1048.

27 <sup>519</sup> Tr. at 1049.

<sup>520</sup> Tr. at 1095-1096; Exh. S-31(b).

28 <sup>521</sup> Tr. at 1096; Exh. S-124.

<sup>522</sup> Tr. at 1096; Exh. S-125.

1 involvement with Barcelona Advisors.<sup>523</sup> Mr. Kerrigan testified that he told Mr. Jordan about the  
 2 investment, provided him with a subscription agreement, and that Mr. Jordan decided to invest as an  
 3 LLC using his daughter's name.<sup>524</sup> Mr. Kerrigan testified that Mr. Jordan claimed to have a net worth  
 4 in excess of \$1 million.<sup>525</sup> Mr. Jordan, as Cheyenne Kassie, LLC, made an investment of \$50,000 in  
 5 Barcelona Advisors on October 2, 2013.<sup>526</sup> On October 8, 2013, Mr. Kerrigan received a check from  
 6 Barcelona Advisors for \$4,200.<sup>527</sup>

7 Mr. Kerrigan testified that Barcelona Advisors investor RJR Group, LLC, was his client,  
 8 Richard Ramirez, whom he provided information about the investment, a subscription agreement, and  
 9 an offering memorandum.<sup>528</sup> Mr. Kerrigan testified that Mr. Ramirez had a net worth over \$1 million  
 10 at the time.<sup>529</sup> Mr. Ramirez, through RJR Group, LLC, made an investment of \$100,000 in Barcelona  
 11 Advisors on October 22, 2013.<sup>530</sup> On November 1, 2013, Mr. Kerrigan received a check from  
 12 Barcelona Advisors for \$4,200.<sup>531</sup>

13 Mr. Kerrigan testified that he knew Nancy Chaimson through a singles group to which they  
 14 both belonged and that she was not his client.<sup>532</sup> Mr. Kerrigan testified that he told Ms. Chaimson  
 15 about the yield she could receive through the Barcelona Advisors investment and that he provided her  
 16 with a subscription agreement.<sup>533</sup> Mr. Kerrigan testified that he had her speak with Mr. Harkins, whom  
 17 she knew from the singles group, for more information about Barcelona Advisors.<sup>534</sup> Mr. Kerrigan  
 18 testified that he did not know exactly what Ms. Chaimson's net worth was, but he believed it was over  
 19 \$1 million.<sup>535</sup> Ms. Chaimson, through the Nancy Chaimson Revocable Trust, made an investment of  
 20

21 \_\_\_\_\_  
 22 <sup>523</sup> Tr. at 1025-1026. Mr. Kerrigan apparently misstated Mr. Jordan as being "Mr. Williams," however the record does not  
 reflect a Mr. Williams being involved in the investment and the context of Mr. Kerrigan's testimony indicates he was  
 referring to Mr. Jordan. Tr. at 1025.

23 <sup>524</sup> Tr. at 1026.

24 <sup>525</sup> Tr. at 1026.

25 <sup>526</sup> Tr. at 1100; Exh. S-31b.

26 <sup>527</sup> Tr. at 1100; Exh. S-126.

27 <sup>528</sup> Tr. at 1026-1029.

28 <sup>529</sup> Tr. at 1028.

<sup>530</sup> Tr. at 1101; Exh. S-31b.

<sup>531</sup> Tr. at 1101; Exh. S-127.

<sup>532</sup> Tr. at 1029.

<sup>533</sup> Tr. at 1030.

<sup>534</sup> Tr. at 1030.

<sup>535</sup> Tr. at 1030-1031.

1 \$50,000 in Barcelona Advisors on November 25, 2013.<sup>536</sup> On December 2, 2013, Mr. Kerrigan  
2 received a check from Barcelona Advisors for \$4,200.<sup>537</sup>

3 Mr. Kerrigan testified that Ms. Stewart was a client of his for approximately twenty years and  
4 she had a net worth close to \$4 million.<sup>538</sup> Mr. Kerrigan testified that he met with Ms. Stewart and her  
5 husband, discussed the offering, and provided them with a subscription agreement.<sup>539</sup> Ms. Stewart,  
6 through JP Stewart Enterprises, LLC, made an investment of \$100,000 in Barcelona Advisors on April  
7 3, 2014.<sup>540</sup> On April 16, 2014, Mr. Kerrigan received a check from Barcelona Advisors for \$2,100.<sup>541</sup>

8 Mr. Kerrigan testified regarding a tax lien against him filed by the state of Tennessee. Mr.  
9 Kerrigan testified that he had insurance licenses in Tennessee because he had a client living in the  
10 state.<sup>542</sup> Mr. Kerrigan testified that, after his client moved out of Tennessee, he notified his insurance  
11 company that he would no longer need a license in the state, however, the insurance company failed to  
12 cancel or terminate the license.<sup>543</sup> Mr. Kerrigan testified that the state of Tennessee charged the license  
13 for two years and sent him a letter that they were filing a lien against him.<sup>544</sup> Mr. Kerrigan testified  
14 that he negotiated with the state of Tennessee and paid \$2.50 in April 2008 to release the lien.<sup>545</sup>

15 Mr. Kerrigan also testified about a tax lien filed against him by the National Bank of Arizona.  
16 Mr. Kerrigan testified that his ex-wife withdrew over \$60,000 from a line of credit from which Mr.  
17 Kerrigan was the only person authorized to make withdrawals.<sup>546</sup> Mr. Kerrigan testified that the bank  
18 admitted making a mistake and asked Mr. Kerrigan's ex-wife to return the funds, but she refused.<sup>547</sup>  
19 Mr. Kerrigan testified that the bank filed a lien against him because the line of credit was in his name.<sup>548</sup>  
20 Mr. Kerrigan testified that he negotiated with the bank and settled the lien for \$23,500, paid on March  
21

22 \_\_\_\_\_  
<sup>536</sup> Tr. at 1101-1102; Exh. S-31b.

23 <sup>537</sup> Tr. at 1102; Exh. S-128.

24 <sup>538</sup> Tr. at 1032-1033.

25 <sup>539</sup> Tr. at 1033-1034.

26 <sup>540</sup> Tr. at 1103; Exh. S-31b.

27 <sup>541</sup> Tr. at 1103; Exh. S-131.

28 <sup>542</sup> Tr. at 1035.

<sup>543</sup> Tr. at 1035-1036.

<sup>544</sup> Tr. at 1036.

<sup>545</sup> Tr. at 1036, 1077; Exh. K-1.

<sup>546</sup> Tr. at 1037-1038.

<sup>547</sup> Tr. at 1038, 1077-1078.

<sup>548</sup> Tr. at 1038.

1 30, 2011.<sup>549</sup>

2 On cross-examination, Mr. Kerrigan admitted that the IRS filed a tax lien against him in 2014  
3 based on a deduction on his 2010 tax return that was disallowed.<sup>550</sup> As of October 5, 2015, the tax lien  
4 was in the amount of \$22,909.36.<sup>551</sup> Mr. Kerrigan testified that at the time of the hearing, he was in  
5 the process of paying the lien pursuant to a payment schedule set in 2014.<sup>552</sup> Mr. Kerrigan testified  
6 that when he introduced Ms. Burlison, Mr. Woods, Mr. Eaves, Ms. Carolin, Cheyenne Kassie, Mr.  
7 Ramirez, Ms. Chaimson, and Ms. Stewart to the opportunity to invest in Barcelona Advisors, he did  
8 not disclose his issue with the IRS over back taxes.<sup>553</sup>

9 Mr. Kerrigan also testified that he did not disclose to Mr. Woods, Mr. and Mrs. Eaves, Ms.  
10 Carolin, Cheyenne Kassie, Mr. Ramirez, Ms. Chaimson, and Ms. Stewart that Barcelona Advisors did  
11 not pay him the \$60,000 due on June 30, 2013.<sup>554</sup> Mr. Kerrigan testified that he did not tell those  
12 investors that he accepted a promissory note on October 1, 2013, saying that he would be repaid  
13 \$70,000 with the proceeds of new investor money.<sup>555</sup>

14 Mr. Kerrigan testified that he attended a meeting at Talking Stick Resort in January of 2013,  
15 for the purpose of introducing Barcelona Advisors to the approximately 25 people in attendance.<sup>556</sup>  
16 Mr. Kerrigan testified that he did not invite any of the attendees.<sup>557</sup> Mr. Kerrigan testified that he could  
17 not recall a December 30, 2013, meeting wherein Mr. Harkins, Mr. Kerrigan, Mr. Simmons and Mr.  
18 Orr met with Mr. and Mrs. Eaves and requested that Mr. Eaves make an investment in Barcelona  
19 Advisors.<sup>558</sup> Mr. Kerrigan also testified that he could not recall a February 28, 2014, meeting where  
20 Mr. Harkins, Mr. Kerrigan, Mr. Simmons and Mr. Orr met with Mr. and Mrs. Eaves and requested that  
21 Mr. Eaves make an investment in Barcelona Advisors.<sup>559</sup>

22 \_\_\_\_\_  
23 <sup>549</sup> Tr. at 1038; Exh. K-1. Prior to the negotiated settlement, a Superior Court ruling held the bank entitled to summary  
judgment as the bank “did no more than pay [Mr. Kerrigan’s] ex-wife what [he] agreed that she be paid by him in his  
dissolution action.” Tr. at 1080-1082; Exh. S-123.

24 <sup>550</sup> Tr. at 1085-1087; Exh. S-100.

25 <sup>551</sup> Tr. at 1085; Exh. S-100.

26 <sup>552</sup> Tr. at 1087-1088.

27 <sup>553</sup> Tr. at 1103-1104.

28 <sup>554</sup> Tr. at 1104.

<sup>555</sup> Tr. at 1104.

<sup>556</sup> Tr. at 1070.

<sup>557</sup> Tr. at 1070.

<sup>558</sup> Tr. at 1071-1072.

<sup>559</sup> Tr. at 1073.

1 On October 1, 2013, Mr. Kerrigan received another promissory note for a \$70,000 loan to  
 2 Barcelona Advisors.<sup>560</sup> Pursuant to the terms of the note, the principal and any unpaid interest shall be  
 3 paid from the proceeds received by Barcelona Advisors from new investors in the Series A 12-6-12  
 4 note offering.<sup>561</sup> Mr. Kerrigan testified that when he received his promissory notes in February 2013,  
 5 he and Mr. Harkins realized that Mr. Kerrigan could not be repaid from investor money.<sup>562</sup> Mr.  
 6 Kerrigan testified that he would have accepted the October note, with terms for repayment that were  
 7 supposedly prohibited by the operating agreement, without reading it.<sup>563</sup> Mr. Kerrigan later testified  
 8 that language that he be repaid with future proceeds from the sale of the offering was included in the  
 9 notes at his request.<sup>564</sup> Mr. Kerrigan testified that the company expected to receive fees from other real  
 10 estate ventures that could have been used to pay member loans.<sup>565</sup>

11 Mr. Kerrigan testified that he signed a consent with the Financial Industry Regulatory Authority  
 12 (“FINRA”) on April 27, 2016, that bars him from association with any FINRA member in any  
 13 capacity.<sup>566</sup> Mr. Kerrigan testified that the consent arises from his decision not to incur the expenses  
 14 of travelling to Maryland, and bringing documents, to testify before FINRA.<sup>567</sup>

15 George Thomas Simmons

16 Mr. Simmons testified that he graduated college with degrees in economics and engineering in  
 17 1964 and worked as an engineer with “Fortune 500 type companies” until he retired in 1998.<sup>568</sup> Mr.  
 18 Simmons testified that he then founded, or co-founded, nine different companies prior to joining  
 19 Barcelona Advisors.<sup>569</sup> Mr. Simmons testified that he also worked on the board of several non-profit  
 20 companies over the years since 1973.<sup>570</sup>

21 Mr. Simmons testified that he first learned about the plans for what eventually became  
 22 Barcelona Advisors in 2009, when Mr. Harkins told him about plans for creating a private real estate

23 <sup>560</sup> Tr. at 1097; Exh. S-135.

24 <sup>561</sup> Tr. at 1097; Exh. S-135.

25 <sup>562</sup> Tr. at 1097.

26 <sup>563</sup> Tr. at 1098.

27 <sup>564</sup> Tr. at 1128.

28 <sup>565</sup> Tr. at 1128-1129.

<sup>566</sup> Tr. at 1118-1119; Exh. S-175.

<sup>567</sup> Tr. at 1120-1121.

<sup>568</sup> Tr. at 1132-1133.

<sup>569</sup> Tr. at 1133.

<sup>570</sup> Tr. at 1133-1134.

1 investment trust (“REIT”) that would ultimately be taken public.<sup>571</sup> Mr. Simmons testified that he  
 2 learned more about the concept in 2011, in a meeting he had with Mr. Harkins and Mr. Kerrigan.<sup>572</sup>  
 3 Mr. Simmons testified that he next heard about the company in approximately September 2012, when  
 4 Mr. Harkins called him stating that capital was being lined up and the company was close to being  
 5 launched.<sup>573</sup> Mr. Simmons testified that he told Mr. Harkins he was still months to a year from being  
 6 able to have the time to be involved.<sup>574</sup>

7 Mr. Simmons testified that in early 2013, he was invited to a meeting about the company at  
 8 Talking Stick Resort that he did not attend, contrary to the testimony of Mr. Eaves.<sup>575</sup> Mr. Simmons  
 9 testified that he spoke with Mr. Harkins again in April, that he joined the company, on a part-time basis,  
 10 in mid-July, and that he actually started doing tasks in early August 2013.<sup>576</sup> Mr. Simmons testified  
 11 that, from an operating standpoint, his role with Barcelona Advisors was to put the administrative  
 12 structure in place and coordinate projects, including development of a management-by-objectives  
 13 program, but that essentially his role was “substantially undefined” until Barcelona Advisors would  
 14 become more organized with structured affiliates.<sup>577</sup> Mr. Simmons testified that everyone on the  
 15 payroll reported to Mr. Harkins.<sup>578</sup> Mr. Simmons testified that he was not involved in raising capital  
 16 for the company although he had been asked to think of how he could help or how he could encourage  
 17 others to help.<sup>579</sup> Mr. Simmons testified that he was not an investor in Barcelona Advisors, and that he  
 18 would not seek investors for a company if he himself was not invested.<sup>580</sup> Mr. Simmons testified that  
 19 by the company’s September meeting in Sedona, he had agreed upon his title of executive vice  
 20 president and chief operating officer.<sup>581</sup> Mr. Simmons testified that he understood that he did not have  
 21 signature authority for the company unless delegated by Mr. Harkins, except that after the company  
 22 brought on a chief financial officer, Mr. Simmons was included as one of two signatories for checks

23 \_\_\_\_\_  
 24 <sup>571</sup> Tr. at 1134-1135.

<sup>572</sup> Tr. at 1135-1136.

<sup>573</sup> Tr. at 1137.

<sup>574</sup> Tr. at 1137.

<sup>575</sup> Tr. at 1138.

<sup>576</sup> Tr. at 1140-1141, 1148.

<sup>577</sup> Tr. at 1141, 1159, 1178-1179, 1184, 1202.

<sup>578</sup> Tr. at 1143.

<sup>579</sup> Tr. at 1143.

<sup>580</sup> Tr. at 1144.

<sup>581</sup> Tr. at 1145, 1186.

1 written in excess of \$5,000.<sup>582</sup> Mr. Simmons testified that he did not know how much money the  
 2 company had raised or what the ownership of the company was when he joined in 2013.<sup>583</sup> Mr.  
 3 Simmons testified that he had no role in drafting the offering memoranda.<sup>584</sup> Mr. Simmons testified  
 4 that he worked on identifying a potential board of directors for the Hotel Land Company.<sup>585</sup> Mr.  
 5 Simmons testified that these board members would be control persons, unlike the Executive Members  
 6 in Barcelona Advisors who only voted on major decisions to represent all members' interests, although  
 7 such a vote never actually occurred.<sup>586</sup>

8 Mr. Simmons testified that after he joined Barcelona Advisors he met Mr. Orr.<sup>587</sup> Mr. Simmons  
 9 testified that Mr. Orr focused on the projects and property while Mr. Simmons focused on the partners  
 10 who would do the work.<sup>588</sup> Mr. Simmons testified that Mr. Orr's responsibilities did not include capital  
 11 formation.<sup>589</sup> Mr. Simmons testified that he believed he was the person working closest with Mr. Orr,  
 12 but Mr. Orr did not report to him.<sup>590</sup> Mr. Simmons testified that he and Mr. Orr met with major hotel  
 13 companies and hotel management companies.<sup>591</sup> Mr. Simmons testified that in considering  
 14 opportunities with potential third party partners, criteria had been developed by Mr. Harkins and Mr.  
 15 Orr with "a little bit" of participation from Mr. Simmons.<sup>592</sup> These criteria included location,  
 16 ownership, and debt structure of the property being considered, as well as zoning.<sup>593</sup> Mr. Simmons  
 17 testified that working capital was needed to seek these opportunities, with the investment properties  
 18 planned to be brought into another entity that would pay back Barcelona Advisors for the expenses  
 19 incurred.<sup>594</sup> Mr. Simmons testified that the 12/6/12 and 10/5/10 notes were designed to raise working  
 20 capital to be used in part for pursuing these opportunities.<sup>595</sup>

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22 <sup>582</sup> Tr. at 1145-1146.

23 <sup>583</sup> Tr. at 1146.

24 <sup>584</sup> Tr. at 1146.

25 <sup>585</sup> Tr. at 1240-1241.

26 <sup>586</sup> Tr. at 1242.

27 <sup>587</sup> Tr. at 1148.

28 <sup>588</sup> Tr. at 1160.

<sup>589</sup> Tr. at 1181.

<sup>590</sup> Tr. at 1187.

<sup>591</sup> Tr. at 1187-1188.

<sup>592</sup> Tr. at 1190-1191.

<sup>593</sup> Tr. at 1190-1191.

<sup>594</sup> Tr. at 1192.

<sup>595</sup> Tr. at 1192.

1 Mr. Simmons testified that Mr. McDonough came to Barcelona Advisors in early fall 2013,  
 2 after learning about the company from Mr. Harkins.<sup>596</sup> Mr. Simmons testified that Mr. Harkins made  
 3 the offer to Mr. McDonough regarding compensation and a role with the company while Mr. Simmons  
 4 merely finalized the matter, including signing and delivering a confirmation letter of employment.<sup>597</sup>  
 5 Mr. Simmons testified that Mr. McDonough's title was to be vice president retail capital markets, and  
 6 his role was to be the lead person working with broker/dealer organizations to sell Barcelona Advisors'  
 7 investment products.<sup>598</sup> Mr. Simmons testified that Mr. McDonough was supervised and trained by  
 8 Mr. Harkins.<sup>599</sup> Mr. Simmons testified that on two occasions he was asked to critique Mr.  
 9 McDonough's ability to explain the company in presentations.<sup>600</sup> Mr. Simmons testified that Mr.  
 10 McDonough was not particularly successful in his work and Mr. Harkins suggested that Mr.  
 11 McDonough work with Mr. Simmons, to assist in researching and vetting construction companies and  
 12 other third party affiliates.<sup>601</sup> Mr. Simmons testified that he believed Mr. McDonough was unhappy  
 13 about the change in his role and that he cleaned out his office and quit in May or June of 2014.<sup>602</sup> Mr.  
 14 Simmons testified he met with Mr. McDonough about two days after he quit, at which time Mr.  
 15 McDonough stated that he was owed compensation from the company.<sup>603</sup> Mr. Simmons testified that  
 16 he had two more meetings with Mr. McDonough regarding money owed to him, and that Mr.  
 17 McDonough threatened action against the company including a lawsuit, filing liens, and contacting the  
 18 Commission.<sup>604</sup> Mr. Simmons testified that he signed the agreement for services with Mr. McDonough,  
 19 as well as addenda regarding compensation and confidentiality, on behalf of Barcelona Advisors on  
 20 January 31, 2014.<sup>605</sup>

21 Mr. Simmons testified that he recalled meeting Mr. Eaves for the first time at the company's  
 22

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23 <sup>596</sup> Tr. at 1149.

24 <sup>597</sup> Tr. at 1150-1151; Exh. S-177.

25 <sup>598</sup> Tr. at 1152.

26 <sup>599</sup> Tr. at 1152, 1184, 1234-1235.

27 <sup>600</sup> Tr. at 1185. Mr. Simmons testified that Mr. Harkins was present both times and he thought other persons were also  
 present on the other occasion. Tr. at 1185-1186.

28 <sup>601</sup> Tr. at 1152-1154.

<sup>602</sup> Tr. at 1153, 1155.

<sup>603</sup> Tr. at 1156-1157.

<sup>604</sup> Tr. at 1157-1158.

<sup>605</sup> Tr. at 1194-1196; Exh. H-6.

1 retreat meeting in Sedona.<sup>606</sup> Mr. Simmons testified that shortly thereafter, approximately October  
 2 2013, Mr. Eaves came into the Barcelona Advisors' office on a couple of occasions to speak with Mr.  
 3 Harkins, and that Mr. Simmons would sometimes be involved in those discussions.<sup>607</sup> Mr. Simmons  
 4 testified that after January 1, 2014, Mr. Eaves was in the office very frequently, sometimes attending  
 5 Monday morning meetings where Mr. Harkins would gather everyone for a status report on projects.<sup>608</sup>  
 6 Mr. Simmons testified that he never spoke with Mr. Eaves about investing in Barcelona Advisors and  
 7 that he was not in a December 30, 2013, meeting with Mr. Harkins, Mr. Kerrigan, Mr. Orr and the  
 8 Eaves.<sup>609</sup> Mr. Simmons disputed the testimony of Mr. Eaves and denied calling Mr. Eaves in February  
 9 2014, asking him to invest another \$125,000, although Mr. Simmons testified that Mr. Eaves did invest  
 10 \$125,000 on February 28, 2014.<sup>610</sup> Mr. Simmons testified that he did not approach Mr. Eaves to work  
 11 for the company, but he did sign Mr. Eaves' independent contractor agreement on behalf of Mr.  
 12 Harkins.<sup>611</sup> Mr. Simmons testified that in early 2014, Mr. Eaves expressed an interest in joining the  
 13 company in an operating capacity after he invested and that Mr. Harkins spoke with Mr. Eaves about  
 14 his level of interest.<sup>612</sup> Mr. Simmons testified that in a meeting he attended with Mr. Eaves and Mr.  
 15 Harkins in February or March 2014, it was discussed that beginning in the second quarter of 2014, Mr.  
 16 Eaves could work on the development team with Mr. Orr and Mr. Simmons to locate and vet hotels  
 17 and properties.<sup>613</sup>

18 Mr. Simmons testified that Jim Wilkerson joined the company in approximately March 2014,  
 19 and that he had clients that he thought were suitable to invest in USA Barcelona.<sup>614</sup> Mr. Simmons  
 20 testified that Mr. Wilkerson decided to join Barcelona Advisors in 2013, but needed to wait until after  
 21 the first quarter of 2014 pursuant to a compensation arrangement with his employer at the time.<sup>615</sup> Mr.  
 22 Simmons testified that Mr. Wilkerson brought in Mr. Andrade as an investor for \$50,000 in early April  
 23

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24 <sup>606</sup> Tr. at 1161.

25 <sup>607</sup> Tr. at 1162-1164.

26 <sup>608</sup> Tr. at 1163-1164.

27 <sup>609</sup> Tr. at 1164-1165.

28 <sup>610</sup> Tr. at 1204-1205.

<sup>611</sup> Tr. at 1193.

<sup>612</sup> Tr. at 1237-1238.

<sup>613</sup> Tr. at 1238-1239.

<sup>614</sup> Tr. at 1165, 1167.

<sup>615</sup> Tr. at 1166, 1205.

1 2014.<sup>616</sup> Mr. Simmons testified that he and Mr. Andrade had both worked at Intel until Mr. Simmons  
2 left in 1986, and that Mr. Andrade asked Mr. Wilkerson to set up a lunch meeting with Mr. Simmons.<sup>617</sup>  
3 Mr. Simmons testified that he told Mr. Wilkerson that Mr. Harkins would be the proper person to  
4 discuss the investment, but he could have a social lunch meeting with Mr. Andrade and Mr. Wilkerson,  
5 which was what occurred on or about December 23, 2013.<sup>618</sup> Mr. Simmons denied that at lunch he  
6 introduced Mr. Andrade to the opportunity to invest in Barcelona Advisors, that he described Mr.  
7 Harkins' success in real estate, or that he told Mr. Andrade that investing in Barcelona Advisors was a  
8 good investment based upon the track record of the individuals involved.<sup>619</sup>

9 Mr. Simmons testified that in early 2014, Mr. Wilkerson was not yet ready to leave his current  
10 employment to join Barcelona Advisors, so Mr. Wilkerson asked Mr. Simmons to invite Mr. Andrade  
11 to the Barcelona Advisors' offices to meet Mr. Harkins and others at the office.<sup>620</sup> Mr. Simmons  
12 testified that he sent an email to Mr. Andrade who responded by saying he was unable to come in this  
13 week, and that he was not going to be investing at this time.<sup>621</sup> Mr. Simmons testified that he wasn't  
14 sure why Mr. Andrade included the last part because Mr. Simmons did not ask him to invest.<sup>622</sup> In the  
15 email, Mr. Simmons specifically stated, "I'd like to schedule time with you to come into the office this  
16 week to discuss our current capital raise and have you meet more of our team."<sup>623</sup> Mr. Simmons  
17 testified that he had no further communication with Mr. Andrade until early April when Mr. Wilkerson  
18 and Mr. Andrade arrived at the offices to have Mr. Harkins sign the note for Mr. Andrade's  
19 investment.<sup>624</sup> Mr. Simmons testified that, to his knowledge, Mr. Andrade had not requested to meet  
20 with Mr. Harkins prior to his April 8 investment.<sup>625</sup> Mr. Simmons testified that since Mr. Harkins was  
21 not present, Mr. Simmons telephoned him to ask if he would delegate the authority to sign the note to  
22 Mr. Simmons.<sup>626</sup> Mr. Simmons testified that he was assured by Mr. Wilkerson that Mr. Andrade was

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23 <sup>616</sup> Tr. at 1167, 1205.

24 <sup>617</sup> Tr. at 1168-1169, 1206-1207.

25 <sup>618</sup> Tr. at 1170, 1207-1208, 1211.

26 <sup>619</sup> Tr. at 1218.

27 <sup>620</sup> Tr. at 1166, 1170-1171, 1208.

28 <sup>621</sup> Tr. at 1171, 1208-1210; Exh. S-171.

<sup>622</sup> Tr. at 1171, 1209.

<sup>623</sup> Tr. at 1210; Exh. S-171.

<sup>624</sup> Tr. at 1172, 1210-1211.

<sup>625</sup> Tr. at 1211-1212.

<sup>626</sup> Tr. at 1172-1173, 1211.

1 an accredited investor, which Mr. Simmons conveyed to Mr. Harkins.<sup>627</sup> Mr. Simmons signed the  
 2 subscription agreement for Mr. Andrade on April 8, 2014.<sup>628</sup> Mr. Simmons testified that Mr. Andrade's  
 3 visit was brief as he was leaving for a trip.<sup>629</sup> Mr. Simmons testified that he was not involved in the  
 4 additional \$5,000 loan made by Mr. Andrade.<sup>630</sup> Mr. Simmons testified that prior to Mr. Andrade  
 5 investing, Mr. Simmons did not tell him that: Mr. Harkins' real estate venture, AVC, had three of its  
 6 subsidiaries go into Chapter 11 bankruptcy; Barcelona Advisors had an employee, Paul Meka, who  
 7 was a convicted felon for his role in an investment scheme; Barcelona Advisors had failed to make  
 8 payments due to Mr. Kerrigan; and Barcelona Advisors failed to make interest payments owed to earlier  
 9 investors.<sup>631</sup>

10 On September 4, 2014, Mr. Simmons received from, and responded to, an email from Mr.  
 11 Andrade asking if Mr. Simmons had an "update on the finance issue with USA Barcelona" and "[d]id  
 12 the planned money come in?"<sup>632</sup> Mr. Simmons testified that he did not know what "planned money"  
 13 Mr. Andrade was referring to, but Mr. Harkins had sent something out in mid-June discussing  
 14 anticipated funds.<sup>633</sup> Mr. Simmons testified that his response was based upon information he was told  
 15 and had knowledge of, although he was not participating in raising new capital.<sup>634</sup> Mr. Simmons  
 16 testified that he never discussed the investment opportunity in Barcelona Advisors with Mr.  
 17 Andrade.<sup>635</sup>

18 Mr. Simmons testified that there were no regularly scheduled Executive Member meetings and  
 19 he never voted on a major decision.<sup>636</sup> Mr. Simmons testified that his view of the role of Executive  
 20 Members was to protect the interests of nonvoting members in major decisions that would have affected

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21 <sup>627</sup> Tr. at 1212.

22 <sup>628</sup> Tr. at 1213; Exh. S-36.

23 <sup>629</sup> Tr. at 1211, 1214. At an EUO on October 2, 2015, Mr. Simmons testified that he spoke with Mr. Andrade at the office  
 24 when Mr. Andrade came to sign the note and that they discussed what they had been doing since Intel in the 1980s. Tr. at  
 25 1215-1217; Exh. S-76 at 47-48. At the hearing, Mr. Simmons testified that he was confused about the order his meetings  
 26 with Mr. Andrade took place. Tr. at 1217. Later at the hearing, Mr. Simmons testified that he did not think there was an  
 27 inconsistency between his hearing testimony and his testimony at the EUO, other than the lunch meeting "didn't come to  
 28 mind" at the EUO. Tr. at 1235-1236, 1245-1246.

<sup>630</sup> Tr. at 1173, 1236.

<sup>631</sup> Tr. at 1222-1223.

<sup>632</sup> Tr. at 1220, 1236-1237; Exh. S-172.

<sup>633</sup> Tr. at 1237.

<sup>634</sup> Tr. at 1221-1222, 1237.

<sup>635</sup> Tr. at 1236, 1246.

<sup>636</sup> Tr. at 1174-1175.

1 their interests in the company.<sup>637</sup> Mr. Simmons testified that his understanding of the ownership of the  
 2 company was that there were B shares allocated to investors and A shares allocated to employees and  
 3 partners who might take an equity interest in lieu of other compensation.<sup>638</sup> Mr. Simmons testified that  
 4 his interest in the company was always under 10 percent.<sup>639</sup>

5 Mr. Simmons testified that Mr. Harkins asked the Executive Members to sign two letters to  
 6 investors stating that interest payments would be delayed due to a lack of capital.<sup>640</sup> Mr. Simmons  
 7 testified that Mr. Harkins sent out other letters to investors that were not signed by the Executive  
 8 Members, and he did not know why Mr. Harkins had these letters signed by all four of them.<sup>641</sup> Mr.  
 9 Simmons testified he did not have a role in drafting the two letters.<sup>642</sup> Mr. Simmons testified that Mr.  
 10 Orr was not in town to sign the December 31, 2013, letter and that after calling Mr. Orr, Mr. Simmons  
 11 signed for him with Mr. Orr's consent.<sup>643</sup> Mr. Simmons testified that he had not read the letter when  
 12 he signed it and that he did not hold himself out as an Executive Member to investors.<sup>644</sup> Mr. Simmons  
 13 testified that he, along with the other three Executive Members, signed an April 16, 2014, letter to Ms.  
 14 Carolin.<sup>645</sup> Mr. Simmons testified that he signed, as COO, an October 24, 2013, offer letter to Partick  
 15 McDonough, as requested by Mr. Harkins.<sup>646</sup>

16 Mr. Simmons testified that he was not involved in creating disclosures for investors in any of  
 17 Barcelona Advisors' offerings, he was not involved in soliciting or selling to investors other than once  
 18 signing a subscription agreement under Mr. Harkins' direction, and he was not otherwise involved in  
 19 capital raising for Barcelona Advisors.<sup>647</sup> Mr. Simmons testified that he did not review offering  
 20 documents for Barcelona Advisors.<sup>648</sup> Mr. Simmons testified that he confirmed that legal counsel  
 21  
 22

23 <sup>637</sup> Tr. at 1175-1176.

24 <sup>638</sup> Tr. at 1176.

25 <sup>639</sup> Tr. at 1176.

26 <sup>640</sup> Tr. at 1177; Exhs. S-27, S-65, S-108.

27 <sup>641</sup> Tr. at 1177-1178.

28 <sup>642</sup> Tr. at 1178.

<sup>643</sup> Tr. at 1180-1181; Exhs. S-65, S-108.

<sup>644</sup> Tr. at 1196-1197; Exh. S-65.

<sup>645</sup> Tr. at 1197-1198; Exh. S-26.

<sup>646</sup> Tr. at 1198; Exh. S-177.

<sup>647</sup> Tr. at 1179-1180.

<sup>648</sup> Tr. at 1199-1200.

1 approved the final version of offering documents.<sup>649</sup> Mr. Simmons testified that, to his knowledge,  
2 Barcelona Advisors did not monitor what Mr. Kerrigan told investors about the company and the  
3 company did not have any guidelines for what those selling the notes were required to tell investors.<sup>650</sup>

4 Mr. Simmons acknowledged writing an August 20, 2013, email to Mr. McDonough stating that  
5 “[t]oday our four member [sic] Executive Members all participate at some level in working to capitalize  
6 both the Advisor and Realty...”, which Mr. Simmons testified was a true statement.<sup>651</sup> Mr. Simmons  
7 acknowledged that the email further stated that Mr. Harkins and he, plus others as required, would  
8 spend time to indoctrinate Mr. McDonough as quickly as possible to represent the two entities to  
9 potential investors.<sup>652</sup> Mr. Simmons testified that he did not consider himself, Mr. Kerrigan, or Mr.  
10 Orr to be control persons for Barcelona Advisors and that he believed Mr. Harkins to be the only control  
11 person.<sup>653</sup> Mr. Simmons testified that he received approximately \$99,000 in compensation from  
12 Barcelona Advisors.<sup>654</sup>

### 13 **III. Offerings**

#### 14 12-6-12 Offering

15 The 12-6-12 Offering involved the offer and sale of promissory notes and investment contracts,  
16 in the form of membership units in Barcelona Advisors, within and from Arizona from at least October  
17 12, 2012, to November 25, 2013. The name of the offering arose from the terms of the notes which  
18 offered 12% annual interest, paid quarterly, plus bonuses of 6% to be paid at the end of 2013, and 12%  
19 to be paid at the end of 2014, to mature on December 31, 2014.<sup>655</sup> Barcelona Advisors described the  
20 12-6-12 Offering in a private placement offering memorandum (“PPM”) originally dated October 18,  
21 2012 (“October 2012 PPM”), with amended versions dated February 1, 2013 (“February 2013 PPM”),

22 \_\_\_\_\_  
23 <sup>649</sup> Tr. at 1200. At an EUO on October 2, 2015, Mr. Simmons testified that he did not confirm whether each of the offering  
documents’ final version was approved by counsel. Tr. at 1200-1201; Exh. S-76 at 56. At the hearing, Mr. Simmons  
testified that he interpreted the question to mean if he had checked with counsel in every case. Tr. at 1201.

24 <sup>650</sup> Tr. at 1201-1202.

25 <sup>651</sup> Tr. at 1203; Exh. S-176. Mr. Simmons clarified that he and Mr. Orr were not directly involved in soliciting investors  
but were involved in discussions with potential business partners who could contribute land or cash to a project. Tr. at  
1232-1233. Mr. Simmons also testified that meetings with Allen Weintraub, who was to raise funds, and meetings with  
26 fund representatives regarding institutional investments, were other examples of raising capital without direct involvement  
with individuals. Tr. at 1233.

27 <sup>652</sup> Tr. at 1203-1204; Exh. S-176.

28 <sup>653</sup> Tr. at 1233-1234, 1243.

<sup>654</sup> Tr. at 1199; Exh. S-88.

<sup>655</sup> Exhs. S-5 at ACC007213, S-57 at ACC000736.

1 and April 29, 2013 (“April 2013 PPM”).<sup>656</sup> Investors receiving a PPM were given the most recent  
 2 version at the time of their investment.<sup>657</sup> Mr. Harkins was the primary drafter of the three PPMs.<sup>658</sup>  
 3 The PPMs contained biographies of the Executive Members and the biography for Mr. Harkins  
 4 mentioned his role with AVC.<sup>659</sup> The February 2013 PPM and April 2013 PPM stated that Barcelona  
 5 Advisors’ business plan was to act as an advisor to a series of private funds that would raise capital to  
 6 acquire apartments and hotels.<sup>660</sup> The 12-6-12 Offering consisted of promissory notes and membership  
 7 interests in Barcelona Advisors with a total offering of \$1,000,000.<sup>661</sup> The purpose of the 12-6-12  
 8 Offering was to raise working capital for the company.<sup>662</sup>

### 9 10-5-10 Offering

10 The 10-5-10 Offering involved the offer and sale of promissory notes in Barcelona Advisors  
 11 within and from Arizona, from at least December 23, 2013. The name of the offering arose from the  
 12 terms of the notes which offered 10% annual interest, paid quarterly, plus bonuses of 5% to be paid at  
 13 the end of 2014, and 10% to be paid at the end of 2015, to mature on December 31, 2015.<sup>663</sup> The 10-  
 14 5-10 Offering was begun, in part, because there was no provision in the 12-6-12 Offering to pro rate  
 15 returns based on the date of investment.<sup>664</sup> Barcelona Advisors described the \$1,000,000 10-5-10  
 16 Offering in a PPM dated January 1, 2014 (“January 2014 PPM”), that was drafted primarily by Mr.  
 17 Harkins.<sup>665</sup>

18  
 19 <sup>656</sup> Exhs. S-5, S-57. A copy of the October 2012 PPM was not submitted in evidence.

20 <sup>657</sup> Exh. S-32 at 61.

21 <sup>658</sup> Exhs. S-32 at 35-36, 72, S-57.

22 <sup>659</sup> Exhs. S-5 at ACC007229, S-32 at 60-61, S-57 at ACC000751. The February 2013 PPM and April 2013 PPM provide,  
 23 in pertinent part:

24 Since 1987, [Mr. Harkins] has been involved in the real estate industry in the development of high-end  
 25 daily fee golf courses, and over the period 2002 through mid-2009 in the creation and executive  
 26 management of Arizona Village Communities Operating Company, Inc. (“AVC”), a land acquisition and  
 27 investment company.

28 He has been involved as the responsible executive in the acquisition of sites and the financing of over  
 225 limited service hotels, over 550 Apartment Communities and the assembly of over \$5 Billion dollars  
 of public and private equity and debt capital. ... Mr. Harkins remains President of AVC, which exists in  
 a state of inactivity, and continues to examine possible uses of AVC’s loss carry forward tax asset.

29 Exhs. S-5 at ACC007229, S-57 at ACC000751.

30 <sup>660</sup> Exhs. S-5 at ACC007213, S-57 at ACC000736.

31 <sup>661</sup> Exhs. S-5 at ACC007203, S-57 at ACC000724.

32 <sup>662</sup> Tr. at 925, 927-928.

33 <sup>663</sup> Exh. S-57 at ACC005719.

34 <sup>664</sup> Tr. at 808-809.

35 <sup>665</sup> Exhs. S-32 at 86, S-58.

1 The January 2014 PPM stated that Barcelona Advisors' business plan was to act as an advisor  
 2 to a series of funds that would raise capital to develop and acquire hotels and other qualified real estate  
 3 properties.<sup>666</sup> The business plan changed from that stated in the 12-6-12 Offering to include the  
 4 development of hotels because the individual tasked with bringing in acquisition capital failed to do  
 5 so.<sup>667</sup>

6 On December 31, 2013, Barcelona Advisors sent a letter to investors informing that the  
 7 company had released a new offering, the 10-5-10 Offering, to fund working capital requirements.<sup>668</sup>  
 8 The letter was signed by Mr. Harkins, Mr. Kerrigan, and Mr. Simmons, with Mr. Simmons also signing  
 9 for Mr. Orr after paraphrasing the letter to Mr. Orr and obtaining his consent.<sup>669</sup>

#### 10 Barcelona Land Company

11 Barcelona Land Company prepared a PPM ("Barcelona Land Company PPM") dated May 5,  
 12 2014, for a \$10,000,000 offering of membership units to be marketed to securities dealers.<sup>670</sup> Barcelona  
 13 Land Company's stated business plan in the Barcelona Land Company PPM was to complete  
 14 entitlement of land parcels which would then be sold to other entities who would construct, own and  
 15 operate hotels on the parcels.<sup>671</sup> Mr. Harkins was the primary drafter of the Barcelona Land Company  
 16 PPM.<sup>672</sup> The Barcelona Land Company PPM was never completed past a draft stage and no offers in  
 17 Barcelona Land Company were made.<sup>673</sup>

#### 18 June 2014 Offering

19 On June 11, 2014, Mr. Harkins signed and sent a letter (June 2014 Offer Letter) to all existing  
 20 investors in Barcelona Advisors.<sup>674</sup> The June 2014 Offer Letter stated that the company had a short  
 21 term capital need of "\$150,000 to get us through the month of June" and asked investors if they could  
 22 make "a short-term loan of any portion of the \$150,000."<sup>675</sup> The June 2014 Offer Letter offered

24 <sup>666</sup> Exh. S-58 at ACC005720.

<sup>667</sup> Tr. at 809.

25 <sup>668</sup> Exhs. S-32 at 114-115, S-65, S-66.

<sup>669</sup> Tr. at 740-741, 1180-1181; Exhs. S-65, S-66.

26 <sup>670</sup> Tr. at 882; Exhs. S-32 at 95, S-59

<sup>671</sup> Exh. S-59 at ACC005853-ACC005854.

27 <sup>672</sup> Exh. S-32 at 35-36.

<sup>673</sup> Tr. at 882, 901.

28 <sup>674</sup> Exhs. S-32 at 96, S-60.

<sup>675</sup> Exh. S-60.

1 promissory notes with 10% annual interest, a 3% bonus and a 90 day maturity date.<sup>676</sup> The June 2014  
 2 Offer Letter also offered Class A membership units in Barcelona Advisors at a rate of “½ Class A Unit  
 3 per dollar of your loan amount.”<sup>677</sup>

4 8-8 Offering

5 The 8-8 Offering of promissory notes occurred in mid-2013. The name of the offering referred  
 6 to the terms of the notes, which offered 8% annual interest, paid quarterly, plus an 8% bonus, to be  
 7 paid at maturity on December 31, 2014.<sup>678</sup> The purpose of the 8-8 Offering was to raise working capital  
 8 for the company.<sup>679</sup>

9 By June 1, 2013, no one at Barcelona Advisors appeared to have more prospective investors  
 10 for the 12-6-12 Offering.<sup>680</sup> Mr. Harkins proposed a new offering pursuant to A.A.C. R14-4-140 that  
 11 could be advertised.<sup>681</sup> Mr. Harkins was aware that, under A.A.C. R14-4-140, a company is limited to  
 12 raising \$1,000,000 in a twelve-month period, so the 8-8 Offering was set at \$500,000 because moneys  
 13 raised under the 12-6-12 Offering would be integrated with the 8-8 Offering.<sup>682</sup>

14 Barcelona Advisors advertised the 8-8 Offering in a series of newspaper advertisements from  
 15 July 17, 2013, to September 4, 2013.<sup>683</sup> Barcelona Advisors did not draft a PPM for the 8-8 Offering,  
 16 but if interest had been shown in the offering, a PPM could have been prepared quickly to resemble the  
 17 other Barcelona Advisors PPMs.<sup>684</sup> No sales of notes were made under the 8-8 Offering.<sup>685</sup>

18 In September 2013, Mr. Kerrigan said he had some potential investors, so the 8-8 Offering  
 19 advertisements were stopped and more investments were sold in the 12-6-12 Offering.<sup>686</sup>

20 . . .

21 . . .

22 . . .

23 \_\_\_\_\_  
<sup>676</sup> Exh. S-60.

24 <sup>677</sup> Exh. S-60.

25 <sup>678</sup> Tr. at 806, 930; Exh. S-25.

26 <sup>679</sup> Tr. at 928-930.

27 <sup>680</sup> Tr. at 806-807.

28 <sup>681</sup> Tr. at 807, 929.

<sup>682</sup> Tr. at 807, 929-930.

<sup>683</sup> Tr. at 807; Exh. S-25 at ACC006214-ACC006235.

<sup>684</sup> Tr. at 807-808.

<sup>685</sup> Tr. at 807-808.

<sup>686</sup> Tr. at 808.

1 **IV. Transactions**

2 Kelly Bair (Investment 1)

3 Arizona resident Kelly Bair invested \$20,000 in the 12-6-12 Offering on October 12, 2012.<sup>687</sup>  
 4 Mr. Harkins met Ms. Bair through a mutual insurance agent.<sup>688</sup> Mr. Harkins met with Ms. Bair, gave  
 5 her the October 2012 PPM for the purpose of investing, discussed the October 2012 PPM with her, and  
 6 sold her the investment.<sup>689</sup> Prior to meeting Ms. Bair, Mr. Harkins knew nothing of Ms. Bair's personal  
 7 finances or whether she was an accredited investor.<sup>690</sup> On the subscription agreement, Ms. Bair  
 8 indicated that she qualified as an accredited investor as she had a net worth exceeding \$1,000,000,  
 9 exclusive of the value of her personal residence.<sup>691</sup> Mr. Harkins signed the subscription agreement and  
 10 note as Manager for Barcelona Advisors.<sup>692</sup> Ms. Bair received \$4,099 on this investment.<sup>693</sup>

11 Rodney and Melissa Eaves – First Investment (Investment 2)

12 Arizona residents Rodney and Melissa Eaves invested \$250,000 in the 12-6-12 Offering on  
 13 March 11, 2013.<sup>694</sup> Mr. Eaves learned about the 12-6-12 Offering in December 2012, from his  
 14 investment advisor of twelve years, Mr. Kerrigan.<sup>695</sup> Mr. Kerrigan gave Mr. Eaves a printed email  
 15 from Mr. Harkins, dated January 11, 2013, containing biographical information of Mr. Harkins,  
 16 identified as Barcelona's President and Director who will serve on the Executive Committee; Mr.  
 17 Simmons, who will serve as Director and be on the Executive Committee; and Mr. Orr, who will serve  
 18 as an advisor to the board of directors.<sup>696</sup> At Mr. Kerrigan's invitation, Mr. Eaves also attended a  
 19 meeting about Barcelona Advisors at Talking Stick Resort in Scottsdale, Arizona, on or about January  
 20 15, 2013.<sup>697</sup> In late February 2013, Mr. Eaves received the February 2013 PPM from Mr. Kerrigan.<sup>698</sup>  
 21 Mr. Eaves also received a subscription agreement from Mr. Kerrigan.<sup>699</sup> On the subscription

22 <sup>687</sup> Exhs. S-6, S-31b, S-37, S-165.

23 <sup>688</sup> Tr. at 844.

24 <sup>689</sup> Tr. at 844; Exh. S-32 at 61, 71, 74, 79, 95.

25 <sup>690</sup> Exh. S-32 at 74-75.

26 <sup>691</sup> Exh. S-6.

27 <sup>692</sup> Exhs. S-6, S-32 at 58, S-37.

28 <sup>693</sup> Exh. S-31b.

<sup>694</sup> Tr. at 189-190; Exhs. S-31b, S-33, S-38.

<sup>695</sup> Tr. at 190-191; Exh. S-98 at 36, 59.

<sup>696</sup> Tr. at 195-196; Exh. S-170.

<sup>697</sup> Tr. at 196-197.

<sup>698</sup> Tr. at 192-195, 1064-1065; Exh. S-5.

<sup>699</sup> Tr. at 200, 1017-1018; Exh. S-33.

1 agreement, Mr. Eaves indicated that he qualified as an accredited investor on multiple bases.<sup>700</sup> Mr.  
 2 Harkins signed the subscription agreement and note as Manager for Barcelona Advisors.<sup>701</sup> Mr. Eaves  
 3 considered the Barcelona Advisors opportunity to be an investment.<sup>702</sup> Mr. Eaves invested based upon  
 4 the returns stated in the February 2013 PPM, and the past success of the individuals involved in the  
 5 management team.<sup>703</sup> The Eaves received \$38,158 on this investment.<sup>704</sup>

6 Roberta Burleson – Two Investments (Investments 3 and 4)

7 Roberta Burleson made two \$50,000 investments in Barcelona Advisors on or about May 31,  
 8 2013, in Arizona.<sup>705</sup> Ms. Burleson is Mr. Harkins' significant other and she knew about Barcelona  
 9 Advisors from him since the company's beginning.<sup>706</sup> Ms. Burleson learned about the investment  
 10 opportunity with Barcelona Advisors from her financial advisor, Mr. Kerrigan.<sup>707</sup>

11 One of Ms. Burleson's \$50,000 investments was in the 12-6-12 Offering.<sup>708</sup> Ms. Burleson  
 12 received subscription paperwork from Mr. Kerrigan, and a PPM from Mr. Harkins.<sup>709</sup> On her  
 13 subscription paperwork, Ms. Burleson wrote that she qualified as an accredited investor based on  
 14 "relationship with sponsor."<sup>710</sup> Ms. Burleson was uncertain whether she qualified as an accredited  
 15 investor based on net worth, but Mr. Harkins accepted Mr. Kerrigan's assertion that she did.<sup>711</sup> Mr.  
 16 Harkins signed the subscription agreement and note for Barcelona Advisors.<sup>712</sup>

17 Ms. Burleson's second \$50,000 investment carried the same interest and bonus terms as the 12-  
 18 6-12 Offering note.<sup>713</sup> However, this note differed from the 12-6-12 Offering because it did not provide  
 19 for membership units in Barcelona Advisors and it granted Ms. Burleson the opportunity to choose the

20 \_\_\_\_\_  
 21 <sup>700</sup> Exh. S-33.

<sup>701</sup> Exhs. S-32 at 58, S-33, S-38.

<sup>702</sup> Tr. at 190.

<sup>703</sup> Tr. at 199-200.

<sup>704</sup> Exh. S-31b.

<sup>705</sup> Tr. at 633; Exhs. S-8, S-31b, S-39, S-184.

<sup>706</sup> Tr. at 844; Exh. S-32 at 70, 79.

<sup>707</sup> Tr. at 989, 1007-1008, 1020. Division investigator Dulance Morin provided hearsay testimony that Ms. Burleson told him she first learned of the investment from Mr. Harkins. Tr. at 633. Mr. Morin also testified that Ms. Burleson made her investments "on two different occasions" though her investments were made at the same time. Tr. at 633. We give greater weight to the consistent testimony under oath from Mr. Harkins and Mr. Kerrigan as to these points.

<sup>708</sup> Exhs. S-8, S-39.

<sup>709</sup> Tr. at 1021.

<sup>710</sup> Exh. S-8 at ACC00089.

<sup>711</sup> Tr. at 991-992.

<sup>712</sup> Exhs. S-8, S-32 at 58, S-39.

<sup>713</sup> Exh. S-184.

1 maturity date on December 31, 2013, or at the end of any quarter in 2014.<sup>714</sup> Mr. Harkins drafted this  
 2 note with Ms. Burleson's input to meet her financial needs.<sup>715</sup> Mr. Harkins signed the note as President  
 3 for Barcelona Advisors.<sup>716</sup> Ms. Burleson received \$13,130 on her two investments.<sup>717</sup>

4 Richard Woods (Investment 5)

5 On July 2, 2013, Arizona resident Richard Woods invested \$100,000 in the 12-6-12 Offering.<sup>718</sup>  
 6 Mr. Woods learned of the investment opportunity from his investment advisor for nearly thirty years,  
 7 Mr. Kerrigan.<sup>719</sup> Mr. Kerrigan provided Mr. Woods with a subscription agreement.<sup>720</sup> Mr. Woods was  
 8 an accredited investor at the time of his investment.<sup>721</sup> Mr. Harkins signed the subscription agreement  
 9 and note for Barcelona Advisors.<sup>722</sup> Mr. Woods received \$12,097 on his investment.<sup>723</sup>

10 Kathleen Carolin – Two Investments (Investment 6 and 8)

11 On July 5, 2013, Arizona resident Kathleen Carolin invested \$25,000 in the 12-6-12 Offering.<sup>724</sup>  
 12 Ms. Carolin's boyfriend at the time, Mr. Kerrigan, recommended the investment to her.<sup>725</sup> Mr. Harkins  
 13 signed the subscription agreement and note for Barcelona Advisors.<sup>726</sup>

14 On July 30, 2013, Kathleen Carolin invested another \$25,000 in the 12-6-12 Offering.<sup>727</sup> Ms.  
 15 Carolin made her second investment because she had become friends with most of the principals of  
 16 Barcelona Advisors and Ms. Burleson was also investing.<sup>728</sup> Mr. Harkins signed the subscription  
 17 agreement and note for Barcelona Advisors.<sup>729</sup>

18 At the time Ms. Carolin invested, she had a net worth less than \$1,000,000 and an annual income  
 19 below \$200,000.<sup>730</sup> Ms. Carolin had been dating Mr. Kerrigan and he had some knowledge of her

20 \_\_\_\_\_  
 21 <sup>714</sup> Tr. at 988, 1008; Exh. S-184.

<sup>715</sup> Tr. at 1008-1009.

<sup>716</sup> Exhs. S-32 at 58, S-184.

<sup>717</sup> Exh. S-31b.

<sup>718</sup> Tr. at 1095; Exhs. S-9, S-31b, S-41.

<sup>719</sup> Tr. at 660, 1022.

<sup>720</sup> Tr. at 661-662, 1023.

<sup>721</sup> Tr. at 672, 1023; Exh. S-9.

<sup>722</sup> Exhs. S-9, S-32 at 58, S-41.

<sup>723</sup> Exh. S-31b.

<sup>724</sup> Exhs. S-10, S-31b, S-40.

<sup>725</sup> Tr. at 426.

<sup>726</sup> Exhs. S-10, S-32 at 58, S-40.

<sup>727</sup> Exhs. S-31b, S-34, S-43.

<sup>728</sup> Tr. at 439.

<sup>729</sup> Exhs. S-34, S-43.

<sup>730</sup> Tr. at 431-432.

1 finances.<sup>731</sup> At the time Ms. Carolin invested, her investment experience was limited to 401(k) plans  
 2 and she had never invested in something like Barcelona Advisors.<sup>732</sup> Ms. Carolin is a certified public  
 3 accountant and has worked for businesses.<sup>733</sup> After making her investments, Ms. Carolin briefly did  
 4 some accounting work for Barcelona Advisors, during which time she had no management authority  
 5 for the company.<sup>734</sup>

6 Ms. Carolin received a copy of the subscription agreement for her first investment from Mr.  
 7 Harkins.<sup>735</sup> Ms. Carolin did not fully read the subscription agreement because she trusted the  
 8 recommendation from Mr. Kerrigan.<sup>736</sup> At a restaurant meeting with Mr. Harkins about the investment,  
 9 Mr. Harkins told her that she needed to check one of the qualifications for being an accredited investor  
 10 but she said that she did not qualify under any of those lines.<sup>737</sup> Both subscription agreements for Ms.  
 11 Carolin are marked with an “x” indicating that she had an annual income over \$200,000, however, Ms.  
 12 Carolin did not mark the line on either agreement.<sup>738</sup> Ms. Carolin believed she was allowed to invest  
 13 without being qualified as an accredited investor because she was a friend.<sup>739</sup>

14 Ms. Carolin considered both transactions to be investments that she made to earn money for  
 15 retirement.<sup>740</sup> Ms. Carolin made her two investments from a distribution from her 401(k) plan through  
 16 Carolin Group, LLC.<sup>741</sup> Ms. Carolin received \$5,793 on her two investments.<sup>742</sup> The loss of her  
 17 investments caused Ms. Carolin financial hardship by cutting her retirement funds in half and forcing  
 18 her to sell her home.<sup>743</sup>

19 . . .

21 <sup>731</sup> Tr. at 432, 1024; Exh. S-98 at 49-50. At hearing, Mr. Kerrigan testified that he did not know what Ms. Carolin’s income  
 22 would have been at the time of her investment as they “didn’t talk about that.” Tr. at 1024. However, at his EUO on  
 October 8, 2015, Mr. Kerrigan testified that he believed Ms. Carolin’s income was over \$300,000 because “I think she told  
 me one time.” Exh. S-98 at 50.

23 <sup>732</sup> Tr. at 445.

24 <sup>733</sup> Tr. at 453, 462.

<sup>734</sup> Tr. at 444-445; Exh. S-98 at 49.

<sup>735</sup> Tr. at 431.

<sup>736</sup> Tr. at 469-470.

<sup>737</sup> Tr. at 433; Exh. S-10 at ACC000881.

<sup>738</sup> Tr. at 432-433, 450-451, 458-459, 466, 473; Exhs. S-10 at ACC000881, S-34 at ACC000871.

<sup>739</sup> Tr. at 472-473.

<sup>740</sup> Tr. at 426, 439.

<sup>741</sup> Tr. at 465.

<sup>742</sup> Tr. at 439-442; Exhs. S-31b, S-150 at ACC001557-ACC001558, S-160, S-164.

<sup>743</sup> Tr. at 448.

1           Rodney and Melissa Eaves – Second Investment (Investment 7)

2           On July 18, 2013, the Eaves made a second investment in Barcelona Advisors of \$250,000.<sup>744</sup>

3           The note for this second investment contained the same interest, bonuses, and December 31, 2014  
4           maturity date, as the 12-6-12 offering notes.<sup>745</sup> The July 18, 2013 Eaves investment included purchase  
5           rights to 75 units of Class A member units at a total purchase price of \$0.75, while the March 11, 2013,  
6           Eaves investment in the 12-6-12 Offering included Class B member units.<sup>746</sup> Class A member interests  
7           carried a stronger per share ownership of the company and are voting shares, while Class B member  
8           interests have preferred distribution but no voting rights.<sup>747</sup> Mr. Kerrigan provided Mr. Eaves with a  
9           Loan and Investment document that Mr. Eaves completed to make his second investment.<sup>748</sup> Mr.  
10          Harkins signed the Loan and Investment agreement and note as President for Barcelona Advisors.<sup>749</sup>  
11          In making his second investment, Mr. Eaves continued to rely upon information contained in the  
12          February 2013 PPM, although he had also been exposed to further information about the company  
13          since his first investment.<sup>750</sup> The Eaves received no payments from this investment.<sup>751</sup>

14           William Jordan (Investment 9)

15          Arizona resident William Jordan, through Cheyenne Kassie, LLC, invested \$50,000 in the 12-  
16          6-12 Offering on October 2, 2013.<sup>752</sup> Mr. Jordan considered the transaction to be an investment.<sup>753</sup>  
17          Mr. Jordan learned about the investment from his investment advisor, Mr. Kerrigan.<sup>754</sup> In a meeting at  
18          Mr. Kerrigan's office in Arizona, Mr. Kerrigan discussed the investment with Mr. Jordan, gave Mr.  
19          Jordan a subscription agreement and the April 2013 PPM, and took Mr. Jordan's investment check.<sup>755</sup>  
20          The subscription agreement indicates that Mr. Jordan qualified as an accredited investor as he had a  
21          net worth exceeding \$1,000,000, exclusive of the value of his personal residence, which he also told

22 \_\_\_\_\_  
23 <sup>744</sup> Exhs. S-7, S-31b, S-42.

<sup>745</sup> Tr. at 203-204; Exhs. S-7, S-42.

24 <sup>746</sup> Tr. at 203-204, 341, 805, 845; Exhs. S-5, S-7, S-33.

<sup>747</sup> Tr. at 805, 844-845.

25 <sup>748</sup> Tr. at 206.

<sup>749</sup> Exhs. S-7, S-42.

26 <sup>750</sup> Tr. at 205-206, 870; Exh. S-5.

<sup>751</sup> Exh. S-31b.

27 <sup>752</sup> Tr. at 158, 165; Exhs. S-11, S-31b, S-45, S-158.

<sup>753</sup> Tr. at 159.

28 <sup>754</sup> Tr. at 159.

<sup>755</sup> Tr. at 160-165, 170, 1025-1026; Exhs. S-57, S-158.

1 Mr. Kerrigan.<sup>756</sup> Mr. Harkins signed the subscription agreement and note as President for Barcelona  
2 Advisors.<sup>757</sup> Mr. Jordan has received payments totaling \$4,552 on the investment.<sup>758</sup>

3 Ridick Ramirez (Investment 10)

4 Arizona resident Ridick Ramirez, through RJR Group, LLC, invested \$100,000 in the 12-6-12  
5 Offering on October 22, 2013.<sup>759</sup> Mr. Kerrigan told his client, Mr. Ramirez, about the investment and  
6 provided him with a subscription agreement and the April 2013 PPM.<sup>760</sup> The subscription agreement  
7 indicates that Mr. Ramirez qualified as an accredited investor as he had a net worth exceeding  
8 \$1,000,000, exclusive of the value of his personal residence.<sup>761</sup> Mr. Harkins signed the subscription  
9 agreement and note for Barcelona Advisors.<sup>762</sup> Mr. Ramirez has received payments totaling \$8,439 on  
10 his investment.<sup>763</sup>

11 Nancy Chaimson (Investment 11)

12 Arizona resident Nancy Chaimson, through the Nancy Chaimson Revocable Trust, invested  
13 \$50,000 in the 12-6-12 Offering on November 25, 2013.<sup>764</sup> Ms. Chaimson was Mr. Kerrigan's friend  
14 whom he told about the investment and gave a subscription agreement.<sup>765</sup> The subscription agreement  
15 indicates that Ms. Chaimson qualified as an accredited investor as she had a net worth exceeding  
16 \$1,000,000, exclusive of the value of her personal residence.<sup>766</sup> Mr. Harkins signed the subscription  
17 agreement and note as President for Barcelona Advisors.<sup>767</sup> Ms. Chaimson has received payments  
18 totaling \$608 on her investment.<sup>768</sup>

19 Rodney and Melissa Eaves – Additional Investments (Investments 12, 15, 17, and 18)

20 On December 30, 2013, Mr. and Mrs. Eaves made a third investment in Barcelona Advisors.<sup>769</sup>

22 <sup>756</sup> Tr. at 1026; Exh. S-11.

<sup>757</sup> Exhs. S-11, S-45.

23 <sup>758</sup> Tr. at 171-172; Exhs. S-31b, S-150 at ACC001561, S-163.

<sup>759</sup> Exhs. S-12, S-31b, S-46.

24 <sup>760</sup> Tr. at 1026-1029; Exhs. S-32 at 61, S-98 at 57-58.

<sup>761</sup> Exh. S-12.

25 <sup>762</sup> Exhs. S-12, S-32 at 58, S-46.

<sup>763</sup> Exh. S-31b.

26 <sup>764</sup> Exhs. S-13, S-31b, S-47.

<sup>765</sup> Tr. at 1029-1030; Exh. S-98 at 29-30, 56.

27 <sup>766</sup> Exh. S-13.

<sup>767</sup> Exhs. S-13, S-47.

28 <sup>768</sup> Exh. S-31b.

<sup>769</sup> Exhs. S-31b, S-53.

1 Mr. and Mrs. Eaves invested \$125,000, and received a promissory note from Barcelona Advisors  
 2 offering 12% annual interest with a maturity date of March 31, 2014.<sup>770</sup> Mr. and Mrs. Eaves also  
 3 received options to purchase 250,000 Class A membership units.<sup>771</sup> The promissory note was signed  
 4 by Mr. Harkins for Barcelona Advisors.<sup>772</sup> Mr. Eaves made his third investment after he was told by  
 5 Mr. Kerrigan that expected capital had been delayed and the company needed money to bridge the  
 6 gap.<sup>773</sup> Mr. Eaves made his third investment to protect his prior investments.<sup>774</sup> The Eaves have  
 7 received no payments on their third investment.<sup>775</sup>

8 On February 28, 2014, Mr. and Mrs. Eaves made a fourth investment in Barcelona Advisors.<sup>776</sup>  
 9 Mr. and Mrs. Eaves invested \$125,000 and received a promissory note from Barcelona Advisors  
 10 offering 12% annual interest with a maturity date of May 31, 2014.<sup>777</sup> Mr. and Mrs. Eaves also received  
 11 options to purchase 250,000 Class A membership units.<sup>778</sup> The promissory note was signed by Mr.  
 12 Harkins for Barcelona Advisors.<sup>779</sup> Mr. Eaves made his fourth investment after receiving a phone call  
 13 from Mr. Simmons asking for an additional \$125,000 while the company was awaiting capital to come  
 14 in soon.<sup>780</sup> The Eaves have received no payments on their fourth investment.<sup>781</sup>

15 On May 12, 2014, Mr. Eaves became an independent contractor for Barcelona Advisors,  
 16 researching potential real estate properties for the company.<sup>782</sup>

17 On July 14, 2014, Mr. Eaves made a fifth investment in Barcelona Advisors.<sup>783</sup> Mr. Eaves  
 18 invested \$15,000 and received a promissory note from Barcelona Advisors, offering 8% annual interest  
 19 with a maturity date of October 14, 2014.<sup>784</sup> The promissory note was signed by Mr. Harkins for  
 20

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21 <sup>770</sup> Exh. S-53.

22 <sup>771</sup> Exh. S-53.

23 <sup>772</sup> Exhs. S-32 at 58, S-53.

24 <sup>773</sup> Tr. at 282, 345.

25 <sup>774</sup> Tr. at 282-283.

26 <sup>775</sup> Exh. S-31b.

27 <sup>776</sup> Exhs. S-31b, S-54.

28 <sup>777</sup> Exh. S-54.

<sup>778</sup> Exh. S-54.

<sup>779</sup> Exh. S-54.

<sup>780</sup> Tr. at 287-288, 346-347.

<sup>781</sup> Exh. S-31b.

<sup>782</sup> Tr. at 310-311, 365-366; Exh. S-30 at ACC006358.

<sup>783</sup> Exhs. S-31b, S-55.

<sup>784</sup> Exh. S-55.

1 Barcelona Advisors.<sup>785</sup> Mr. Harkins asked Mr. Eaves to make his fifth investment during a discussion  
 2 regarding the need for funds to pay bills at a meeting in Barcelona Advisors' conference room that was  
 3 also attended by Mr. Simmons and Mr. Kerrigan.<sup>786</sup> Mr. Eaves has received no payments on his fifth  
 4 investment.<sup>787</sup>

5 On July 31, 2014, Mr. Eaves made a sixth investment in Barcelona Advisors.<sup>788</sup> Mr. Eaves  
 6 invested \$15,000 and received a promissory note from Barcelona Advisors offering 10% annual interest  
 7 with a maturity date of August 15, 2014.<sup>789</sup> The promissory note was signed by Mr. Harkins for  
 8 Barcelona Advisors.<sup>790</sup> Mr. Harkins asked Mr. Eaves to make his sixth investment during another  
 9 discussion regarding the need for funds to pay bills at a meeting in Barcelona Advisors' conference  
 10 room that was also attended by Mr. Simmons and Mr. Kerrigan.<sup>791</sup> Mr. Eaves has received no payments  
 11 on his sixth investment.<sup>792</sup>

12 On August 8, 2014, Mr. Eaves became an Executive Member of Barcelona Advisors, replacing  
 13 Mr. Orr.<sup>793</sup> Mr. Eaves had no management responsibilities prior to becoming an Executive Member.<sup>794</sup>  
 14 As an Executive Member, Mr. Eaves had a voting right on any company decision that could be made.

15 In making his third, fourth, fifth, and sixth investments, Mr. Eaves continued to rely upon  
 16 information contained in the February 2013 PPM, although he had also been exposed to further  
 17 information about the company since his first investment.<sup>795</sup> Mr. Eaves' investments in Barcelona  
 18 Advisors represented a loss of about 40% of his net worth and created financial hardship as he was  
 19 unable to provide capital to a small business he started.<sup>796</sup>

20 Pam Stewart (Investment 13)

21 Arizona resident Pam Stewart, through JP Stewart Enterprises, LLC, invested \$100,000 in the  
 22

23 <sup>785</sup> Exhs. S-32 at 58, S-55.

<sup>786</sup> Tr. at 289-291.

<sup>787</sup> Exh. S-31b.

<sup>788</sup> Exhs. S-31b, S-56.

<sup>789</sup> Exh. S-56.

<sup>790</sup> Exh. S-56.

<sup>791</sup> Tr. at 293-294.

<sup>792</sup> Exh. S-31b.

<sup>793</sup> Tr. at 311, 326, 715; Exh. S-30 at ACC006360.

<sup>794</sup> Tr. at 311.

<sup>795</sup> Tr. at 297-298, 870.

<sup>796</sup> Tr. at 309-310.

1 10-5-10 Offering on April 3, 2014.<sup>797</sup> Ms. Stewart considered the transaction to be an investment.<sup>798</sup>  
 2 In February 2014, Ms. Stewart learned about the investment from Mr. Kerrigan, who had been her  
 3 broker for over sixteen years.<sup>799</sup> Mr. Kerrigan knew that Ms. Stewart had a low risk tolerance for  
 4 investments and he recommended Barcelona Advisors as a low-risk investment.<sup>800</sup> Mr. Kerrigan met  
 5 Ms. Stewart in a restaurant in Scottsdale, Arizona, where he gave her a subscription agreement that she  
 6 and her husband signed.<sup>801</sup> Ms. Stewart asked Mr. Kerrigan about the subscription agreement stating  
 7 the investment carried a high degree of risk, but Mr. Kerrigan told her the investment was not high  
 8 risk.<sup>802</sup> On the subscription agreement, Ms. Stewart indicated that she qualified as an accredited  
 9 investor, as she had a net worth exceeding \$1,000,000, exclusive of the value of her personal  
 10 residence.<sup>803</sup> Mr. Harkins signed the subscription agreement and note for Barcelona Advisors.<sup>804</sup> Ms.  
 11 Stewart has received no payments on her investment.<sup>805</sup> Ms. Stewart considered the transaction to be  
 12 an investment, the loss of which caused financial hardship, including a \$35,000 tax liability for using  
 13 funds from her retirement account to pay for the investment.<sup>806</sup> Ms. Stewart's investment funds were  
 14 used, in part, to make delayed payments that had been due to 12-6-12 Offering investors on December  
 15 31, 2013.<sup>807</sup>

16 Richard Andrade – First Investment (Investment 14)

17 Arizona resident Richard Andrade invested \$50,000 in the 10-5-10 Offering on April 16,  
 18 2014.<sup>808</sup> In approximately November 2013, Mr. Andrade first learned about the Barcelona Advisors  
 19 opportunity from his investment advisor, Jim Wilkerson, who scheduled a lunch meeting with Mr.  
 20 Andrade and Mr. Simmons to discuss the opportunity, as Mr. Andrade and Mr. Simmons had worked  
 21 together at Intel in the 1980s.<sup>809</sup> The lunch meeting with Mr. Andrade, Mr. Wilkerson and Mr.

22 <sup>797</sup> Tr. at 221-222; Exhs. S-31b, S-35, S-48, S-148.

23 <sup>798</sup> Tr. at 222.

24 <sup>799</sup> Tr. at 222-224, 1032.

25 <sup>800</sup> Tr. at 223-225.

26 <sup>801</sup> Tr. at 223, 225-227, 268-269, 1033-1034.

27 <sup>802</sup> Tr. at 245; Exh. S-35 at ACC000993.

28 <sup>803</sup> Exh. S-35.

<sup>804</sup> Exhs. S-32 at 58, S-35, S-48.

<sup>805</sup> Tr. at 228; Exh. S-31b.

<sup>806</sup> Tr. at 222, 233.

<sup>807</sup> Exhs. S-26, S-27, S-32 at 91-92, S-65, S-98 at 138.

<sup>808</sup> Exhs. S-31b, S-36, S-49, S-50, S-148.

<sup>809</sup> Tr. at 376-379, 420.

1 Simmons took place on December 23, 2013, in Scottsdale Arizona.<sup>810</sup> At the meeting, Mr. Simmons  
 2 spoke of his successful business ventures since leaving Intel, which Mr. Andrade interpreted as  
 3 bringing value to, and Mr. Simmons' vouching for, the new opportunity.<sup>811</sup> Mr. Simmons also said  
 4 that Mr. Harkins was managing Barcelona Advisors and that Mr. Harkins had a long and successful  
 5 history in real estate businesses, indicating to Mr. Andrade that Mr. Simmons was confident in Mr.  
 6 Harkins.<sup>812</sup> Mr. Simmons said that Barcelona Advisors planned to build business oriented hotels, that  
 7 it had a good opportunity for success, and that it would be a good investment based upon the track  
 8 record of the individuals involved.<sup>813</sup> At the lunch meeting, Mr. Simmons asked Mr. Andrade to invest  
 9 and discussed having a follow up meeting in 2014.<sup>814</sup>

10 On January 7, 2014, Mr. Simmons sent an email to Mr. Andrade inviting him to visit the  
 11 Barcelona Advisors' office to meet the team and "discuss our current capital raise."<sup>815</sup> Mr. Andrade  
 12 replied via email that day, stating he was not available, and that he was "not in a position to make an  
 13 investment at this time," which was a response to Mr. Simmons' lunch meeting request that Mr.  
 14 Andrade make an investment.<sup>816</sup>

15 At or about the time of the lunch meeting, Mr. Andrade received a January 2014 PPM.<sup>817</sup> Based  
 16 on the high rate of interest, Mr. Andrade decided to invest in Barcelona Advisors in April 2014.<sup>818</sup> On  
 17 the subscription agreement, Mr. Andrade indicated that he qualified as an accredited investor as he had  
 18 a net worth exceeding \$1,000,000, exclusive of the value of his personal residence.<sup>819</sup>

19 The subscription agreement was signed by Mr. Simmons as COO for Barcelona Advisors.<sup>820</sup>  
 20 Prior to signing, Mr. Simmons called Mr. Harkins, who was away from the office, for authorization to  
 21 sign the subscription agreement.<sup>821</sup> Mr. Harkins told Mr. Simmons that he could sign the subscription  
 22

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23 <sup>810</sup> Tr. at 378, 405-406.

24 <sup>811</sup> Tr. at 379.

25 <sup>812</sup> Tr. at 380.

26 <sup>813</sup> Tr. at 379-382.

27 <sup>814</sup> Tr. at 387.

28 <sup>815</sup> Tr. at 382-383; Exh. S-171.

<sup>816</sup> Tr. at 387; Exh. S-171.

<sup>817</sup> Tr. at 384, 410, 413-414, 416.

<sup>818</sup> Tr. at 376, 388.

<sup>819</sup> Exh. S-77.

<sup>820</sup> Exh. S-77.

<sup>821</sup> Tr. at 874, 1172-1173, 1211; Exh. S-76 at 46-48.

1 agreement if Mr. Andrade was a qualified investor.<sup>822</sup> Mr. Simmons did not need permission from Mr.  
 2 Harkins to sign as he was already an authorized signatory of Barcelona Advisors.<sup>823</sup> Mr. Harkins signed  
 3 the note as President for Barcelona Advisors.<sup>824</sup> Mr. Andrade has received no payments on his  
 4 investment.<sup>825</sup> Mr. Andrade has experienced hardship from the loss of his investment as it was nearly  
 5 twice his current annual income and his retirement funds have been reduced.<sup>826</sup> Mr. Andrade's  
 6 investment funds were used, in part, to make delayed payments that had been due to 12-6-12 Offering  
 7 investors on December 31, 2013.<sup>827</sup>

8 Richard Andrade – Second Investment (Investment 16)

9 On June 13, 2014, Mr. Andrade received via email the June 2014 Offer Letter and asked to  
 10 meet with Mr. Harkins to better understand the situation at Barcelona Advisors.<sup>828</sup> On or about June  
 11 16, 2014, Mr. Andrade met with Mr. Harkins at Barcelona Advisors' office.<sup>829</sup> Mr. Harkins told Mr.  
 12 Andrade about his past business successes, his optimism that new investments were coming, and that  
 13 Barcelona Advisors just needed funds to pay staff until the new investments arrived.<sup>830</sup> Mr. Andrade  
 14 gave Mr. Harkins a check for \$5,000 at the meeting and received a promissory note paying 10% annual  
 15 interest with a 3% bonus, maturing on September 16, 2014.<sup>831</sup> Mr. Harkins signed the promissory note  
 16 as President for Barcelona Advisors.<sup>832</sup> Mr. Andrade considered the \$5,000 payment to be an  
 17 investment, which he made to help the company be successful so he could earn his principal plus  
 18 interest on his prior \$50,000 investment.<sup>833</sup> Mr. Andrade has received no payments on this  
 19 investment.<sup>834</sup>

20 Before leaving the meeting with Mr. Harkins, Mr. Andrade received a copy of the Barcelona  
 21

22 <sup>822</sup> Tr. at 874, 1173.

23 <sup>823</sup> Tr. at 874, 913.

24 <sup>824</sup> Exh. S-49.

25 <sup>825</sup> Tr. at 397; Exh. S-31b.

26 <sup>826</sup> Tr. at 401.

27 <sup>827</sup> Exhs. S-26, S-27, S-32 at 91-92, S-65, S-98 at 138.

28 <sup>828</sup> Tr. at 389.

<sup>829</sup> Tr. at 389. Mr. Andrade testified that Mr. Simmons was also at this meeting, though Mr. Simmons testified he was not present and Mr. Harkins could not recall. Tr. at 389, 411, 1173, 1258.

<sup>830</sup> Tr. at 390.

<sup>831</sup> Tr. at 391, 393-396; Exhs. S-51, S-169.

<sup>832</sup> Exh. S-51.

<sup>833</sup> Tr. at 376, 396.

<sup>834</sup> Tr. at 397; Exh. S-31b.

1 Land Company PPM.<sup>835</sup> Mr. Andrade received the Barcelona Land Company PPM from Mr. Harkins  
2 in response to questions he had about the future business plans of the company.<sup>836</sup> Mr. Andrade  
3 considered his receipt of the Barcelona Land Company PPM to be in response to his questions and not  
4 an investment offering.<sup>837</sup>

## 5 **V. Legal Argument**

### 6 **A. Filings by the Parties**

7 At the conclusion of the hearing, a schedule for the filing of post-hearing briefs was established  
8 whereby the Division would file an initial brief by July 8, 2016, the Respondents would file a response  
9 by August 8, 2016, and the Division would file a reply by August 23, 2014. By Procedural Order, Mr.  
10 Harkins was granted an extension to file his post-hearing brief by August 22, 2016, with a  
11 corresponding extension deadline of September 6, 2016, for the Division to file a reply to Mr. Harkins'  
12 post-hearing brief.

13 The Division timely filed its Post-Hearing Brief on July 8, 2016, then filed an Amended Post-  
14 Hearing Brief on July 11, 2016. The Division's Amended Post-Hearing Brief stated that it had been  
15 amended to reflect that Mr. Kerrigan, Mr. Simmons, and Mr. Orr were not control persons for  
16 Barcelona Advisors at the time of the first investment in the company.<sup>838</sup>

17 The Post-Hearing Briefs of Mr. Simmons and Mr. Orr were filed on August 9, 2016. In his  
18 Post-Hearing Brief, Mr. Orr makes no objection to the Division's filing of an amended brief and he  
19 stipulates to the procedural history as set forth in the Securities Division's Amended Post-Hearing  
20 Brief.<sup>839</sup> Mr. Simmons, in his Post-Hearing Brief, demands that the Securities Division's Amended  
21 Post-Hearing Brief "be stricken from the record" as it was filed without authorization from the Hearing  
22 Division and without prior notice given to the Respondents.<sup>840</sup>

23 Mr. Kerrigan filed his Post-Hearing Brief on August 11, 2016. Mr. Kerrigan's Post-Hearing  
24 Brief referenced the Securities Division's Amended Post-Hearing Brief, not the original brief filed by  
25

26 <sup>835</sup> Tr. at 392, 411, 418, 882, 976-977, 1258; Exh. S-59.

<sup>836</sup> Tr. at 392, 418, 882-883, 976-977, 1258.

<sup>837</sup> Tr. at 418.

<sup>838</sup> Securities Division's Amended Post-Hearing Brief at 1.

<sup>839</sup> Respondent Bruce Orr's Post-Hearing Brief at 1.

<sup>840</sup> Post-Hearing Brief of Respondent George T. Simmons at 2-3.

1 the Division.<sup>841</sup> In his Post-Hearing Brief, Mr. Kerrigan stated no reason as to why his brief had not  
2 been timely filed.

3 In the Division's Reply to the Post-Hearing Briefs of Mr. Simmons and Mr. Orr, the Division  
4 moves for the acceptance of its amended Post-Hearing Brief which was filed one business day after the  
5 briefing deadline.<sup>842</sup> The Division argues that there is good cause to accept the late-filed amended brief  
6 because it contains a more accurate prayer for relief, acknowledging that Mr. Simmons, Mr. Kerrigan  
7 and Mr. Orr are not liable as control persons for the investment of Ms. Bair.<sup>843</sup>

8 Mr. Harkins, in his timely filed Post-Hearing Brief, asks that if the Securities Division's  
9 Amended Post-Hearing Brief was not approved by the Administrative Law Judge and/or if it contains  
10 any charges against Mr. Harkins that were not "there-to-fore of record, it should be Stricken."<sup>844</sup> Mr.  
11 Harkins' Post-Hearing Brief is written in response to the Securities Division's Amended Post-Hearing  
12 Brief, not the Division's original Post-Hearing Brief.<sup>845</sup> An Amended Post-Hearing Brief of  
13 Respondent Richard C. Harkins was timely filed and contained the same request regarding the  
14 Securities Division's Amended Post-Hearing Brief.<sup>846</sup>

15 On September 2, 2016, Respondents George T. Simmons and Bruce L. Orr jointly filed a  
16 Response to the Securities Division's Reply to Post-Hearing Briefs ("S&O Response"). Neither Mr.  
17 Simmons nor Mr. Orr sought leave to file any such response. In the S&O Response, Mr. Simmons and  
18 Mr. Orr contend that "the Division's presentation of new arguments in the [Division's Reply to Post-  
19 Hearing Briefs of Respondents George T. Simmons and Bruce L. Orr] is improper" and that Mr.  
20 Simmons and Mr. Orr "address them here of necessity."

21 Under A.A.C. R14-3-109(R), briefs may be ordered by the Commission or presiding officer to  
22 be filed within such time as may be allowed. Here, the briefing schedule, as set by the Administrative  
23 Law Judge, has been deviated from through untimely and unauthorized briefs filed by several of the  
24 parties. While we do not condone the disregard of an Administrative Law Judge's scheduling order,  
25

26 <sup>841</sup> Post-Hearing Brief of Respondent Robert J. Kerrigan at 2.

<sup>842</sup> Division's Reply to Post-Hearing Briefs of Respondents George T. Simmons and Bruce L. Orr at 5-6.

27 <sup>843</sup> *Id.* at 6.

<sup>844</sup> Post-Hearing Brief of Respondent Richard C. Harkins at 3.

28 <sup>845</sup> *See* Post-Hearing Brief of Respondent Richard C. Harkins at 3, 25, 35, 83, 100.

<sup>846</sup> Amended Post-Hearing Brief of Respondent Richard C. Harkins at 3.

1 we find no prejudice to any of the parties should we consider the post-hearing documents that have  
2 been filed. The Securities Division's Amended Post-Hearing Brief, though late filed, apparently was  
3 received and responded to by Mr. Harkins, Mr. Kerrigan and Mr. Orr. We find no prejudice to Mr.  
4 Simmons in our consideration of the Securities Division's Amended Post-Hearing Brief, as the  
5 amendment to the original brief actually reduces the allegations against him. The Division has made  
6 no objections to the late filed Post-Hearing Brief of Respondent Robert J. Kerrigan or the filing of the  
7 S&O Response by Mr. Simmons and Mr. Orr without their seeking leave to make such a filing. In the  
8 interest of allowing all parties to the hearing a full opportunity to be heard, we shall consider all of the  
9 post-hearing filings.

10 B. Motion to Conform

11 1. Argument

12 At the hearing, the Division moved to conform the Amended T.O. and Notice to the evidence  
13 in the case.<sup>847</sup> The motion was made at the conclusion of the Division's presentation of its witnesses,  
14 with the understanding that the Division could reopen the evidence to call any of the four individual  
15 Respondents, if they did not all testify on their own behalf.<sup>848</sup> The Division did not specifically state  
16 how it wished to further amend the Amended T.O. & Notice.<sup>849</sup> The Administrative Law Judge asked  
17 the Respondents for a response to the motion, to which counsel for Mr. Simmons replied that "I don't  
18 think we have an objection to that" but argued that such a conformation would require dismissal of any  
19 claims involving Barcelona Land Company and the control person liability claims against Mr. Orr and  
20 Mr. Simmons.<sup>850</sup> After hearing brief argument from the Division and Mr. Simmons on this point, the  
21 Administrative Law Judge stated that he would take the motion under advisement, and subsequently  
22 advised the parties to address the matter in their closing briefs.<sup>851</sup>

23 In its closing brief, the Division for the first time set forth the alleged violations it sought to  
24 include by way of its motion to conform. The Division expanded its allegations from the Amended  
25 T.O. and Notice in four areas: 1) regarding the alleged violations of A.R.S. § 44-1841 by the offer or

26 <sup>847</sup> Tr. at 697.

27 <sup>848</sup> Tr. at 697.

<sup>849</sup> Tr. at 697.

<sup>850</sup> Tr. at 700-701.

28 <sup>851</sup> Tr. at 702, 1268.

1 sale of unregistered securities within or from Arizona, the Division added Mr. Simmons, Mr. Orr, and  
2 Barcelona Land Company; 2) regarding the alleged violations of A.R.S. § 44-1842 by the offer or sale  
3 of securities within or from Arizona while not registered as a securities salesman or dealer, the Division  
4 added Mr. Simmons, Mr. Orr, and Barcelona Land Company; 3) regarding the alleged violation of  
5 A.R.S. § 44-1991(A)(2) by making untrue statements of material fact or materially misleading  
6 omissions in connection with an offer to sell securities within or from Arizona, the Division added Mr.  
7 Simmons; and 4) regarding alleged violations of A.R.S. § 44-1962 by Mr. Kerrigan, the Division added  
8 a violation of A.R.S. § 44-1962(A)(8). The Division argues that, pursuant to A.A.C. R14-3-101(A),  
9 Rule 15(b) of the Arizona Rules of Civil Procedure applies, as no procedure for conforming pleadings  
10 to the evidence is set forth by law, the Commission's Rules of Practice and Procedure, or Commission  
11 regulation or order.<sup>852</sup> The Division contends that under Rule 15(b), conforming is permissible for  
12 issues not raised in the notice if they are tried by the express or implied consent of the parties. Citing  
13 *Continental Nat'l Bank v. Evans*, 107 Ariz. 378, 381 (1971), the Division contends that conforming  
14 amendments are to be liberally permitted in the interests of justice and to promote judicial economy.  
15 Here, the Division contends that all of the issues were tried at the hearing with the express consent of  
16 the parties as there was no objection to the Division's motion.

17 In his Post-Hearing Brief, Mr. Orr notes that counsel for Mr. Simmons objected to the motion  
18 to conform at the hearing. Mr. Orr further contends that, if granted, the motion to conform "would  
19 completely change what was alleged, and what was defended."<sup>853</sup> Mr. Orr states that if the Division  
20 had timely alleged that he directly offered or sold securities in his meeting over drinks, he could have  
21 brought in a witness from that meeting to rebut the allegation.<sup>854</sup> Mr. Harkins, in his Post-Hearing  
22

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23 <sup>852</sup> Though amended effective January 1, 2017, as of the date of the hearing, Rule 15(b) of the Arizona Rules of Civil  
24 Procedure provided:

25 When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all  
26 respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them  
27 to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment,  
28 but failure so to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the  
ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do  
so freely when the presentation of the merits of the action will be subserved thereby and the objecting party fails to satisfy  
the court that the admission of such evidence would prejudice the party in maintaining the party's action or defense upon  
the merits. The court may grant a continuance to enable the objecting party to meet such evidence.

<sup>853</sup> Respondent's, Bruce Orr, Post-hearing Brief at 15.

<sup>854</sup> *Id.* at 9.

1 Brief, notes that Mr. Simmons objected to the Division's motion at hearing and that the Administrative  
2 Law Judge took the motion under advisement "with no follow-on ruling."<sup>855</sup> Mr. Harkins concludes  
3 that the motion is "a none event [sic]."<sup>856</sup> Mr. Kerrigan, in his Post-Hearing Brief, makes no mention  
4 of the Division's motion to conform, and responds to specific paragraphs of the Division's Post-  
5 Hearing Brief.

6 In his brief, Mr. Simmons disputes the Division's claim that the parties expressly consented to  
7 conforming, arguing that Mr. Simmons objected to the motion and it was never granted, but rather  
8 taken under advisement by the Administrative Law Judge along with Mr. Simmons' motions to dismiss  
9 the claims against him and Barcelona Land Company. Mr. Simmons argues that it would be  
10 fundamentally unfair and a denial of due process to conform the notice to allow new claims against  
11 any of the Respondents. Without citing any authority, Mr. Simmons contends that "it is never proper  
12 to 'conform' the pleadings to add new claims or causes of action."<sup>857</sup> Mr. Simmons contends that if  
13 the motion had been granted at the close of the Division's case, Mr. Simmons would have had an  
14 opportunity to compel the Division to state the additional claims it believed the evidence supported and  
15 he could have defended against the new allegations not contained in the Notice. Mr. Simmons contends  
16 that had he been aware of additional claims as to investor Richard Andrade, other than those arising  
17 from the noticed control person liability, he would have interviewed Mr. Wilkerson and called him as  
18 a witness.

19 The Division, in its Reply to Post-Hearing Briefs of Respondents George T. Simmons and  
20 Bruce L. Orr, challenges Mr. Simmons' argument that a motion to conform may not add a new cause  
21 of action, citing *Leigh v. Swartz*, 74 Ariz. 108, 112-113 (1952), for allowing just that. The Division  
22 argues that under Rule 15(b), a motion to conform should be allowed when tried by the express or  
23 implied consent of the parties, but even without consent, "the motion should still be allowed if it  
24 promotes the merits of the case unless the opposing party shows that it would be prejudiced."<sup>858</sup>

25 The Division contends that Mr. Simmons gave implied consent to try the issues of his offers to  
26

27 <sup>855</sup> Amended Post-Hearing Brief of Respondent Richard C. Harkins at 84.

<sup>856</sup> *Id.*

<sup>857</sup> Post-Hearing Brief of Respondent George T. Simmons at 23.

28 <sup>858</sup> Securities Division's Reply to Post-Hearing Briefs of Respondents George T. Simmons and Bruce L. Orr at 2.

1 sell securities and his misleading omissions made in connection with those offers. The Division relies  
 2 upon an Eighth Circuit Court of Appeals case, *Herrera v. Valentine*,<sup>859</sup> which applied the “very similar”  
 3 Federal Rule of Civil Procedure 15(b).<sup>860</sup> The Division argues that in *Herrera*, the court concluded  
 4 that “a party’s new claim was tried with the opponent’s implied consent because, 1) the party’s opening  
 5 statement effectively put the opponent on notice of the new claim, 2) the party introduced evidence to  
 6 prove the new claim early in the trial, and 3) the opponent introduced evidence on the same issue as  
 7 part of its defense.”<sup>861</sup> The Division argues that these three implied consent factors are present in this  
 8 case. The Division notes that during its opening statement, counsel stated that “[t]he sale of the  
 9 securities also involved fraud, and Mr. Harkins, Mr. Kerrigan, and Mr. Simmons were all directly  
 10 involved in that fraud.”<sup>862</sup> Further notice of the new claims was set forth in the Division’s opening by  
 11 summarizing Mr. Andrade’s expected testimony to be that “Mr. Simmons encouraged [Mr. Andrade]  
 12 to invest and misled him by telling him that Mr. Hawkins was a very successful business man and that  
 13 this was a sure investment.”<sup>863</sup> The Division argues the presence of the second element by noting that  
 14 on the second day of the seven-day hearing, Mr. Eaves testified that Mr. Simmons asked him to invest  
 15 an additional \$125,000,<sup>864</sup> while Mr. Andrade testified that Mr. Simmons asked him to invest, assured  
 16 him that there was no reason to worry about investing, and attested to Mr. Harkins’ success in real  
 17 estate.<sup>865</sup> The Division further contends that the third element of implied consent is present as Mr.  
 18 Simmons introduced evidence of these issues as part of his defense. The Division notes that Mr.  
 19 Simmons cross-examined Mr. Eaves and Mr. Andrade regarding these issues.<sup>866</sup> The Division also  
 20 notes that Mr. Simmons denied making the statements to Mr. Eaves and Mr. Andrade on direct  
 21 examination,<sup>867</sup> and again, after the Division’s cross-examination on these statements,<sup>868</sup> on redirect  
 22

23 \_\_\_\_\_  
 24 <sup>859</sup> 653 F.2d 1220 (8th Cir. 1981).

<sup>860</sup> Securities Division’s Reply to Post-Hearing Briefs of Respondents George T. Simmons and Bruce L. Orr at 3, FN 3.

<sup>861</sup> Securities Division’s Reply to Post-Hearing Briefs of Respondents George T. Simmons and Bruce L. Orr at 2, *citing*  
 25 *Herrera*, 653 F.2d at 1223-1224.

<sup>862</sup> Tr. at 21 (emphasis added).

<sup>863</sup> Tr. at 23-24.

<sup>864</sup> Tr. at 288.

<sup>865</sup> Tr. at 380-381, 391, 397-399.

<sup>866</sup> Tr. at 346-347, 404-411.

<sup>867</sup> Tr. at 1164, 1170, 1171, 1173.

<sup>868</sup> Tr. at 1204, 1207-1208, 1218, 1219, 1246-1247, 1248-1250.

1 and further redirect examination.<sup>869</sup>

2 In the alternative, the Division argues that if Mr. Simmons did not give implied consent, the  
3 Division's motion should be allowed because Mr. Simmons has failed to show how he would be  
4 prejudiced by trying the issue. The Division cites another federal case, *U.S. v. Shanbaum*, which held  
5 that a party was not prejudiced when "all of the factual and legal details were before the court at trial."<sup>870</sup>  
6 Here, the Division argues that Mr. Simmons fully litigated the issues of his offers to sell securities and  
7 his misleading omissions in connection with those offers, which were addressed by Mr. Simmons on  
8 direct examination, cross-examination, redirect, recross, and further redirect before Mr. Simmons  
9 rested.<sup>871</sup> The Division notes that Mr. Andrade testified on May 10, 2016, and Mr. Simmons did not  
10 rest his case until May 19, 2016, providing ample time to arrange for testimony from Mr. Wilkerson,  
11 if desired.

12 As to Mr. Orr, the Division's reply concedes that no allegation regarding offer or sale was made  
13 in the Notice or the Division's opening statement. However, the Division argues that the evidence of  
14 Mr. Orr's offer to sell securities was raised by Mr. Orr himself during his own testimony, and thereby  
15 he impliedly consented to trying the issue. In support of this argument, the Division cites the Ninth  
16 Circuit case, *Slavitt v. Kauhi*, wherein the defendant denied the plaintiff's allegation of a willful assault  
17 and testified to facts supporting a theory of negligence.<sup>872</sup> The Ninth Circuit held that the trial court  
18 should have allowed the plaintiff's motion to amend his complaint to add a new claim of negligence  
19 because the defendant impliedly consented to the new claim as it arose from his own testimony.<sup>873</sup> The  
20 Division notes that when it cross-examined Mr. Orr regarding his claims of never meeting with  
21 potential investors, he testified to meeting four people, telling them about Barcelona Advisors over  
22 drinks, and directing them to Mr. McDonough.<sup>874</sup> The Division compares Mr. Orr's raising of a new  
23 issue with the *Slavitt* case, and argues that implied consent should similarly be found in this case. In  
24 the alternative, as with Mr. Simmons, the Division argues that even if Mr. Orr did not impliedly consent

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26 <sup>869</sup> Tr. at 1235-1236, 1251.

<sup>870</sup> *U.S. v. Shanbaum*, 10 F.3d 305, 313 (5th Cir. 1994).

<sup>871</sup> Tr. at 1164, 1170, 1171, 1173, 1204, 1207-1208, 1218, 1219, 1235-1236, 1246-1247, 1248-1251, 1253.

<sup>872</sup> *Slavitt v. Kauhi*, 384 F.2d 530, 531-532 (9th Cir. 1967).

<sup>873</sup> *Slavitt*, 384 F.2d at 532-534.

<sup>874</sup> Tr. at 743, 749-750.

1 to trying the issue, the Division's motion should still be allowed as Mr. Orr has not shown how he  
2 would be prejudiced by conforming the notice.

3 Mr. Simmons and Mr. Orr jointly filed the S&O Response, contending that the Division failed  
4 to fully address the merits of its motion to conform in its Post-Hearing Brief, then improperly set forth  
5 new arguments in its Reply which Mr. Simmons and Mr. Orr did not have an opportunity to address,  
6 thereby necessitating the S&O Response. The S&O Response argues that neither Mr. Simmons nor  
7 Mr. Orr agreed, expressly or impliedly, to try issues of direct liability, noting that the Administrative  
8 Law Judge acknowledged that the parties had not agreed to the motion to conform.<sup>875</sup> Mr. Simmons  
9 and Mr. Orr argue that they defended only against those claims set forth in the T.O. and Notice and the  
10 Amended T.O. and Notice, and stated as much, without response or objection from the Division, at  
11 hearing: in Mr. Simmons' opening statement,<sup>876</sup> in Mr. Orr's opening statement,<sup>877</sup> in Mr. Simmons'  
12 testimony on redirect,<sup>878</sup> and in Mr. Orr's closing statement.<sup>879</sup> Even if consent was given, Mr.  
13 Simmons and Mr. Orr contend that they would be prejudiced as they were not afforded an opportunity  
14 to respond to the new claims in pleadings, conduct discovery, or present additional evidence. Mr.  
15 Simmons asserts that minimally, he would have called additional witnesses that were disclosed by the  
16 Division but who would have had nothing to add with respect to the control person claims. Mr.  
17 Simmons and Mr. Orr both accuse the Division of concealing its intent of the motion to conform and  
18 argue that the Respondents could have better addressed the merits of the motion at hearing had the  
19 Division stated its purpose of raising claims of direct liability. Mr. Simmons and Mr. Orr further  
20 contend that given the multiple Respondents and numerous issues, the only way they would know what  
21 to contest was by referring to the pleadings in the Amended T.O. and Notice. Mr. Simmons and Mr.  
22 Orr further challenge that the cases cited by the Division involved narrow issues brought against a  
23 single party and are inapplicable here, as this case involved multiple claims against six Respondents.<sup>880</sup>

24 <sup>875</sup> Tr. at 1268.

25 <sup>876</sup> Tr. at 26, 28.

26 <sup>877</sup> Tr. at 29.

27 <sup>878</sup> Tr. at 1242-1243.

28 <sup>879</sup> Tr. at 1269.

<sup>880</sup> Mr. Simmons and Mr. Orr mention the cases cited by the Division as being a "tax court appeal (*Janis v Commissioner*)" and "a board of immigration deportation appeal (*Cortez-Pineda v Holder*)." S&O Response at 7. However, we can find neither of these cases as having been cited by the Division in its Post-Hearing Brief, its Amended Post-Hearing Brief, or its Reply to Post-Hearing Briefs of Respondents George T. Simmons and Bruce L. Orr. Regarding the motion to conform, the

1                   2. Analysis

2           The Commission's rules allow for the amendment or correction of formal documents and  
3 provide that "[f]ormal documents will be liberally construed and defects which do not affect substantial  
4 rights of the parties will be disregarded."<sup>881</sup> Motions are to conform insofar as practicable with the  
5 Arizona Rules of Civil Procedure.<sup>882</sup> The Arizona Rules of Civil Procedure apply when procedure is  
6 not otherwise set forth by law, by the Commission's Rules of Practice and Procedure, or by regulations  
7 or orders of the Commission.<sup>883</sup> Rule 15(b) permits theories of liability to be treated as if they were  
8 raised in the pleadings when they are tried by the express or implied consent of the parties.<sup>884</sup>  
9 Amendments under Rule 15(b) allow a case to ultimately be tried on its merits and such amendments  
10 should be liberally allowed in the interests of justice.<sup>885</sup> Whether an issue has been tried under Rule  
11 15(b) will depend upon the facts of the case, but the record must have some affirmative showing that  
12 the unpleaded issue was reached.<sup>886</sup> A failure to object to the introduction of evidence on the ground  
13 that it is not within the issues sufficiently implies consent to try such issues.<sup>887</sup> However, permitting  
14 evidence relevant to an existing issue to be admitted without objection does not constitute implied  
15 consent to the trial of an issue which has not been raised.<sup>888</sup> It would be error to refuse to allow an  
16 amendment of a pleading to conform to proof on the ground that the amendment would be a change in  
17 theory.<sup>889</sup> If the amendment would cause prejudice or surprise, it may be properly refused.<sup>890</sup>

18                                   a) Amendments Pertaining to Barcelona Land Company and Mr. Kerrigan

19           Barcelona Land Company was not represented and made no appearance at the hearing. Mr.  
20 Kerrigan raised no objection to the Division's motion to conform at the hearing and he has not  
21

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22 Division cites five cases: *Continental Nat'l Bank v. Evans*, 107 Ariz. 378 (1971), *Leigh v. Swartz*, 74 Ariz. 108 (1952),  
23 *Herrera v. Valentine*, 653 F.2d 1220 (8th Cir. 1981), *U.S. v. Shanbaum*, 10 F.3d 305 (5th Cir. 1994), *Slavitt v. Kauhi*, 384  
F.2d 530 (9th Cir. 1967). The S&O Response references none of these five cited cases.

24 <sup>881</sup> A.A.C. R14-3-106(E).

25 <sup>882</sup> A.A.C. R.14-3-106(K).

26 <sup>883</sup> A.A.C. R.14-3-101(A).

27 <sup>884</sup> *Dietz v. Waller*, 141 Ariz. 107, 112, 685 P.2d 744, 749 (1984).

28 <sup>885</sup> *Evans*, 107 Ariz. at 381, 489 P.2d at 18.

<sup>886</sup> *Hill v. Chubb Life American Ins. Co.*, 182 Ariz. 158, 161, 894 P.2d 701, 704 (1995).

<sup>887</sup> *In re Estate of McCauley*, 101 Ariz. 8, 18, 415 P.2d 431, 441 (1966).

<sup>888</sup> *Magma Copper Co. v. Industrial Comm'n of Arizona*, 139 Ariz. 38, 47 (1983).

<sup>889</sup> *McCauley*, 101 Ariz. at 18, 415 P.2d at 431.

<sup>890</sup> See *Bujanda v. Montgomery Ward & Co. Inc.*, 125 Ariz. 314, 316, 609 P.2d 584, 586 (App. 1980); *Eng v. Stein*, 123 Ariz. 343, 347, 599 P.2d 796, 800 (1979).

1 addressed the issue in his closing brief. No allegation of prejudice or surprise has been made as to the  
2 amendments pertaining to Barcelona Land Company and Mr. Kerrigan. Without objection, the  
3 Division's motion to conform the Amended T.O. and Notice is granted to include additional allegations  
4 against Barcelona Land Company and Mr. Kerrigan as identified in the Securities Division's Amended  
5 Post-Hearing Brief.

6 b) Amendments Pertaining to Mr. Simmons

7 The new allegations of direct liability against Mr. Simmons arise from the fourth investment  
8 made by Mr. Eaves and the two investments made by Mr. Andrade. Although the violations are newly  
9 alleged, the Amended T.O. and Notice set forth allegations regarding these investments.

10 Regarding the fourth investment by Mr. Eaves, the Amended T.O. and Notice alleged that  
11 "Harkins, Kerrigan, Simmons, Orr, and Barcelona Advisors offered and sold to R.E. and M.E." the  
12 February 28, 2014 investment, with "Harkins, Kerrigan, Simmons, and Orr [meeting] with M.E. and  
13 request[ing] that he make this investment."<sup>891</sup>

14 Mr. Andrade's first investment is referenced in the Amended T.O. and Notice under the heading  
15 "January 2014 Offering." The January 2014 Offering was alleged to have started at least since  
16 December 31, 2013, comprised of offers made by Harkins, Kerrigan, Simmons, Orr, and Barcelona  
17 Advisors, and sales made by Harkins and Barcelona Advisors.<sup>892</sup> Though Mr. Andrade's first  
18 investment is not specifically identified in the Amended T.O. and Notice, the evidence presented of his  
19 receipt of the January 14, 2014 private placement memorandum<sup>893</sup> and his \$50,000 investment on April  
20 16, 2014,<sup>894</sup> correspond with the allegations that at least one investor received the January  
21 memorandum and at least two investors invested at least \$150,000 in the offering.<sup>895</sup>

22 Mr. Andrade's second investment is referenced in the Amended T.O. and Notice under the  
23 heading "June 2014 Offering." The June 2014 offering was alleged to have spanned a period from at  
24 least June 11, 2014 to June 16, 2014, comprising offers and sales made by Harkins and Barcelona  
25

26 <sup>891</sup> Amended T.O. and Notice at ¶ 45.

27 <sup>892</sup> Amended T.O. and Notice at ¶ 53.

28 <sup>893</sup> Tr. at 387.

<sup>894</sup> Exh. S-31b.

<sup>895</sup> Amended T.O. and Notice at ¶¶ 54, 58.

1 Advisors to at least one investor who invested at least \$5,000.<sup>896</sup> Though Mr. Andrade's second  
2 investment is not specifically identified in the Amended T.O. and Notice, his June 16, 2014, investment  
3 of \$5,000 is the only investment in the evidence which corresponds to the allegation.<sup>897</sup>

4 Although the Amended T.O. and Notice specifically stated that Mr. Simmons was involved in  
5 the offer and/or sale of two of the three investments upon which the Division now makes direct  
6 allegations of violations, the only theory of liability against Mr. Simmons stated in the Amended T.O.  
7 and Notice was that of control person liability over Barcelona Advisors and Barcelona Land Company  
8 pursuant to A.R.S. § 44-1999.<sup>898</sup> However, the Amended T.O. and Notice accused Barcelona Advisors  
9 of violating A.R.S. §§ 44-1841, 44-1842, and 44-1991 in connection with these transactions. As such,  
10 Mr. Simmons had no basis to object to the relevance of questions posed to Mr. Eaves and Mr. Andrade  
11 regarding Mr. Simmons' role in their investments. Similarly, introducing evidence regarding these  
12 three transactions through cross-examination of Mr. Eaves and Mr. Andrade, as well as the direct  
13 testimony of Mr. Simmons, does not indicate implied consent to trying the new allegations, but rather  
14 could be considered part of Mr. Simmons' defense to the existing control person liability claims.  
15 Further, the Division's opening statement, which briefly stated direct activity allegedly committed by  
16 Mr. Simmons, cannot be seen as evidence of implied consent when Mr. Simmons had already been  
17 mentioned as being involved in the offer of this transaction in the Amended T.O. and Notice but the  
18 Division had elected not to include a direct liability allegation.

19 We do not find that Mr. Simmons expressly consented to the Division's motion to conform by  
20 failing to object to the motion at the hearing. The Administrative Law Judge elected to take the motion  
21 under advisement and gave the parties an opportunity to argue the motion in their post-hearing briefs.  
22 Since Mr. Simmons contests the motion, we cannot find him to have expressly consented.

23 The Division argues that the motion to conform should be granted as to Mr. Simmons because  
24 he has not shown how he would be prejudiced. The Division argues that no prejudice exists because  
25 all of the relevant factual and legal details are before the Commission. We disagree. The facts  
26 regarding the offer and sale of Mr. Eaves' fourth investment and Mr. Andrade's two investments are

27 <sup>896</sup> Amended T.O. and Notice at ¶¶ 86-87.

28 <sup>897</sup> Exh. S-31b.

<sup>898</sup> Amended T.O. and Notice at ¶¶ 104-105.

1 disputed as Mr. Simmons' testimony conflicts with that of the investors as to key issues. Mr. Simmons  
2 contends that had he be given notice of the new claims, he could have conducted discovery and called  
3 additional witnesses. Had Mr. Simmons been aware of the new claims, he could have decided to  
4 present testimony from Mr. Wilkerson, who was present at the lunch meeting with Mr. Andrade. As  
5 such, additional relevant factual details may have been presented to the Commission had Mr. Simmons  
6 been given notice of the new allegations against him.

7 c) Amendments Pertaining to Mr. Orr

8 The new allegations of direct liability against Mr. Orr arise from his January 2014, meeting  
9 over drinks with four persons who were identified as potential investors in an expense report submitted  
10 by Mr. Orr.<sup>899</sup> The Amended T.O. and Notice makes no allegation regarding this meeting. As evidence  
11 of Mr. Orr's alleged offer, the Division relies upon the expense report and Mr. Orr's testimony. The  
12 testimony regarding this meeting came from cross-examination of Mr. Orr by the Division. The  
13 specific testimony reads as follows:

14 Q. [Division] Okay. And it looks like you attended another executive  
15 meeting on or about January 15th of 2014; correct?

16 A. [Mr. Orr] Yes.

17 Q. And that evening you had drinks with prospective investors. Do you  
18 see that entry for the 14th, July [sic] 14th? Drinks, prospective investors.

19 Oh, yeah.

20 A. Well I see that, yes.

21 Q. Yeah. And they were Don and Dave Dufek, and Dave McKinney,  
22 and Sheila Osias; right?

23 A. Yeah. Osias, yeah.

24 Q. And they were potential investors?

25 A. They never were investors, but – no. I met them for drinks and I told  
26 them about the company, yes.

27  
28 <sup>899</sup> Exh. S-173 at ACC007316.

1 Q. Why did you classify them as prospective investors? Because you  
2 were soliciting investment; right?

3 A. I did not solicit investment. I turned them over to, I believe it was  
4 Mr. McDonough at that time.

5 Q. Okay.

6 A. Or whoever – it was either Mr. McDonough or Mr. Wilkerson.

7 Q. But you weren't involved in trying to raise capital for this company,  
8 were you?

9 A. No. I met them at -- I remember that. That was at the Downside  
10 Risk. I was there having a couple drinks. I met them and so I turned  
11 them over.

12 Q. Did you tell them about the company?

13 A. Only that, you know, what we were. It was more a social having a  
14 couple drinks and I turned them over and said here, you know, call these  
15 guys.<sup>900</sup>

16 Following cross-examination, the Administrative Law Judge offered Mr. Orr the opportunity  
17 to provide additional testimony.<sup>901</sup> Mr. Orr testified “I met some people one time at Downside Risk  
18 and I referred them to our investment people, I believe Mr. McDonough. ... But as far as direct  
19 meetings with investors, trying to solicit money, I have never had any role in that.”<sup>902</sup>

20 The Division contends that the alleged offers by Mr. Orr were tried by implied consent. Unlike  
21 the new allegations against Mr. Simmons, the alleged offers by Mr. Orr were not mentioned in the  
22 Amended T.O. and Notice, and cannot be construed as having applied to another respondent when Mr.  
23 Orr was being questioned. As such, an objection to the relevance of the questions would have been  
24 proper. No such objection came from Mr. Orr on cross-examination, and he testified further regarding  
25 the issue on his own. Accordingly, we find that Mr. Orr impliedly consented to try the issue at the  
26 hearing.

27 <sup>900</sup> Tr. at 749-750.

28 <sup>901</sup> Tr. at 756.

<sup>902</sup> Tr. at 756-757.

1 In his Post-Hearing Brief and the S&O Response, Mr. Orr objects to the Commission  
2 considering these allegations. Like Mr. Simmons, Mr. Orr argues that he would be prejudiced by not  
3 being afforded an opportunity to conduct discovery and present additional witnesses on this allegation.  
4 However, unlike the allegations against Mr. Simmons, the record presents no conflicting testimony  
5 regarding the alleged offers made by Mr. Orr. The only evidence presented by the Division on this  
6 issue is Mr. Orr's testimony and his expense reports. With no conflicting evidence regarding Mr. Orr's  
7 alleged offers, we have no reason to doubt the veracity of his testimony on this issue. Mr. Orr cannot  
8 assert prejudice from an inability to present corroborating witnesses as their testimony would be  
9 cumulative on the issue.

### 10 3. Conclusion

11 Having considered the Division's motion to conform and the Respondents' objections, we grant  
12 the motion to conform, in part, and deny, in part. The motion to conform is granted, except as to the  
13 new allegations against Mr. Simmons. As to those allegations made against Mr. Simmons, the record  
14 does not establish Mr. Simmons' implied or express consent to the motion. Further, Mr. Simmons  
15 would be prejudiced by granting the motion. Accordingly, the motion to conform as to Mr. Simmons  
16 is denied. The allegations of liability against Mr. Simmons pursuant to A.R.S. §§ 44-1841 and 44-  
17 1842, and the direct liability allegations against Mr. Simmons pursuant to A.R.S. § 44-1991, are  
18 dismissed.

### 19 C. Classification of the Investments

#### 20 1. Barcelona Advisors Notes

21 The Division contends that the notes sold by Barcelona Advisors are securities. The Division  
22 argues that for the purpose of registration provisions, notes are securities unless exempt from  
23 registration under the Act. The Division argues that the Barcelona Advisors notes are not exempt.

24 The Division further contends that the notes are securities under the Act's anti-fraud provisions.  
25 The Division analyzes the Barcelona Advisors notes under the "family resemblance" test, adopted as  
26 law in Arizona in *MacCollum v. Perkinson*, 185 Ariz. 179, 913 P.2d 1097 (App. 1996). Under  
27 *MacCollum*, the Division contends that a note is presumed to be a security for anti-fraud purposes but  
28 that presumption may be rebutted "by showing that a note bears a strong resemblance to an instrument

1 that is not intended to be regulated as a security based on four factors: 1) the motives of the parties, 2)  
2 the plan of distribution, 3) the public's reasonable expectations, and 4) the existence of a risk-reducing  
3 factor such as another regulatory scheme.”<sup>903</sup> The Division contends that under the facts of this case,  
4 these factors do not rebut the presumption that the Barcelona Advisors notes are securities: Barcelona  
5 Advisors was motivated to raise working capital while the investors were motivated by the promise of  
6 returns; Barcelona Advisors’ plan of distribution was to raise capital through Mr. Kerrigan, a registered  
7 securities salesman; the public could reasonably expect that the notes are securities because the PPMs  
8 expressly refer to them as securities; and there is no alternative regulatory scheme or risk-reducing  
9 factor for the Barcelona Advisors notes other than securities regulation.

10 Mr. Harkins contends the Barcelona Advisors notes that included a member interest in the  
11 company, i.e., those that were part of the 12-6-12 and 10-5-10 Offerings, are securities.<sup>904</sup> Mr. Harkins  
12 contends that other notes are “Stand-Alone Transactions” where the company took a loan from a single  
13 borrower evidenced by a promissory note, with or without accompanying rights or interests.  
14 Specifically, Mr. Harkins identifies as Stand-Alone Transactions: Ms. Burleson’s second investment;  
15 Mr. and Mrs. Eaves’s second, third, fourth, fifth and sixth investments; and Mr. Andrade’s second  
16 investment. Mr. Harkins analyzes these transactions under the four factors of the family resemblance  
17 test, as set forth by the United States Supreme Court in *Reves v. Ernst & Young*, 494 U.S. 56, 110 S.Ct.  
18 945, 108 L.Ed.2d 47 (1990). Mr. Harkins contends that the first factor, the parties’ motivations, favors  
19 finding that the Stand-Alone Transactions were not securities as they were offered to correct Barcelona  
20 Advisors’ cash flow problems.<sup>905</sup> Regarding the second factor, common trading plan of distribution,  
21 Mr. Harkins cites *MacCollum* for the proposition that “[o]ffering and selling to a broad segment of the  
22 public is all that is required to establish the requisite ‘common trading’ in an instrument”<sup>906</sup> while the  
23 notes here, offered individually and negotiated separately with single lenders, are not securities under  
24 the *Reves* test. Mr. Harkins argues that the third factor depends on how the public reasonably perceives

25 <sup>903</sup> Securities Division’s Amended Post-Hearing Brief at 48.

26 <sup>904</sup> Amended Post-Hearing Brief of Respondent Richard C. Harkins at 84. We note that the 10-5-10 notes, unlike the 12-6-  
12 notes, did not include membership units in Barcelona Advisors. Exhs. S-57 at ACC000726, S-58 at ACC005713.

27 <sup>905</sup> “If the note is exchanged to facilitate the purchase and sale of a minor asset or consumer good, to correct for the seller’s  
28 cash-flow difficulties, or to advance some other commercial or consumer purpose, on the other hand, the note is less sensibly  
described as a ‘security.’” *Reves*, 494 U.S. at 66, 110 S. Ct. at 952.

<sup>906</sup> *MacCollum*, 185 Ariz. at 187, 913 P.2d at 1105.

1 the note, which favors finding the note is not a security as the Stand-Alone Transactions were not  
 2 advertised or offered to multiple people but were offered in separate cases based on the company's  
 3 cash needs. Mr. Harkins concedes that the fourth factor, whether risk reducing factors are present,  
 4 might favor finding some of the Stand-Alone Transactions are securities. Mr. Harkins notes that four  
 5 of the Stand-Alone Transactions <sup>907</sup> carry no attachments of units, rights or options, and may therefore  
 6 be securities. Mr. Harkins argues that the other three Stand-Alone Transactions <sup>908</sup> are supported by a  
 7 second form of value, either membership units or an option to purchase membership units, and  
 8 therefore contain risk reducing factors that indicate those notes are not securities.

9 In its Reply Brief, The Division contends that the four family resemblance factors as applied  
 10 here compare favorably to those in *MacCollum*, where the note was held to be a security. As for the  
 11 first factor, motivation of the parties, the Division notes that in *MacCollum*, the issuer was motivated  
 12 to raise capital and the investor sought to profit from interest on the note. Similarly, the Division argues  
 13 that Barcelona Advisors had the motive of raising capital while investors Ms. Burleson, Mr. Eaves, and  
 14 Mr. Andrade were motivated by interest payments from their current or prior investments. Regarding  
 15 the third factor, the Division cites *MacCollum* for the proposition that "[t]he essence of a security is its  
 16 character as an investment."<sup>909</sup> The Division contends that Ms. Burleson, Mr. Andrade, and Mr. Eaves  
 17 believed their Stand-Alone Transactions were investments. As to the fourth factor, existence of a risk-  
 18 reducing factor, the Division states that the note in *MacCollum* was not secured and not subject to  
 19 substantial regulation under Arizona law other than the Act. The Division contends that no risk-  
 20 reducing factors were present for the stand-alone notes here, and argues that options to purchase  
 21 Barcelona Advisors' membership units did nothing to reduce risk as "[t]he options are now just as  
 22 worthless as the notes themselves."<sup>910</sup>

23 The Division notes that in *MacCollum* the issuer sold a single note to a single investor and  
 24 marketed to a limited number of investors, making the second factor of the test resemble the family of  
 25 notes not deemed to be securities. The Division admits that the Barcelona Advisors stand-alone notes

26 <sup>907</sup> Ms. Burleson's \$50,000 note that was not in the 12-6-12 Offering, Mr. Eaves' fifth and sixth investments, and Mr.  
 27 Andrade's second investment.

<sup>908</sup> Mr. Eaves' second, third and fourth investments.

<sup>909</sup> *MacCollum*, 185 Ariz. at 187, 913 P.2d at 1105.

28 <sup>910</sup> Division Reply to Post-Hearing Brief of Respondent Richard C. Harkins at 3.

1 had unique terms unlike the 12-6-12 notes and the 10-5-10 notes. However, while the *MacCollum*  
 2 court found taht the second factor did not indicate a security, the evidence as a whole failed to rebut  
 3 the presumption that the note was a security. Similarly, the Division argues that the stand-alone notes,  
 4 in spite of their limited distribution, are also securities.

5 The Division correctly states that the standard applied by the Arizona Supreme Court with  
 6 regard to determining whether a note is a security for registration purposes, namely that a note is a  
 7 security unless otherwise exempted by statute.<sup>911</sup> Therefore, the Barcelona Advisors notes are  
 8 securities, for registration purposes, unless exempt under the Act. We specifically consider the  
 9 applicability of exemptions in a separate section, *infra*.

10 When analyzing a note in terms of whether it is a security for the purposes of the antifraud  
 11 provisions of the Act, the Arizona Court of Appeals has adopted the “family resemblance” test,<sup>912</sup>  
 12 which was used under federal securities law by the United States Supreme Court in *Reves v. Ernst &*  
 13 *Young*, 494 U.S. 56, 110 S.Ct. 945, 108 L.Ed.2d 47 (1990). The test begins with the presumption that  
 14 every note is a security.<sup>913</sup> This presumption can be rebutted if a review of four factors establishes a  
 15 “family resemblance” to a list of instruments that are not securities, or if those factors establish a new  
 16 category of instrument that should be added to the list.<sup>914</sup> This list of notes “that are not securities  
 17 includes the note delivered in consumer financing, the note secured by a mortgage on a home, the short-  
 18 term note secured by a lien on a small business or some of its assets, the note evidencing a ‘character’  
 19 loan to a bank customer, short-term notes secured by an assignment of accounts receivable, or a note  
 20 which simply formalizes an open-account debt incurred in the ordinary course of business” as well as  
 21 “notes evidencing loans by commercial banks for current operations”<sup>915</sup> The four factors considered  
 22 are: 1) the motivations prompting a reasonable buyer and seller to enter the transaction; 2) the plan of  
 23 distribution of the instrument to determine if it is an instrument subject to common speculation or  
 24 investment; 3) the reasonable expectations of the investing public; and 4) whether some risk-reducing

25 \_\_\_\_\_  
 26 <sup>911</sup> *State v. Tober*, 173 Ariz. 211, 213, 841 P.2d 206, 209 (1992).

<sup>912</sup> *MacCollum*, 185 Ariz. at 187, 913 P.2d at 1105.

<sup>913</sup> *Reves*, 494 U.S. at 65, 110 S. Ct. at 951.

<sup>914</sup> *Id.* Since both inquiries involve application of the same four-factor test, they “essentially collapse into a single inquiry.”  
 27 *S.E.C. v. Wallenbrock*, 313 F.3d 532, 537 (9th Cir. 2002).

<sup>915</sup> *Reves*, 494 U.S. at 65, 110 S. Ct. at 951 (citations omitted).  
 28

1 factor, such as the existence of another regulatory scheme, would render application of the Securities  
2 Act unnecessary.<sup>916</sup> We may also consider the notes in light of the economic realities of the  
3 transaction.<sup>917</sup>

4 Under the first factor, a note is more likely a security “[i]f the seller's purpose is to raise money  
5 for the general use of a business enterprise or to finance substantial investments and the buyer is  
6 interested primarily in the profit the note is expected to generate.”<sup>918</sup> Conversely, a note is less likely  
7 to be a security “[i]f the note is exchanged to facilitate the purchase and sale of a minor asset or  
8 consumer good, to correct for the seller's cash-flow difficulties, or to advance some other commercial  
9 or consumer purpose.”<sup>919</sup>

10 Notes were sold under the 12-6-12 Offering to raise working capital for Barcelona Advisors.<sup>920</sup>  
11 Notes sold under the 10-5-10 Offering were also designed to raise working capital for the company.<sup>921</sup>  
12 Ms. Burleson made her stand-alone investment on or about the same day as her 12-6-12 investment.<sup>922</sup>  
13 Ms. Burleson’s stand-alone investment was made under different terms to accommodate her desire to  
14 call the note sooner if she needed.<sup>923</sup> But for this special request of Ms. Burleson, her full \$100,000  
15 investment would have been under the 12-6-12 Offering. Ms. Burleson’s investment was made while  
16 Barcelona Advisors was actively seeking working capital under the 12-6-12 Offering and the record  
17 does not suggest that Barcelona Advisors had any other motivation for signing the note.

18 Similarly, the second investment of Mr. Eaves occurred while Barcelona Advisors was in the  
19 midst of raising capital from investors for its 12-6-12 Offering.<sup>924</sup> Mr. Eaves was motivated to make  
20 the second investment because of a recommendation from his investment advisor, Mr. Kerrigan, and  
21 because he had been receiving interest on his first investment.<sup>925</sup> Mr. Eaves’ third and fourth  
22 investments were made after Barcelona Advisors requested additional funds from Mr. Eaves to cover  
23

24 <sup>916</sup> *Reves*, 494 U.S. at 66-67, 110 S. Ct. at 951-952; *MacCollum* 185 Ariz. at 187-188, 913 P.2d at 1105-1106.

25 <sup>917</sup> *Wallenbrock*, 313 F.3d at 538.

26 <sup>918</sup> *Reves*, 494 U.S. at 66, 110 S. Ct. at 951-952.

27 <sup>919</sup> *Reves*, 494 U.S. at 66, 110 S. Ct. at 952.

28 <sup>920</sup> Tr. at 925, 927-928; Exhs. S-5 at ACC007205, S-57 at ACC000726.

<sup>921</sup> Exhs. S-26, S-27, S-58 at ACC005713, S-65, S-66, S-79, S-108.

<sup>922</sup> Tr. at 987-988.

<sup>923</sup> Tr. at 988.

<sup>924</sup> Exh. S-31b.

<sup>925</sup> Tr. at 203.

1 gaps in capital that the company expected to receive.<sup>926</sup> Mr. Eaves' fifth and sixth investments were  
 2 made after Mr. Harkins' requested funds to cover the company's outstanding bills.<sup>927</sup> Mr. Eaves'  
 3 motivation in making his third, fourth, fifth and sixth investments was to protect his first two  
 4 investments.<sup>928</sup> Mr. Andrade made his second investment to protect his initial investment after  
 5 receiving a letter from Barcelona Advisors requesting money from current investors to cover a short-  
 6 term capital need.<sup>929</sup>

7 Barcelona Advisors found itself in a capital shortfall based upon the failure of Mr. Weintraub  
 8 to bring in any funds from a planned \$70 million offering with registered investment advisors.<sup>930</sup> We  
 9 find that funds raised through the stand-alone investments were not attempts to correct cash flow  
 10 difficulties, but reflect Barcelona's Advisors' ongoing need to acquire capital to maintain business  
 11 operations. Accordingly, the first *Reves* factor weighs in favor of finding the stand-alone notes, as well  
 12 as the 12-6-12 Offering and 10-5-10 Offering notes, to be securities.

13 The second *Reves* factor is the plan of distribution. Offers and sales to a broad segment of the  
 14 public will establish common trading in an instrument.<sup>931</sup> The notes in the 12-6-12 Offering and the  
 15 10-5-10 Offering were marketed to a number of investors, indicating they are securities under the *Reves*  
 16 test. The Stand-Alone Transaction notes were marketed individually to each purchaser. The Stand-  
 17 Alone Transaction note for Ms. Burleson was tailored to her specific desire to be able to call the note  
 18 sooner.<sup>932</sup> The second *Reves* factor weighs in favor of finding that the stand-alone notes are not  
 19 securities.

20 The third factor requires us to consider the reasonable expectations of the investing public.  
 21 When a note seller calls the note an investment, it is generally reasonable for a prospective purchaser  
 22 to take the offeror at its word, but when note purchasers are expressly put on notice that a note is not  
 23 an investment, it is usually reasonable to conclude that the investing public would not expect the notes  
 24

25 <sup>926</sup> Tr. at 282, 287-288, 345-347.

26 <sup>927</sup> Tr. at 289, 291, 293-294.

27 <sup>928</sup> Tr. at 282-283, 287-288, 305-306.

28 <sup>929</sup> Tr. at 396; Exh. S-60.

<sup>930</sup> Tr. at 768-769, 793, 795; Exhs. S-5 at ACC007212, S-32 at 27-28, 84.

<sup>931</sup> *Reves*, 494 U.S. at 68, 110 S. Ct. at 953.

<sup>932</sup> Tr. at 988.

1 to be securities.<sup>933</sup>

2 The PPMs for the 12-6-12 Offering and 10-5-10 Offering contain copies of the “Investor  
3 Questionnaire and Subscription Agreement,” for prospective purchasers to sign, an express indication  
4 to the public that these are investments.<sup>934</sup> Further, the PPMs expressly refer to the notes as  
5 securities.<sup>935</sup> The Stand-Alone Transaction notes for Ms. Burleson, Mr. Eaves and Mr. Andrade are  
6 drafted similar in appearance to their respective notes from the 12-6-12 Offering or the 10-5-10  
7 Offering, with all of the notes identifying the investor as the “Payee” and Barcelona Advisors as the  
8 “Maker.”<sup>936</sup> Although the terms of the notes differ, the Stand-Alone Transaction notes do not give a  
9 reasonable investor a reason to believe that they are any less of an investment than notes in the 12-6-  
10 12 Offering and 10-5-10 Offering. As part of Mr. Eaves’ second transaction, he signed a “Loan and  
11 Investment Agreement,” however the economic reality of the transaction provided Mr. Eaves with a  
12 note bearing the same interest, bonuses and maturity date as his note in the 12-6-12 Offering.<sup>937</sup>  
13 Further, Mr. Eaves and Mr. Andrade both considered all of their respective notes to be investments.<sup>938</sup>  
14 Accordingly, the third *Reves* factor weighs in favor of finding the stand-alone notes, as well as the 12-  
15 6-12 Offering and 10-5-10 Offering notes, to be securities.

16 The fourth factor requires us to look at risk-reducing factors that would diminish the need for  
17 protection under the Act, such as the presence of other regulatory schemes, collateral or insurance.<sup>939</sup>  
18 The Barcelona Advisors notes carried no security interest or collateral. Mr. Harkins argues that some  
19 of the Stand-Alone Transactions came with rights or purchase options in Barcelona Advisors’ member  
20 units. However, these membership units and options did nothing to protect purchasers from default or  
21 to enforce repayment. Accordingly, the fourth *Reves* factor weighs in finding the Barcelona Advisors  
22 notes to be securities.

23 Under Arizona law, the Barcelona Advisors notes are presumed to be securities. Having  
24 considered the family resemblances test under *Reves*, we conclude that the Barcelona Advisors notes

25 <sup>933</sup> *Stoiber v. S.E.C.*, 161 F.3d 745, 751 (D.C. Cir. 1998).

26 <sup>934</sup> Exhs. S-5 at ACC007253, S-57 at ACC000773, S-58 at ACC005771.

27 <sup>935</sup> Exhs. S-5 at ACC007207, S-57 at ACC000729, S-58 at ACC005715.

28 <sup>936</sup> Exhs. S-38, S-39, S-42, S-49, S-50, S-51, S-53, S-54, S-55, S-56, S-184.

<sup>937</sup> Exhs. S-7, S-42.

<sup>938</sup> Tr. at 190, 376.

<sup>939</sup> *Resolution Trust Corp. v. Stone*, 998 F.2d 1534, 1539 (10th Cir. 1993).

1 do not resemble instruments on the *Reves* list, and the evidence does not establish that they should be  
2 a category added to that list. Accordingly, we find the Barcelona Advisors notes are securities subject  
3 to the antifraud provisions of the Act.

#### 4 2. Barcelona Advisors Membership Units

5 The Division contends that the Barcelona Advisors Membership Units (“LLC Units”) are  
6 securities because they are investment contracts. The Division applies the *Howey*<sup>940</sup> test to determine  
7 the LLC Units are investment contracts if they involve an investment of money in a common enterprise  
8 with the expectation of profits from the managerial efforts of others. The Division concludes that the  
9 LLC Units meet the *Howey* test because: investors expected profits from distributions promised to LLC  
10 Unit holders; investors relied upon the managerial efforts of Mr. Harkins, Mr. Kerrigan, Mr. Simmons  
11 and Mr. Orr, who were the managers of Barcelona Advisors, a manager-managed LLC; and the investors  
12 themselves had only minor powers similar to those of corporate shareholders. The Division further  
13 contends that the rights to purchase LLC Units are also securities because the Act specifically identifies  
14 rights to purchase investment contracts as securities.

15 In his Post-Hearing Brief, Mr. Harkins does not contest that the 12-6-12 Offering Membership  
16 Units are securities. However, Mr. Harkins argues that the rights and options in the Stand-Alone  
17 Transactions are not securities. Mr. Harkins contends that “[t]he Division incorrectly cites ARS 44-  
18 180[1](26) which deals with notes and not rights or options associated with a note.”<sup>941</sup> Mr. Harkins  
19 argues that securities differ from purchase options and he quotes a law firm website article on the topic  
20 of perfecting a security interest in an LLC. Mr. Harkins further argues that the Division failed to give  
21 proper notice that it would be asserting the purchase rights are a security.

22 In its Reply Brief, the Division notes that Mr. Harkins does not contest a finding that the LLC  
23 Units are securities in the form of investment contracts. The Division contends that under A.R.S. § 44-  
24 1801(26), a security includes the right to purchase an investment contract. The Division further  
25 contends that the Amended T.O. and Notice provided adequate notice that the rights to purchase LLC  
26 Units were subject to the hearing.

27 \_\_\_\_\_

28 <sup>940</sup> *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244 (1946).

<sup>941</sup> Amended Post-Hearing Brief of Respondent Richard C. Harkins at 90 (Emphasis in original).

1 a) LLC Units

2 Investment contracts are included within the statutory definition of a security.<sup>942</sup> The elements  
3 of what constitutes an investment contract have been set forth in *S.E.C. v. W.J. Howey Co.*, 328 U.S.  
4 293, 66 S.Ct. 1100, 90 L.Ed. 1244 (1946), adopted as law in Arizona in *Rose v. Dobras*, 128 Ariz. 209,  
5 624 P.2d 887 (App. 1981). Under *Howey* and *Rose*, an investment contract will be found in “any  
6 situation where (1) individuals are led to invest money (2) in a common enterprise (3) with the  
7 expectation that they will earn a profit solely through the efforts of others.”<sup>943</sup>

8 Investments in the 12-6-12 Offering included class B member units.<sup>944</sup> The first prong under  
9 *Howey* is met as the PPMs referred to purchasers as investors in the “Investor Questionnaire and  
10 Subscription Agreement” and purchasers considered themselves to be making an investment.<sup>945</sup> The  
11 second prong requires a finding of a common enterprise. “A common enterprise exists when ‘the  
12 fortunes of the investor are interwoven with and dependent upon the efforts and success of those  
13 seeking the investment or of third parties.’”<sup>946</sup> Investors’ funds were used for the working capital of  
14 Barcelona Advisors, and the investors’ fortunes were tied to the success of the company and its  
15 management.<sup>947</sup> Therefore, a common enterprise exists. The last prong of the *Howey* test requires that  
16 investors expect profits based solely on the efforts of others. Investors could expect to profit from  
17 member distributions.<sup>948</sup> At the time of making their investments, none of the investors had managerial  
18 positions with Barcelona Advisors, the management of which was vested in its managers: Mr. Harkins,  
19 Mr. Simmons, Mr. Kerrigan and Mr. Orr.<sup>949</sup> As such, investors relied upon the efforts of Barcelona  
20 Advisors’ management to see any profits. The LLC Units meet the requirements set forth under *Howey*,  
21 making them investment contracts and, therefore, securities.

22 . . .

23 . . .

24 \_\_\_\_\_  
<sup>942</sup> A.R.S. § 44-1801(26).

25 <sup>943</sup> *Rose*, 128 Ariz. at 211, 624 P.2d at 889.

26 <sup>944</sup> Exhs. S-5, S-57.

27 <sup>945</sup> Tr. at 159, 190, 426; Exhs. S-5 at ACC007253, S-57 at ACC000773.

28 <sup>946</sup> *Vairo v. Clayden*, 153 Ariz. 13, 17, 734 P.2d 110, 114 (App. 1987), quoting *S.E.C. v. Glenn W. Turner Enterprises, Inc.*,  
474 F.2d 476, 482 n. 7 (9th Cir. 1973).

<sup>947</sup> Tr. at 925, 927-928.

<sup>948</sup> Exhs. S-5 at ACC007213, S-57 at ACC000736.

<sup>949</sup> Exh. S-3b.

1                                    b) Right to Purchase LLC Units

2                    Arizona is a notice pleading state, therefore extensive fact pleading is not required.<sup>950</sup> The  
 3 purpose of the notice pleading standard “is to ‘give the opponent fair notice of the nature and basis of  
 4 the claim and indicate generally the type of litigation involved.’”<sup>951</sup> Under the Administrative  
 5 Procedure Act, notice in a contested case<sup>952</sup> requires “[a] short and plain statement of the matters  
 6 asserted.”<sup>953</sup>

7                    Mr. Eaves’ second investment included purchase rights to 75 units of Class A member units at  
 8 a total purchase price of \$0.75.<sup>954</sup> Mr. Eaves’ third and fourth investments each included options to  
 9 purchase 250,000 Class A member units.<sup>955</sup> The Amended T.O. and Notice stated that Mr. and Mrs.  
 10 Eaves received rights to purchase investment contracts in the form of limited liability company  
 11 membership interests on some of their investments in Barcelona Advisors.<sup>956</sup> The Amended T.O. and  
 12 Notice further stated that Mr. and Mrs. Eaves’ third and fourth investments included “rights to purchase  
 13 membership interests in Barcelona Advisors at an unspecified price.”<sup>957</sup> The Amended T.O. and Notice  
 14 does not mention that the second investment of Mr. and Mrs. Eaves included an option to purchase  
 15 Member Units, but rather includes that investment in the 12-6-12 Offering.<sup>958</sup> The Amended T.O. and  
 16 Notice asserts violations of A.R.S. § 44-1841 for the offer and sale of “securities in the form of  
 17 promissory notes and investment contracts” but does not specifically mention the rights to purchase  
 18 membership interests.<sup>959</sup>

19                    The three investments where Mr. Eaves received purchase rights or options were identified in  
 20 the Amended T.O. and Notice. Accordingly, we find that the Amended T.O. and Notice provided  
 21

22 <sup>950</sup> *Rosenberg v. Rosenberg*, 123 Ariz. 589, 592-93, 601 P.2d 589, 592-93 (1979).

23 <sup>951</sup> *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. at 419, 189 P.3d at 346, quoting *Mackey v. Spangler*, 81 Ariz. 113, 115, 301  
 P.2d 1026, 1027-28 (1956).

24 <sup>952</sup> A.R.S. § 41-1001(5) provides:

25 “Contested case” means any proceeding, including rate making, except rate making pursuant to article XV, Constitution of  
 Arizona, price fixing and licensing, in which the legal rights, duties or privileges of a party are required or permitted by  
 law, other than this chapter, to be determined by an agency after an opportunity for an administrative hearing.

26 <sup>953</sup> A.R.S. § 41-1061(B)(4).

27 <sup>954</sup> Exh. S-7.

28 <sup>955</sup> Exhs. S-53, S-54.

<sup>956</sup> Amended T.O. and Notice at 8.

<sup>957</sup> Amended T.O. and Notice at 9.

<sup>958</sup> Amended T.O. and Notice at 8.

<sup>959</sup> Amended T.O. and Notice at 16.

1 adequate notice that the issue of the right to purchase membership units was subject to the  
2 administrative hearing. While the Amended T.O. and Notice failed to specifically state that options to  
3 purchase LLC Units were among the alleged violations of A.R.S. § 44-1841, we find the Division's  
4 motion to conform corrects this oversight. Contrary to the arguments of Mr. Harkins, we find that this  
5 issue was fully litigated at the hearing, with the admission of documentary evidence of the transactions,  
6 testimony from Mr. Eaves and the opportunity of the Respondents to present evidence and testimony  
7 in rebuttal. Mr. Harkins states no manner in which he would be prejudiced by such an amendment.  
8 Accordingly, the issue of purchase rights and options in the LLC Units is properly before the  
9 Commission.

10 Under A.R.S. § 44-1801(26), a security includes "any ... investment contract ... or right to  
11 subscribe to or purchase, any of the foregoing." "[T]he definition of a security 'embodies a flexible  
12 rather than a static principle, one that is capable of adaptation to meet the countless and variable  
13 schemes devised by those who seek the use of the money of others on the promise of profits.'"<sup>960</sup> How  
14 LLC ownership interests may be considered under the perfection rules of the Uniform Commercial  
15 Code is irrelevant to our analysis, which is governed by the Act. Having determined that the Barcelona  
16 Advisors LLC Units are securities, by definition, we find that any rights to purchase Barcelona  
17 Advisors LLC Units are also securities.

### 18 3. Exemptions to Registration Requirements

19 The 12-6-12 Offering and 10-5-10 Offering PPMs stated that the investments being sold have  
20 not been registered in reliance upon exemptions for transactions not involving a public offering.<sup>961</sup>  
21 Advertisements for the 8-8 Offering stated that the offering was subject to the provisions of A.A.C.  
22 R14-4-140, the accredited investor exemption.<sup>962</sup> The Division contends that the Respondents have  
23 failed to meet their burden to prove that any exemption to the Act's registration requirements applies  
24 to them or their securities. We first consider whether the Barcelona Advisors' offers and transactions  
25 should be integrated, then determine whether any exemptions from registration requirements should

26 <sup>960</sup> *Nutek Info. Sys., Inc. v. Arizona Corp. Comm'n*, 194 Ariz. 104, 108, 977 P.2d 826, 830 (App. 1998) quoting *Howey* 328  
27 U.S. at 299, 66 S.Ct. 1100.

<sup>961</sup> Exhs. S-5 at ACC007207, ACC007239, S-57 at ACC000729, ACC000760, S-58 at ACC005715, ACC005753.

28 <sup>962</sup> Exh. S-25 at ACC006216, ACC006219, ACC006222, ACC006225, ACC006228, ACC006231, ACC006234,  
ACC006237.

1 apply.

2 a) Integration

3 The Division contends that all of the Barcelona Advisors investment offerings and transactions  
 4 constituted one integrated offering. The Division notes the five factors considered under Arizona and  
 5 federal law in determining whether offers and sales should be integrated: 1) whether the sales are part  
 6 of a single plan of financing; 2) whether the sales involve issuance of the same class of securities; 3)  
 7 whether the sales have been made at or about the same time; 4) whether the same type of consideration  
 8 is being received; and 5) whether the sales are made for the same general purpose.<sup>963</sup> The Division  
 9 contends that all five factors support integration.

10 The Division contends that the first factor supports integration as the sales were part of the same  
 11 plan of financing, to raise working capital for Barcelona Advisors, with the later investments by Mr.  
 12 Eaves and Mr. Andrade acting as interim capital solutions. The Division argues that because the 12-  
 13 6-12 Offering and the 8-8 Offering both involved the same class of securities, "Class A notes," the  
 14 second factor supports integration. The Division contends the third factor supports integration as the  
 15 sales were made in a planned sequence. The Division argues that the fourth factor supports integration  
 16 as all investors received the same type of consideration, specifically notes, usually with a bonus feature  
 17 and LLC Units. Lastly, the Division contends that the fifth factor supports integration as the 12-6-12  
 18 Offering, the 8-8 Offering and the 10-5-10 Offering were all made for the same general purpose of  
 19 developing Barcelona Advisors into an advisor to a series of funds investing in the acquisition or  
 20 development of real estate.

21 Mr. Harkins states that he does not oppose the integration of the 12-6-12 Offering, the 8-8  
 22 Offering and the 10-5-10 Offering. However, Mr. Harkins contends that, "a maximum of \$75,000  
 23 among the Stand-Alone Transactions may be deemed to be securities and counted toward any  
 24 integration limits that may pertain."<sup>964</sup> Mr. Harkins contends that the differences between the features

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 26 <sup>963</sup> See 17 C.F.R. §230.502(a); R14-4-126(C)(1).

27 <sup>964</sup> Amended Post-Hearing Brief of Respondent Richard C. Harkins at 97. Mr. Harkins appears to consider those Stand-  
 28 alone Transactions which do not include units, rights or options in this \$75,000 total. See *Id.* at 63. However, four  
 transactions did not include rights, units or options, namely one of Mrs. Burtleson's investments (\$50,000), Mr. Eaves' fifth  
 and sixth investments (\$15,000 each) and Mr. Andrade's second investment (\$5,000), which total \$85,000. Exhs. S-51, S-  
 55, S-56, S-184.

1 on the investments do not allow for them to be considered of the same type.

2 Under the doctrine of integration, certain seemingly separate transactions are treated as one to  
3 determine whether those transactions are covered by an exemption from registration requirements.<sup>965</sup>  
4 The doctrine of integration prevents issuers of securities from avoiding registration requirements by  
5 breaking offerings into small pieces.<sup>966</sup> In Arizona, limited offerings exempt from the registration  
6 requirements of A.R.S. §§ 44-1841 and 44-1842 are subject to integration under A.A.C. R14-4-126.  
7 A.A.C. R14-4-126(C)(1)(c) provides:

8 The following factors should be considered in determining whether offers and sales  
9 should be integrated for purposes of the exemptions under this Section:

- 10 i. Whether the sales are part of a single plan of financing;
- 11 ii. Whether the sales involve issuance of the same class of securities;
- 12 iii. Whether the sales have been made at or about the same time;
- 13 iv. Whether the same type of consideration is being received; and
- 14 v. Whether the sales are made for the same general purpose.

15 We analyze the Barcelona Advisors investments and offerings under the five factors. Barcelona  
16 Advisors entered all of the transactions to generate working capital.<sup>967</sup> The intent of the 8-8 Offering  
17 was to generate capital when sales of the 12-6-12 Offering stalled.<sup>968</sup> As such, all of the offers and  
18 sales can be considered part of a single plan of financing. The first factor weighs in favor of integration.

19 Investors received notes in all of the transactions. However, some of the investments included  
20 LLC Units. Others came with purchase rights or options to purchase LLC Units. The LLC Units in  
21 the 12-6-12 Offering were “Class B” units while the purchase rights and options in the second, third,  
22 and fourth investments of Mr. Eaves were “Class A” units. While all the investors received notes,  
23 enough differences exist among the offerings and the Stand-Alone Transactions that the second factor  
24 leans against integration.

25 For the third factor, we consider the timing of the sales. All of the investments occurred

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27 <sup>965</sup> *S.E.C. v. Cavanagh*, 445 F.3d 105, 112 (2d Cir. 2006).

<sup>966</sup> *Donohoe v. Consol. Operating & Prod. Corp.*, 982 F.2d 1130, 1140 (7th Cir. 1992).

<sup>967</sup> We reached this conclusion in considering the first factor of the *Reves* test, *supra*.

28 <sup>968</sup> Tr. at 929-930.

1 between October 12, 2012, and July 31, 2014, with the longest gap between investments being five  
 2 months between the first and second investment.<sup>969</sup> Ms. Burleson's stand-alone transaction occurred  
 3 on or about the same day as her investment in the 12-6-12 Offering.<sup>970</sup> The second investment by Mr.  
 4 and Mrs. Eaves occurred on July 18, 2013, less than two weeks after Ms. Carolin made an investment  
 5 in the 12-6-12 Offering, and less than two weeks before Ms. Carolin's second investment in the 12-6-  
 6 12 Offering.<sup>971</sup> The 8-8 Offering was advertised between July 17, 2013, and September 4, 2013, with  
 7 the intention of being integrated with the 12-6-12 Offering, but abandoned when new investors were  
 8 found for the 12-6-12 Offering.<sup>972</sup> Mr. and Mrs. Eaves made their third and fourth investments in the  
 9 five months between the final sale under the 12-6-12 Offering and the first sale under the 10-5-10  
 10 Offering.<sup>973</sup> Mr. Andrade made his second investment two months after he invested in the 10-5-10  
 11 Offering.<sup>974</sup> Mr. and Mrs. Eaves made their fifth and sixth investments a little over a month after Mr.  
 12 Andrade's second investment.<sup>975</sup> Based upon the proximity in time of the offerings and investments,  
 13 the third factor supports integration.

14 The fourth factor is the consideration received. All investors purchased their investments with  
 15 cash.<sup>976</sup> The 8-8 Offering advertisements promised interest on cash investments.<sup>977</sup> As cash was the  
 16 only consideration sought and received by the company, the fourth factor supports integration.

17 The 12-6-12 Offering, the 8-8 Offering, and the 10-5-10 Offering identified the same general  
 18 purpose, namely that Barcelona Advisors was to become an advisor to a series of funds to develop  
 19 and/or acquire hotels and other qualified real estate properties.<sup>978</sup> As the Stand-Alone Transactions  
 20 were designed to provide operating capital to Barcelona Advisors, they supported this general purpose.  
 21 Accordingly, the fifth factor supports integration.

22 In weighing all the factors we find the second factor disfavors integration based upon the  
 23

24 <sup>969</sup> Exh. S-31b.

<sup>970</sup> Tr. at 987-988.

25 <sup>971</sup> Exhs. S-7, S-10, S-31b, S-34, S-40, S-42, S-43.

<sup>972</sup> Tr. at 805, 807-808, 929-930; Exh. S-25 at ACC006214-ACC006235.

26 <sup>973</sup> Exhs. S-13, S-31b, S-35, S-47, S-48, S-53, S-54, S-148.

<sup>974</sup> Exhs. S-31b, S-36, S-49, S-50, S-51, S-148, S-169.

27 <sup>975</sup> Exhs. S-31b, S-51, S-55, S-56, S-169.

<sup>976</sup> Exh. S-31b.

<sup>977</sup> Exh. S-25.

28 <sup>978</sup> Exhs. S-5 at ACC007217, S-25 at ACC006216, S-57 at ACC000740, S-58 at ACC005720.

1 differences in the types of investments. However, the other four factors strongly support integration.  
2 We find that the 12-6-12 Offering, the 8-8 Offering, the 10-5-10 Offering and the Stand-Alone  
3 Transactions should properly be integrated for the purpose of considering exemptions.

4 b) Exemptions

5 The Division contends that the Respondents have failed to prove that any exemption applies to  
6 them or the securities. The Division contends that the Respondents failed to file a Form D with the  
7 Commission, a requirement for many exemptions. The Division notes that the exemptions forbidding  
8 general advertisement are not available to the Respondents as the 8-8 Offering used general  
9 advertisement. The Division further contends that exemptions forbidding general solicitation are  
10 unavailable because Barcelona Advisors used general solicitation on Ms. Bair and Ms. Chaimson, as  
11 none of the Respondents had substantive and pre-existing relationships with these two investors at the  
12 time they were led to invest. Lastly, the Division contends that exemptions limited to accredited  
13 investors are unavailable to Barcelona Advisors because Ms. Carolin was not an accredited investor.

14 Mr. Harkins contends that the company relies upon Section 4(a)(2) of the federal Securities Act  
15 of 1933, arguing that Barcelona Advisors' offerings are exempt as they were transactions by an issuer  
16 that did not involve a public offering. Mr. Harkins argues that if Barcelona Advisors "missed some  
17 step in compliance statutes (such as submitting a form and a fee)," the company made a good faith  
18 effort to meet all requirements.<sup>979</sup>

19 In its Reply Brief, the Division contends that good faith efforts are not the standard for  
20 complying with an exemption, but rather strict compliance is required. The Division contends that an  
21 exemption under A.A.C. R14-4-140 is not available because Ms. Carolin was not an accredited investor  
22 at the time she invested, and Barcelona Advisors never filed a Form D notice as required. The Division  
23 further contends that the Barcelona Advisors sales are not exempt under A.R.S. § 44-1844(A)(1) as  
24 "transactions by an issuer not involving any public offering" ("Non-Public Offering"). Because there  
25 is no Arizona authority as to what constitutes a Non-Public Offering, the Division argues that federal  
26 interpretations of Section 4(a)(2) of the federal Securities Act of 1933, identical to A.R.S. § 44-

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<sup>979</sup> Amended Post-Hearing Brief of Respondent Richard C. Harkins at 98.

1 1844(A)(1), should be used for guidance. The Division cites *S.E.C. v. Murphy*, 626 F.2d 633, 644-645  
2 (9th Cir. 1980), as stating the factors which federal courts have applied to consider the applicability of  
3 the Non-Public Offering exemption: 1) the number of offerees; 2) the sophistication of the offerees;  
4 3) the size and manner of the offering; and 4) the relationship of the offerees to the issuer. The Division  
5 notes that, under *Murphy*, “[t]he party claiming the exemption must show that it is met not only with  
6 respect to each purchaser, but also with respect to each offeree.”<sup>980</sup> The Division contends that the  
7 Respondents cannot claim the Non-Public Offering exemption as the evidence of record does not  
8 establish the number of offerees or their identities.

9 Under A.R.S. § 44-2033, the burden of proof to establish an exemption from registration is  
10 borne by the party raising the defense. The Respondents argue that two exemptions apply to their  
11 offerings and sales: the accredited investor exemption and the Non-Public Offering exemption. The  
12 Respondents further contend that if they failed to meet the requirements of any exemption, they should  
13 be credited for acting in good faith.

14 Under A.A.C. R14-4-140, the accredited investor exemption, offers and sales of securities by  
15 an issuer in compliance with federal Rule 504 of Regulation D shall be exempt from registration  
16 requirements under A.R.S. §§ 44-1841 and 44-1842, provided those offers and sales satisfy the  
17 provisions of A.A.C. R14-4-140.<sup>981</sup> The accredited investor exemption requires that all offers of  
18 securities must specify that sales shall be made only to accredited investors, and that sales shall be  
19 made exclusively to accredited investors.<sup>982</sup> Accredited investors include persons who come within  
20 any of a list of enumerated categories, or whom the issuer reasonably believes come within those  
21 categories.<sup>983</sup> Generally, a natural person will be an accredited investor if he or she has a net worth,  
22 excluding the person’s primary residence, in excess of \$1,000,000, or an annual income in excess of  
23 \$200,000 in each of the two most recent years.<sup>984</sup> The accredited investor exemption further requires  
24 that a Form D notice be filed with the Commission within fifteen calendar days of the first sale within  
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26 <sup>980</sup> *Murphy*, 626 F.2d at 645.

27 <sup>981</sup> A.A.C. R14-4-140(A), (B).

28 <sup>982</sup> A.A.C. R14-4-140(D).

<sup>983</sup> 17 C.F.R. § 230.501(a), A.A.C. R14-4-126(B)(1), A.A.C. R14-4-140(A)(1).

<sup>984</sup> *See* 17 C.F.R. § 230.501(a).

1 or from Arizona.<sup>985</sup>

2 Here, the Respondents failed to establish that they met the requirements of the accredited  
3 investor exemption. The record contains no evidence that Barcelona Advisors filed a Form D with the  
4 Commission. At the time of her investment, Ms. Carolin was not an accredited investor as she did not  
5 meet the minimal requirements for net worth or annual income.<sup>986</sup> Ms. Carolin credibly testified that  
6 she did not check that she was an accredited investor on her subscription questionnaire and that she  
7 told Mr. Harkins she did not meet the requirements.<sup>987</sup> Although Mr. Harkins testified that he did not  
8 mark Ms. Carolin as an accredited investor on her questionnaire and he believed that the pen looked to  
9 be the same as used throughout the document,<sup>988</sup> the Respondents have not met their burden of proof  
10 to establish that their offerings and sales met the requirements of the accredited investor exception.

11 As argued by the Division, Arizona's Non-Public Offering exemption has not been subject to  
12 judicial interpretation. When there are no substantial differences between state and federal law, the  
13 Arizona Supreme Court has interpreted the Act by following settled federal securities law unless there  
14 is good reason to depart from that authority.<sup>989</sup> This approach is consistent with the expressed intent  
15 of the legislature with regard to judicial interpretation of the Act.<sup>990</sup> We agree that the *Murphy* test  
16 should be used to determine whether the Respondents made a Non-Public Offering. However, "[t]o  
17 claim the private offering exemption, evidence of the exact number and identity of all offerees must be  
18 produced."<sup>991</sup> The record establishes that there were offers made to persons who did not invest in  
19 Barcelona Advisors.<sup>992</sup> However, the Respondents have failed to bring forth evidence establishing the  
20 total number of offerees, let alone the identities of these offerees, so that a determination can be made  
21 regarding their level of sophistication or relationship to Barcelona Advisors. As such, the Respondents  
22 have failed to meet their burden of proof to establish the Non-Public Offering exemption applies.

23 Mr. Harkins' asserted good faith effort does not mean the Respondents may avail themselves  
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25 <sup>985</sup> A.A.C. R14-4-140(L)

<sup>986</sup> Tr. at 431-432.

26 <sup>987</sup> Tr. at 433, 449-450.

<sup>988</sup> Tr. at 979-980.

27 <sup>989</sup> *Sell v. Gama*, 231 Ariz. 323, 327, 295 P.3d 421, 425 (2013).

<sup>990</sup> *Id.*

28 <sup>991</sup> *W. Fed. Corp. v. Erickson*, 739 F.2d 1439, 1442 (9th Cir. 1984).

<sup>992</sup> Exhs. S-32 at 103, 112-114, S-65.

1 of any exemption whose requirements have not been met. As cited by the Division, the Arizona  
2 Supreme Court has stated that “[b]ecause of the vital public policy underlying the registration  
3 requirement, there must be strict compliance with all the requirements of the exemption statute.”<sup>993</sup>  
4 The Respondents have failed to establish that their offerings and sales met the requirements of any  
5 exemption. Therefore, we find no exemption to the registration requirements applies to the offers and  
6 sales of securities by Barcelona Advisors.

7 D. Registration Violations

8 Under A.R.S. § 44-1841, it is unlawful to sell or offer for sale within or from Arizona any  
9 securities unless those securities have been registered or are exempt from registration. Barcelona  
10 Advisors’ securities have not been registered by the Commission.<sup>994</sup> Under A.R.S. § 44-1842, it is  
11 unlawful for any dealer or salesman to sell or offer to sell any securities within or from Arizona unless  
12 the dealer or salesman is registered. Mr. Harkins, Mr. Simmons, Mr. Orr, Barcelona Advisors, and  
13 Barcelona Land Company were not registered with the Commission as securities dealers or  
14 salesmen.<sup>995</sup>

15 1. Richard Harkins

16 The Division contends that Mr. Harkins is responsible for sales of all of the documents he  
17 executed for Barcelona Advisors, namely: the notes, the subscription agreements for LLC Units, and  
18 the rights to purchase LLC Units. The Division also contends that Mr. Harkins made several offers,  
19 namely: offering the 12-6-12 Offering to Ms. Bair by giving her the October 2012 PPM; offering the  
20 fifth and sixth investments of Mr. Eaves; soliciting Ms. Burleson’s investment by telling her that the  
21 investment would be good as long as the economy was stable, and by drafting custom terms for her  
22 second note to meet her financial needs; soliciting Ms. Carolin’s first investment by giving her a  
23 subscription agreement; and soliciting investments in the June 2014 Offering in a letter where he asked  
24 all existing investors to invest more funds.

25 Mr. Harkins contends that he made only one offer and sale, to Ms. Bair. Mr. Harkins contends  
26 that the sales of the 12-6-12 Offering and the 10-5-10 Offering were made by officers of the company.

27 <sup>993</sup> *State v. Baumann*, 125 Ariz. 404, 411, 610 P.2d 38, 45 (1980).

28 <sup>994</sup> Tr. at 842; Exhs. S-5 at ACC007207, S-57 at ACC000729, S-58 at ACC005715.

<sup>995</sup> Exhs. S-1a, S-1b, S-32 at 19, S-76 at 17, S-136 at 13, S-183 at 3-4.

1 Mr. Harkins contends that Ms. Burleson invested through her investment advisor and that she has had  
 2 conversations with Mr. Harkins about Barcelona Advisors since the company first started. Mr. Harkins  
 3 contends that he had no involvement with Ms. Carolin's first investment and, regarding her second  
 4 investment, that he met her at a meeting where Mr. Kerrigan was late in attending. Mr. Harkins  
 5 contends that the loans from Mr. Eaves arose from meetings of the Executive Members where the cash  
 6 needs of Barcelona Advisors was discussed. As to the letter about the June 2014 Offering, Mr. Harkins  
 7 argues for the application of the "collision principle": an SEC safe harbor that allows an issuer to release  
 8 factual business information without it being considered an offer of securities.<sup>996</sup>

9 The Division contends that Mr. Harkins' "collision principle" argument is irrelevant because  
 10 the letter specifically solicits further investments from investors.

11 The record establishes that Mr. Harkins executed Barcelona Advisors' notes,<sup>997</sup> LLC Unit  
 12 subscription agreements,<sup>998</sup> and LLC Unit purchase rights agreements.<sup>999</sup> Mr. Harkins provided Ms.  
 13 Bair with the October 2012 PPM for the purpose of obtaining an investment.<sup>1000</sup> Mr. Harkins asked  
 14 Mr. Eaves to make his fifth and sixth investments.<sup>1001</sup> Mr. Harkins told Ms. Burleson that an investment  
 15 with Barcelona Advisors would be good as long as the economy remained stable.<sup>1002</sup> Mr. Harkins  
 16 drafted the note for Ms. Burleson's second investment to meet her financial needs.<sup>1003</sup> Ms. Carolin  
 17 received the subscription agreement for her first investment from Mr. Harkins.<sup>1004</sup> Mr. Harkins sent a  
 18 June 11, 2014, letter to all Barcelona Advisors' note holders.<sup>1005</sup> Among other things, the June 11,  
 19 2014 Offer Letter stated:

20 We currently require \$150,000 to get us through the month of June. In  
 21

22 <sup>996</sup> See 17 C.F.R. §§ 230.168, 230.169.

23 <sup>997</sup> Mr. Harkins executed Barcelona Advisors notes in all 18 investments. Exhs. S-37 – S-43, S-45 – S-49, S-51, S-53 – S-  
 24 56, S-184.

25 <sup>998</sup> Mr. Harkins executed Barcelona Advisors LLC Unit Subscription Agreements in 9 investments: Ms. Bair, Mr. Eaves'  
 26 first investment, Ms. Burleson's first investment, Mr. Woods, Ms. Carolin's two investments, Mr. Jordan, Mr. Ramirez,  
 27 and Ms. Chaimson. Exhs. S-6, S-8 – S-13, S-33, S-35.

28 <sup>999</sup> Mr. Harkins executed Barcelona Advisors LLC Unit purchase rights agreements in three investments of Mr. Eaves.  
 Exhs. S-7, S-53, S-54

<sup>1000</sup> Tr. at 844.

<sup>1001</sup> Tr. at 289-291, 293-294.

<sup>1002</sup> Tr. at 634; Exh. S-32 at 79-80.

<sup>1003</sup> Tr. at 1008-1009.

<sup>1004</sup> Tr. at 431.

<sup>1005</sup> Exhs. S-32 at 96, S-60.

1 order to meet this need, we would appreciate your participation in  
 2 funding this requirement by making a short-term loan to us of any portion  
 3 of the \$150,000 we are seeking.

- 4 ✓ We will repay you as soon as the next round of funding ... occurs  
 5 which we anticipate to be within the next two weeks. The Note  
 6 will carry a 90 day due date but may be paid sooner based on the  
 7 inflow of capital to us from the above referenced sources.
- 8 ✓ We will pay you interest on your loan at an annual rate of 10%  
 9 which will be paid at the time we return your principal.
- 10 ✓ Additionally, we will pay a bonus of 3% of your loan amount.
- 11 ✓ Finally, we will grant you fully paid Class A Units of ownership  
 12 is [*sic*] USA Barcelona Realty Advisors based on ½ Class A Unit  
 13 per dollar of your loan amount.<sup>1006</sup>

14 We find Mr. Harkins' arguments unpersuasive. An issuer's employees and officers may be  
 15 exempt from the requirements of A.R.S. § 44-1842 if an exemption has been found to apply to the  
 16 security.<sup>1007</sup> However, the Respondents failed to establish the applicability of any exemption. The  
 17 evidence of record establishes that Mr. Harkins' efforts towards some of the investors constituted  
 18 offers. The June 11, 2014, letter sent to all Barcelona Advisors' investors did more than provide  
 19 information about the company, it specifically requested funds up to \$150,000 from the investors and  
 20 provided specific terms of notes as to interest rates and repayment of principal as well as the provision  
 21 of membership units.

22 We find that Mr. Harkins, by executing Barcelona Advisors' notes, LLC Unit subscription  
 23 agreements, and LLC Unit purchase rights, made 30 sales of unregistered securities, in violation of  
 24 A.R.S. §§ 44-1841 and 44-1842. Mr. Harkins further made offers to Ms. Bair, Mr. Eaves,<sup>1008</sup> Ms.  
 25 Burleson,<sup>1009</sup> and Ms. Carolin.<sup>1010</sup> Mr. Harkins offered the June 2014 Offering to all ten Barcelona

26 <sup>1006</sup> Exh. S-60.

27 <sup>1007</sup> See A.A.C. R14-4-140(B).

28 <sup>1008</sup> As to Mr. Eaves' fifth and sixth investments.

<sup>1009</sup> As to both of Ms. Burleson's investments.

<sup>1010</sup> As to Ms. Carolin's first investment.

1 Advisors investors in the June 2014 Offering Letter. Mr. Harkins made a total of 16 offers for the sale  
2 of unregistered securities, in violation of A.R.S. §§ 44-1841 and 44-1842.

3                   2. Robert Kerrigan

4           The Division contends that Mr. Kerrigan made offers by introducing and recommending the  
5 10-5-10 Offering to Ms. Stewart and the 12-6-12 Offering to Mr. Eaves, Mr. Woods, Ms. Carolin, Mr.  
6 Jordan, Mr. Ramirez and Ms. Chaimson. The Division further contends that Mr. Kerrigan solicited an  
7 investment from Ms. Burleson by recommending that she invest and telling her that money would be  
8 “rolling in.” The Division contends that Mr. Kerrigan solicited the second and third investments from  
9 Mr. Eaves.

10           In his Post-Hearing Brief, Mr. Kerrigan does not deny the Division’s specific allegations but  
11 contends that he never received commissions. Mr. Kerrigan testified at his EUO that he never used the  
12 phrase “rolling in” to Ms. Burleson.<sup>1011</sup>

13           The evidence of record established that Mr. Kerrigan recommended investments in Barcelona  
14 Advisors to several persons: Ms. Burleson,<sup>1012</sup> Mr. Eaves,<sup>1013</sup> Mr. Woods,<sup>1014</sup> Ms. Carolin,<sup>1015</sup> Mr.  
15 Jordan,<sup>1016</sup> Mr. Ramirez,<sup>1017</sup> Ms. Chaimson,<sup>1018</sup> and Ms. Stewart.<sup>1019</sup> Mr. Kerrigan solicited Mr. Eaves’  
16 second investment by providing him with a loan agreement and Mr. Eaves’ third investment by  
17 requesting funds from him to bridge a gap in capital.<sup>1020</sup>

18           Regardless of whether Mr. Kerrigan received a commission, he offered to sell unregistered  
19 securities. We find Mr. Kerrigan made a total of 12 offers for sale of unregistered securities, in  
20 violation of A.R.S. § 44-1841.<sup>1021</sup>

21 . . .

22 \_\_\_\_\_  
23 <sup>1011</sup> Exh. S-98 at 63-64.

24 <sup>1012</sup> Tr. at 633, 988; Exh. S-98 at 169-170.

25 <sup>1013</sup> Tr. at 190-191; Exh. S-98 at 36, 59.

26 <sup>1014</sup> Tr. at 660-662; 1023.

27 <sup>1015</sup> Tr. at 426-427; Exh. S-98 at 29-30.

28 <sup>1016</sup> Tr. at 159.

<sup>1017</sup> Tr. at 1026-1029; Exh. S-98 at 57-58, 169-170.

<sup>1018</sup> Tr. at 1029-1030; Exh. S-98 at 29-30, 56.

<sup>1019</sup> Tr. at 222-225, 1032.

<sup>1020</sup> Tr. at 206, 282.

<sup>1021</sup> Including offers as to both of Ms. Burleson’s investments, both of Ms. Carolin’s investments, and three of Mr. Eaves’ investments.

1                   3. George T. Simmons

2                   The Division contends that Mr. Simmons made offers to Mr. Andrade on both of his  
3 investments and to Mr. Eaves on his fourth investment. Specifically, the Division contends that Mr.  
4 Simmons solicited Mr. Andrade's first investment by asking Mr. Andrade to invest at their lunch  
5 meeting in December 2013. The Division contends that Mr. Simmons also sold this first investment  
6 as he executed Mr. Andrade's subscription agreement on behalf of Barcelona Advisors. The Division  
7 contends that whether Mr. Wilkerson also offered Mr. Andrade's first investment is irrelevant because  
8 the Act does not limit a securities transaction to only one offeror and one seller. The Division argues  
9 that if two persons attempt to dispose of a security to the same investor, then they have both made an  
10 offer to sell under the Act. The Division contends that Mr. Simmons offered Mr. Andrade his second  
11 investment by trying to persuade Mr. Andrade to invest by telling him that he had no reason to worry  
12 about investing more.

13                   Mr. Simmons concedes that he signed the subscription agreement for Mr. Andrade's first  
14 investment, but only after he had received approval to do so from Mr. Harkins, who was not available  
15 to sign.<sup>1022</sup> Mr. Simmons denies the interactions with Mr. Andrade and Mr. Eaves upon which the  
16 Division raises its allegations of offers.

17                   As we have denied, in part, the Division's motion to conform, we have dismissed the allegations  
18 of direct liability against Mr. Simmons. However, the Division has alleged that Barcelona Advisors  
19 has also made all of the offers and sales made by the Executive Members, who are agents on the  
20 company's behalf. Accordingly we consider the Division's allegations of offers. The parties have  
21 presented conflicting testimony on this issue and argue against the credibility of witnesses.

22                   a) Credibility of Mr. Simmons

23                   The Division argues that Mr. Simmons was the least credible of the Respondents, citing several  
24 instances where his testimony was contradicted. Mr. Simmons testified, at his EUO and the hearing,  
25 to have no knowledge of the terms of the Barcelona Advisors offerings or the contents of the PPMs.<sup>1023</sup>  
26 Mr. Simmons' testimony is contradicted by company documents and the testimony of Mr. Harkins,

27 \_\_\_\_\_  
28 <sup>1022</sup> Tr. at 1172-1173.

<sup>1023</sup> Tr. at 1146-1147; Exh. S-76 at 23, 55-56, 99.

1 Mr. Orr, and Mr. McDonough, which reveal Mr. Simmons' role in reviewing PPMs and his detailed  
2 knowledge of the Barcelona Advisors' offerings such that he and Mr. Harkins trained others on how to  
3 present them.<sup>1024</sup> The Division further contends that Mr. Simmons also contradicted himself on this  
4 issue by admitting that he was shown final PPMs to be used to solicit investors.<sup>1025</sup> Mr. Simmons  
5 contends that while he may have received final PPMs, and inquired if they were reviewed by counsel,  
6 he never participated in their preparation.

7 Mr. Simmons testified that he was not involved in raising capital and that he was never directly  
8 involved in soliciting investors or selling investments other than having signed one subscription  
9 agreement.<sup>1026</sup> Mr. Simmons' testimony is contradicted by Mr. Orr, Mr. McDonough, Mr. Eaves, and  
10 Mr. Andrade. Mr. McDonough testified that that Mr. Simmons frequently suggested potential investors  
11 and reported on the status of potential investors he contacted.<sup>1027</sup> Mr. McDonough testified that Mr.  
12 Simmons asked for his help in approaching investors at Mr. Simmons' country club, which was  
13 corroborated by Mr. Orr's testimony.<sup>1028</sup> Mr. Eaves contradicted Mr. Simmons by testifying that Mr.  
14 Simmons called him to solicit his fourth investment.<sup>1029</sup>

15 The Division further challenges Mr. Simmons' testimony where it conflicts with Mr.  
16 Andrade's. Mr. Simmons admitted having a lunch meeting with Mr. Andrade in December 2013, that  
17 was arranged and attended by Mr. Wilkerson.<sup>1030</sup> However, the Division contends that it is implausible  
18 that Mr. Andrade would bring his investment advisor, Mr. Wilkerson, to a purely social meeting with  
19 Mr. Simmons where investing in Barcelona Advisors was not discussed, especially because Mr.  
20 Simmons admitted that Mr. Wilkerson was planning to join the company at the time.<sup>1031</sup> The Division  
21 contends that Mr. Simmons' account of the lunch meeting is further inconsistent with the follow-up  
22 email he sent to Mr. Andrade inviting him to visit the Barcelona Advisors' office to meet the team and  
23 "discuss our current capital raise."<sup>1032</sup> The Division also contends that Mr. Andrade's reply email

24 <sup>1024</sup> Tr. at 89-90, 736-737, 1203-1204; Exh. S-32 at 35-36, S-176, S-177.

25 <sup>1025</sup> Tr. at 1200.

26 <sup>1026</sup> Tr. at 1180; Exh. S-76 at 13.

27 <sup>1027</sup> Tr. at 318-320.

28 <sup>1028</sup> Tr. at 92, 139; Exh. S-136 at 16-17, 31.

<sup>1029</sup> Tr. at 286-290, 346-347.

<sup>1030</sup> Tr. at 1167-1169.

<sup>1031</sup> Tr. at 377, 420, 1170, 1205, 1207.

<sup>1032</sup> Exh. S-171.

1 stating that he was “not in a position to make an investment at this time,” corroborates his testimony  
2 that Mr. Simmons asked him to invest during their lunch meeting.<sup>1033</sup>

3 The Division contends that Mr. Simmons omitted mention of this lunch meeting at his EUO  
4 testimony to hide the extent of his contact with Mr. Andrade.<sup>1034</sup> At the hearing, Mr. Simmons testified  
5 that he was confused about the order of the meetings took place.<sup>1035</sup> However, as the Division notes,  
6 Mr. Simmons did not mention two meetings at his EUO, he simply omitted the December lunch  
7 meeting.<sup>1036</sup> In his Post-Hearing Brief, Mr. Simmons contends that he omitted the lunch meeting from  
8 the EUO because it “had nothing to do with Mr. Andrade’s investment.”<sup>1037</sup>

9 The Division further contends that Mr. Simmons’ denial of attending the June 2014, meeting  
10 with Mr. Harkins and Mr. Andrade is not credible.<sup>1038</sup> The Division notes that while Mr. Harkins did  
11 not recall Mr. Simmons being at the meeting, Mr. Andrade recalled that Mr. Simmons was present, and  
12 generally, what Mr. Simmons told him.<sup>1039</sup> The Division contends that Mr. Andrade’s testimony is  
13 more reliable because he was persuaded to invest in spite of his concerns about the company.

14 The Division contends that Mr. Simmons is not credible about when he became an Executive  
15 Member. Mr. Simmons claimed he did not work at Barcelona Advisors until mid-July 2013.<sup>1040</sup>  
16 However, documents from Barcelona Advisors, including two PPMs, identified him as an Executive  
17 Member as early as January 2013, including a March 26, 2013, memorandum produced by Mr.  
18 Simmons that was sent to him as an Executive Member.<sup>1041</sup> In his Post-Hearing Brief, Mr. Simmons  
19 maintains that he did not start until mid-July and contends that he had no knowledge of how he was  
20 listed in corporate filings, emails and PPMs.<sup>1042</sup>

21 The Division contends that Mr. Simmons contradicted himself about a December 31, 2013,  
22 letter sent to investors, which he claimed to have signed without reading.<sup>1043</sup> However, Mr. Simmons

23 <sup>1033</sup> Tr. at 387; Exh. S-171.

24 <sup>1034</sup> Exh. S-76 at 47-48.

25 <sup>1035</sup> Tr. at 1217-1218.

26 <sup>1036</sup> Exh. S-76 at 47-48.

27 <sup>1037</sup> Post-Hearing Brief of Respondent George T. Simmons at 20.

28 <sup>1038</sup> Tr. at 1173.

<sup>1039</sup> Tr. at 391, 1258.

<sup>1040</sup> Tr. at 1139-1140.

<sup>1041</sup> Tr. at 643; Exhs. S-3b, S-5 at ACC007229-ACC007230, S-24, S-57 at ACC000751-ACC000752, S-170.

<sup>1042</sup> Post-Hearing Brief of Respondent George T. Simmons at 18-19.

<sup>1043</sup> Tr. at 1196; Exh. S-65.

1 admitted that he paraphrased the contents of this letter to Mr. Orr, which would have necessitated  
2 reading it.<sup>1044</sup>

3 The Division further contends that Mr. Simmons was disingenuous about his management role  
4 with the company. Mr. Simmons testified that he did not supervise employees.<sup>1045</sup> However, Mr.  
5 Simmons described his job duties as that of a supervisor, coordinating the activities of others, and  
6 stating that, “you just have to know what people are doing and make sure they are doing their job.”<sup>1046</sup>

7 Mr. Simmons argues that, as he testified, he never requested that Mr. Eaves make any  
8 investments in Barcelona Advisors.<sup>1047</sup> Mr. Simmons contends that, as he testified, there was no  
9 discussion about investing in Barcelona Advisors at the December 2013, lunch meeting he had with  
10 Mr. Andrade and Mr. Wilkerson.<sup>1048</sup> Mr. Simmons further contends that, as he testified, he was not  
11 present at a meeting in June 2014, where an additional investment was discussed with Mr. Andrade.<sup>1049</sup>

12 Mr. Simmons contends his testimony should be found credible, in part, due to credibility issues  
13 of the Division’s witnesses.

14 b) Credibility of Division Witnesses

15 Mr. Simmons attacks the veracity of Mr. Eaves’ testimony against him by alleging false  
16 statements elsewhere in Mr. Eaves’ testimony. Mr. Simmons contends that Mr. Eaves testified that he  
17 attended a January 2013, business meeting at the Talking Stick Resort that was also attended by Mr.  
18 Orr, Mr. Harkins, and Mr. Simmons.<sup>1050</sup> Mr. Simmons contends this testimony of Mr. Eaves is false  
19 as Mr. Simmons was at a different meeting at the time, and Mr. Orr, who attended the meeting,  
20 confirmed the absence of Mr. Simmons.<sup>1051</sup> The Division, in its Reply to the Post-Hearing Briefs of  
21 Respondents George T. Simmons and Bruce L. Orr, makes no response to this allegation.

22 Mr. Simmons also contends that Mr. Eaves testified that he attended two meetings with Mr.  
23  
24

25 <sup>1044</sup> Tr. at 1180-1181; Exhs. S-65, S-108.

26 <sup>1045</sup> Tr. at 1143.

27 <sup>1046</sup> Tr. at 1141-1142, 1178-1179.

28 <sup>1047</sup> Tr. at 1164.

<sup>1048</sup> Tr. at 1170.

<sup>1049</sup> Tr. at 1173.

<sup>1050</sup> Tr. at 196-197, 330.

<sup>1051</sup> Tr. at 714, 720, 1138.

1 Harkins, Mr. Orr, Mrs. Eaves, and Mr. Simmons where investments were solicited.<sup>1052</sup> The testimony  
 2 of Mr. Simmons and Mr. Orr was that they never attended any such meetings, and Mr. Orr's expense  
 3 records showed that he was not in Arizona on the dates of those alleged meetings.<sup>1053</sup> The Division, in  
 4 its Reply to the Post-Hearing Briefs of Respondents George T. Simmons and Bruce L. Orr, contends  
 5 that Mr. Simmons has misstated the testimony of Mr. Eaves on this issue. Mr. Eaves did not testify  
 6 about any such meeting and, on cross-examination, confirmed that Mr. Orr never requested money at  
 7 any such meeting.<sup>1054</sup> The Division argues that Mr. Simmons and Mr. Orr mistakenly rely upon an  
 8 allegation in the Amended T.O. and Notice about two meetings, which the Division concedes was  
 9 incorrect.<sup>1055</sup>

10 Mr. Simmons attacks the veracity of Mr. Andrade's testimony by contending that Mr. Andrade  
 11 told two stories about how his subscription agreement was signed. Mr. Simmons asserts that Mr.  
 12 Andrade first said that his wife dropped off the signed agreement at the Barcelona Advisors' office,  
 13 and that later he claimed that he mailed the signed subscription agreement to Barcelona Advisors and  
 14 received a countersigned document in the mail. Mr. Simmons contends that both of these stories are  
 15 false as Mr. Andrade came in person to the office with Mr. Wilkerson.<sup>1056</sup>

16 Mr. Simmons argues that the Division rehearsed investor witnesses, asking them a series of  
 17 questions "with varying degrees of factual accuracy" then asking if that information would have been  
 18 significant and whether they would have invested if they were aware of the information.<sup>1057</sup> Mr.  
 19 Simmons cites the testimony of Division investigator Darius Taylor, who attended the Division's  
 20 witness preparation of Richard Woods and testified as to the responses he heard.<sup>1058</sup> Mr. Simmons  
 21 discounts the "recit[ed]... prepared testimony" of Mr. Eaves who was "rehearsed to testify about many  
 22 statements that would support the Division's case, irrespective of the truth of those statements."<sup>1059</sup>

23 \_\_\_\_\_  
 24 <sup>1052</sup> Post-Hearing Brief of Respondent George T. Simmons at 12. Mr. Simmons makes no citation to the record where this  
 testimony was allegedly made by Mr. Eaves. Mr. Orr, in his Post-Hearing Brief, notes that these two meetings were  
 referenced in the Amended T.O. and Notice. Respondent's, Bruce Orr, Post-Hearing Brief at 14.

25 <sup>1053</sup> Tr. at 718, 1164-1165.

26 <sup>1054</sup> Tr. at 325.

27 <sup>1055</sup> Division's Reply to the Post-Hearing Briefs of Respondents George T. Simmons and Bruce L. Orr at 12.

28 <sup>1056</sup> Tr. at 1172-1173, 1210-1211.

<sup>1057</sup> Post-Hearing Brief of Respondent George T. Simmons at 12. Mr. Harkins also asserts that Division witnesses were  
 "coached." Amended Post-Hearing Brief of Respondent Richard C. Harkins at 10, 21-22, 62.

<sup>1058</sup> Tr. at 669-670.

<sup>1059</sup> Post-Hearing Brief of Respondent George T. Simmons at 14.

1 Mr. Simmons accuses the Division of trying “to fashion Andrade’s rehearsed testimony to create a false  
2 impression that Mr. Simmons was a significant participant in Andrade’s investment.”<sup>1060</sup>

3 The Division contends that it did nothing more than “what any competent counsel does to  
4 prepare for litigation: meet with witnesses and ask them the expected questions in advance to learn  
5 what their answers will be.”<sup>1061</sup> Both Mr. Andrade and Ms. Carolin testified that while they had been  
6 asked questions before, they were not told how to answer them.<sup>1062</sup> Mr. Andrade testified under cross-  
7 examination that his answers were truthful and not rehearsed.<sup>1063</sup> Ms. Stewart testified that she believed  
8 she was at the hearing to “speak the truth as best I know it.”<sup>1064</sup>

9 c) Analysis and Conclusion

10 The Division’s witnesses all testified under oath. While the Division may have questioned  
11 witnesses prior to the hearing, we find no basis to conclude that the Division suborned perjury from  
12 any of its witnesses. The Respondents have established no impropriety that would call into question  
13 the testimony of the Division’s witnesses.

14 The weight of the evidence suggests that Mr. Eaves may have been mistaken about who  
15 attended the meeting at Talking Stick Resort. However, Mr. Eaves attended many meetings and we  
16 find that this error, which does not affect any of the violations alleged by the Division, does not discount  
17 the rest of his testimony. The contention that Mr. Eaves was incorrect about the attendance of Mr.  
18 Simmons and Mr. Orr at other meetings is not supported by the record as Mr. Eaves did not give this  
19 alleged testimony.

20 Mr. Simmons also incorrectly represents the testimony of Mr. Andrade. Mr. Andrade testified  
21 that his wife dropped off the subscription agreement and that he received the countersigned copy in the  
22 mail.<sup>1065</sup> However, Mr. Andrade never testified that he mailed his subscription agreement.

23 While testimony of the Division’s witnesses may not be supported by the weight of the evidence  
24  
25

26 <sup>1060</sup> Post-Hearing Brief of Respondent George T. Simmons at 25.

27 <sup>1061</sup> Division’s Reply to the Post-Hearing Briefs of Respondents George T. Simmons and Bruce L. Orr at 15-16.

28 <sup>1062</sup> Tr. at 416, 447-448.

<sup>1063</sup> Tr. at 403, 414-415.

<sup>1064</sup> Tr. at 265.

<sup>1065</sup> Tr. at 386.

1 as to certain details,<sup>1066</sup> on the whole we find their testimony credible. Conversely, the testimony of  
 2 Mr. Simmons contains many inconsistencies that render it suspect. Mr. Simmons argues that he was  
 3 not involved with the company before mid-July 2013, and claims no knowledge of documents to the  
 4 contrary. While Mr. Simmons contends he did not receive PPMs and other documents, he was  
 5 identified as an Executive Member in a memo from Mr. Harkins, dated March 26, 2013, where he was  
 6 one of the recipients.<sup>1067</sup> Mr. Simmons provides no reasonable explanation as to how he could not have  
 7 read a letter that was sent to investors, yet summarized that letter to Mr. Orr before signing on Mr.  
 8 Orr's behalf. Mr. Simmons contends that his lunch meeting had nothing to do with Mr. Andrade's  
 9 investment. However, in his EUO, Mr. Simmons testified that Mr. Andrade came into Mr. Andrade's  
 10 office where they chatted and caught up over what they had done since they both worked at Intel.<sup>1068</sup>  
 11 This is the same substance that Mr. Simmons claims to have been their discussion at the December  
 12 lunch meeting.<sup>1069</sup>

13 We find the testimony of Mr. Eaves and Mr. Andrade more credible than that of Mr. Simmons.  
 14 We find that Mr. Simmons made offers to Mr. Eaves, as to his fourth investment, and to Mr. Andrade,  
 15 as to both of his investments. While we have dismissed the direct allegations against Mr. Simmons,  
 16 Barcelona Advisors is responsible for the three offers and one sale attributed to Mr. Simmons.

#### 17 4. Bruce Orr

18 The Division contends that Mr. Orr offered securities to four individuals over drinks. The  
 19 Division asserts that because Mr. Orr filed an expense report for \$85 for drinks, Mr. Orr believed the  
 20 money "was spent for [Barcelona Advisors'] benefit, and the benefit was clearly to build goodwill with  
 21 the prospective investors to increase the likelihood they would invest."<sup>1070</sup> The Division also contends  
 22 that Mr. Orr "directed the prospective investors to speak to McDonough" who was trained to present  
 23 the company's securities and could close the sale.<sup>1071</sup>

24 Mr. Orr disputes the Division's characterization of the meeting. Mr. Orr contends that he did

25 <sup>1066</sup> E.g., Mr. Eaves' testimony about the attendees at the Talking Stick Resort meeting and Mr. Andrade's testimony about  
 26 the date of his second investment, discussed *infra*.

27 <sup>1067</sup> Exh. S-24.

<sup>1068</sup> Exh. S-76 at 48-49.

<sup>1069</sup> Tr. at 1170.

<sup>1070</sup> Securities Division's Amended Post-Hearing Brief at 52.

<sup>1071</sup> Securities Division's Amended Post-Hearing Brief at 52-53.

1 not offer any type of investment to these four individuals “because I did not know what investments  
 2 were being offered at the time, and I simply told them I would give their card to someone.”<sup>1072</sup> Mr.  
 3 Orr further argues that he did not carry an offering memorandum, and he could not make an offer  
 4 without one.<sup>1073</sup> Mr. Orr continues by stating that “it could have been that one of the guys was just  
 5 spouting off about being an investor to impress the woman in the group, I don’t know. I made no  
 6 attempt to sell an investment, or even to vet the qualifications of the gentleman.”<sup>1074</sup>

7 The Act defines an offer for sale as “an attempt or offer to dispose of, or solicitation of an order  
 8 or offer to buy, a security or interest in a security for value or any sale or offer for sale of a warrant or  
 9 right to subscribe to another security of the same issuer or of another issuer.”<sup>1075</sup> We interpret the  
 10 definition broadly as the Legislature has instructed that the Securities Act “be liberally construed to  
 11 effect its remedial purpose of protecting the public interest.”<sup>1076</sup>

12 The Division bears the burden of proof to establish that an offer of sale occurred.<sup>1077</sup> The  
 13 evidence of record establishes only that Mr. Orr told the four potential investors what Barcelona  
 14 Advisors was.<sup>1078</sup> The record does not establish that Mr. Orr mentioned the availability for purchase  
 15 of any securities in connection with Barcelona Advisors and Mr. Orr denied that he was trying to solicit  
 16 investment. After the meeting, Mr. Orr told Mr. McDonough or Mr. Wilkerson about the four  
 17 individuals. However, the record does not establish that any of the four individuals were subsequently  
 18 contacted about purchasing Barcelona Advisors’ securities. We find that the Division has failed to  
 19 meet its burden of proof. Accordingly, we dismiss the alleged violations of A.R.S. §§ 44-1841 and 44-  
 20 1842 against Mr. Orr for offering to sell securities to these four individuals.

## 21 5. Barcelona Advisors

22 The Division contends that Barcelona Advisors is responsible for all offers and sales that were  
 23 made by Mr. Harkins, Mr. Kerrigan, Mr. Simmons, and Mr. Orr. The Division contends that offers

24 <sup>1072</sup> Respondent’s, Bruce Orr, Post-Hearing Brief at 8.

25 <sup>1073</sup> Respondent’s, Bruce Orr, Post-Hearing Brief at 9.

26 <sup>1074</sup> Respondent’s, Bruce Orr, Post-Hearing Brief at 9.

27 <sup>1075</sup> A.R.S. § 44-1801(15)

28 <sup>1076</sup> *Eastern Vanguard Forex, Ltd. v. Arizona Corp. Comm’n*, 206 Ariz. 399, 410, 79 P.3d 86, 97 (App. 2003) citing 1951 Ariz. Sess. Laws, ch. 18, § 20.

<sup>1077</sup> See A.A.C. R14-3-109(G).

<sup>1078</sup> Mr. Orr presented additional factual information regarding the meeting in his Post-Hearing Brief. This information, however, is not part of the evidence of record.

1 and sales of the Executive Members and Managers were made by Barcelona Advisors' agents on its  
2 behalf.<sup>1079</sup>

3 We agree that the offers and sales made by Mr. Harkins, Mr. Kerrigan, Mr. Simmons, and Mr.  
4 Orr, as agents for Barcelona Advisors, are also attributable to the company itself. As such, Barcelona  
5 Advisors is responsible for the 30 sales and 16 offers of Mr. Harkins, the 12 offers of Mr. Kerrigan,  
6 and the 1 sale and 3 offers for which no direct liability has been attached to the actions of Mr. Simmons.

7 6. Barcelona Land Company

8 The Division contends that Barcelona Land Company made an offer of the second note that  
9 Barcelona Advisors issued to Mr. Andrade. The Division contends that the offer was made when Mr.  
10 Andrade met with Mr. Harkins and Mr. Simmons about making a second investment in June 2014.  
11 The Division contends that Mr. Harkins gave Mr. Andrade a copy of the Barcelona Land Company  
12 PPM in response to Mr. Andrade's request for more information about Barcelona Advisors' business  
13 plan. As Mr. Harkins was president of both Barcelona Advisors and Barcelona Land Company, the  
14 Division contends that giving the PPM was an action of both companies providing favorable  
15 information to sway Mr. Andrade to make the investment with Barcelona Advisors.

16 Mr. Harkins contends that the Barcelona Land Company PPM was never more than in a draft  
17 stage and given to Mr. Andrade at his request. Mr. Harkins further contends that Mr. Andrade received  
18 the Barcelona Land Company PPM after Mr. Andrade had already delivered his \$5,000 check to the  
19 company and received his signed promissory note.

20 At the hearing, Mr. Andrade testified that he met with Mr. Harkins and Mr. Simmons on June  
21 15, 2014.<sup>1080</sup> However, both Mr. Andrade and Mr. Harkins testified that Mr. Andrade gave Mr. Harkins  
22 a \$5,000 check at their meeting.<sup>1081</sup> The check was dated June 16, 2014.<sup>1082</sup> The note Mr. Andrade  
23 received was also dated June 16, 2014.<sup>1083</sup> A chronology of meetings for Barcelona Advisors compiled  
24 by Mr. Harkins shows no meetings occurred on June 15, 2014, but reads "Rick Andrade \$5k note  
25

26 <sup>1079</sup> Exhs. S-3b, S-5 at ACC007229-ACC007230.

27 <sup>1080</sup> Tr. at 389, 411.

28 <sup>1081</sup> Tr. at 391, 418, 882, 976-977, 1258.

<sup>1082</sup> Tr. at 395; Exh. S-169.

<sup>1083</sup> Exh. S-51.

1 today” on June 16, 2014.<sup>1084</sup> We find the weight of the evidence establishes that the meeting between  
2 Mr. Andrade and Mr. Harkins occurred on June 16, 2014, the same day Mr. Andrade made his \$5,000  
3 investment.

4 Mr. Andrade received the Barcelona Land Company PPM at the June 16, 2014 meeting with  
5 Mr. Harkins. Mr. Andrade considered the Barcelona Land Company PPM was given to him by Mr.  
6 Harkins in response to Mr. Andrade’s request for information, and not as part of an investment  
7 offering.<sup>1085</sup> The record does not establish that Mr. Andrade even received the Barcelona Land  
8 Company PPM prior to completing his investment that same day. The Division has failed to meet its  
9 burden of proof to establish that Barcelona Land Company made an offer of securities to Mr. Andrade.  
10 Accordingly, this allegation is dismissed.

#### 11 E. Fraud Violations

12 The Division alleges multiple violations of A.R.S. § 44-1991(A), the antifraud provisions of  
13 the Act, against Mr. Harkins, Mr. Kerrigan, Mr. Simmons, Barcelona Advisors, and Barcelona Land  
14 Company. Mr. Harkins contends that the Division has failed to prove fraud, which must be established  
15 by five elements: 1) a false statement of a material fact, 2) knowledge on the part of the defendant that  
16 the statement is untrue, 3) intent on the part of the defendant to deceive the alleged victim, 4) justifiable  
17 reliance by the alleged victim on the statement, and 5) injury to the alleged victim as a result.

18 Nine elements must be proven under common law fraud: 1) a representation; 2) its falsity; 3)  
19 its materiality; 4) the speaker's knowledge of its falsity or ignorance of its truth; 5) the speaker's intent  
20 that it be acted upon by the recipient in the manner reasonably contemplated; 6) the hearer's ignorance  
21 of its falsity; 7) the listener's reliance on its truth; 8) the right to rely on it; and 9) his consequent and  
22 proximate injury.<sup>1086</sup> However, the nine elements of common law fraud are not essential to establishing  
23 statutory securities fraud.<sup>1087</sup> A.R.S. § 44-1991(A) provides:

24 It is a fraudulent practice and unlawful for a person, in connection with  
25 a transaction or transactions within or from this state involving an offer

26  
27 <sup>1084</sup> Exhs. S-30 at ACC006358-ACC006359, S-32 at 122-124.

<sup>1085</sup> Tr. at 418.

<sup>1086</sup> *Wells Fargo Credit Corp. v. Smith*, 166 Ariz. 489, 494, 803 P.2d 900, 905 (App. 1990).

<sup>1087</sup> *Aaron v. Fromkin*, 196 Ariz. 224, 227, 994 P.2d 1039, 1042 (App. 2000).

1 to sell or buy securities, or a sale or purchase of securities, including  
 2 securities exempted under section 44-1843 or 44-1843.01 and including  
 3 transactions exempted under section 44-1844, 44-1845 or 44-1850,  
 4 directly or indirectly to do any of the following:

- 5 1. Employ any device, scheme or artifice to defraud.
- 6 2. Make any untrue statement of material fact, or omit to state  
 7 any material fact necessary in order to make the statements  
 8 made, in the light of the circumstances under which they were  
 9 made, not misleading.
- 10 3. Engage in any transaction, practice or course of business  
 11 which operates or would operate as a fraud or deceit.

12 An issuer of securities has an affirmative duty not to mislead potential investors.<sup>1088</sup> Under  
 13 A.R.S. § 44-1991(A)(2), a material fact is one that “would have assumed actual significance in the  
 14 deliberations of the reasonable buyer.”<sup>1089</sup> Materiality will also be found when there is a “substantial  
 15 likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as  
 16 having significantly altered the ‘total mix’ of information made available.”<sup>1090</sup>

#### 17 1. AVC Failure

18 The Division contends that Mr. Harkins, Mr. Kerrigan, Barcelona Advisors, and Barcelona  
 19 Land Company made statements to investors regarding Mr. Harkins’ real estate experience in general,  
 20 or his experience with AVC in particular, while omitting to state the failure of the AVC real estate  
 21 venture. The Division contends that the omission was misleading because Mr. Harkins’ real estate  
 22 experience was described to create confidence in the investment and the failure of the AVC venture  
 23 would have undermined that confidence. The Division contends that this information would have been  
 24 material to a reasonable investor, as evidenced by many investors stating the information would have  
 25 been significant to their decision to invest.<sup>1091</sup>

26 <sup>1088</sup> *Trimble v. Am. Sav. Life Ins. Co.*, 152 Ariz. 548, 553, 733 P.2d 1131, 1136 (App. 1986).

27 <sup>1089</sup> *Aaron*, 196 Ariz. at 227, 994 P.2d at 1042.

28 <sup>1090</sup> *Caruthers v. Underhill*, 230 Ariz. 513, 524, 287 P.3d 807, 818 (App. 2012), quoting *TSC Indus., Inc. v. Northway, Inc.*, 426 U.S. 438, 449, 96 S.Ct. 2126, 48 L.Ed.2d 757 (1976).

<sup>1091</sup> *Tr.* at 173, 229, 303-304, 397-398, 664.

1 Mr. Harkins contends that AVC had been successful until the United States economy “collapse  
2 in 2007.”<sup>1092</sup> Mr. Harkins contends that AVC was not his company, he did not control AVC and that  
3 he only had 16% ownership of AVC. Mr. Harkins further contends that investors could have found  
4 information about AVC had they asked Barcelona Advisors’ management, as the 12-6-12 and 10-5-10  
5 PPMs told investors they could ask questions, or if they had done their own research on the internet.

6 The Division counters that investors had no duty to investigate on their own and that Mr.  
7 Harkins’ explanation about the effect of the economy on AVC is more information that a reasonable  
8 investor would have wanted to know before investing.

9 Mr. Harkins was previously the President, CEO and Chairman of the Board for AVC, a real  
10 estate company that sought to develop four upscale housing communities.<sup>1093</sup> Although AVC raised  
11 \$10,000,000 from Arizona investors, the real estate venture failed, with three AVC companies filing  
12 for bankruptcy protection and the fourth subject to an order of cancellation from the Arizona State Land  
13 Department for nonpayment on the acquisition of land.<sup>1094</sup>

14 Mr. Harkins and Barcelona Advisors stated through the 12-6-12 PPMs that Mr. Harkins had  
15 been involved in the real estate industry from 2002, through mid-2009, in the creation and executive  
16 management of AVC, a land acquisition and investment company.<sup>1095</sup> The statements were made to  
17 the 12-6-12 PPM recipients: Ms. Bair, Mr. Eaves, Mr. Woods, Mr. Jordan, and Mr. Ramirez.<sup>1096</sup> Mr.  
18 Harkins, Barcelona Advisors, and Barcelona Land Company made the same statement to Mr. Andrade  
19 in the Barcelona Land Company PPM.<sup>1097</sup> As Mr. Kerrigan provided the April 2013 PPM to Mr. Jordan  
20 and Mr. Ramirez, he is also responsible for making the statements to those investors.<sup>1098</sup> Mr. Kerrigan  
21 and Barcelona Advisors gave Barcelona Advisors’ advertising material to Ms. Stewart that stated Mr.  
22 Harkins had “over 40 years of background in hotels and multifamily investing, developing, ownership  
23 and property management, [and] the associated capital markets.”<sup>1099</sup> Mr. Simmons and Mr. Harkins  
24

25 <sup>1092</sup> Amended Post Hearing Brief of Respondent Richard C. Harkins at 71.

26 <sup>1093</sup> Tr. at 783; Exh. S-32 at 16, 44-46.

27 <sup>1094</sup> Exhs. S-15, S-16, S-17, S-18, S-21, S-32 at 44-45, 47-48, S-61.

28 <sup>1095</sup> Exhs. S-5 at ACC007229, S-32 at 59-61, S-57 at ACC000751.

<sup>1096</sup> Tr. at 161-163, 192-195, 667-668, 844, 1028-1029, 1064-1065.

<sup>1097</sup> Exh. S-59 at ACC005876.

<sup>1098</sup> Tr. at 161-163, 1028-1029.

<sup>1099</sup> Tr. at 269; Exh. S-174 at 15.

1 both told Mr. Andrade about Mr. Harkins' business success.<sup>1100</sup> Prior to investing, Mr. Woods, Mr.  
 2 Jordan, Ms. Stewart, and Mr. Andrade were not informed about the failure of the AVC real estate  
 3 venture.<sup>1101</sup> Mr. Eaves was not informed about the failure of AVC prior to making his first four  
 4 investments.<sup>1102</sup>

5 We concur with the Division's assertion that the Respondents used Mr. Harkins' experience to  
 6 generate confidence in investors. The failure of the AVC real estate venture would have tarnished the  
 7 image of Mr. Harkins that was projected to investors. The Respondents had an affirmative duty to  
 8 disclose this information. We find the omission of the information about AVC constituted the omission  
 9 of a material fact, and therefore constituted a violation of A.R.S. § 44-1991(A).

10 We find that Mr. Harkins and Barcelona Advisors violated A.R.S. § 44-1991(A) by omitting to  
 11 tell Mr. Woods, Mr. Jordan, Mr. Andrade,<sup>1103</sup> and Mr. Eaves<sup>1104</sup> about the failure of the AVC real estate  
 12 venture. We find that Mr. Kerrigan and Barcelona Advisors violated A.R.S. § 44-1991(A) by omitting  
 13 to tell Mr. Jordan and Ms. Stewart about the failure of the AVC real estate venture. Regarding the  
 14 AVC omission, we dismiss the alleged violations by Mr. Simmons, as we have denied the Division's  
 15 motion to conform as to direct allegations against him.<sup>1105</sup> We dismiss the alleged violations from  
 16 failing to tell Ms. Bair and Mr. Ramirez, as the Division has failed to meet its burden of proof to  
 17 establish they were not informed about the AVC failure. We further dismiss the allegations of the AVC  
 18 omission arising from Mr. Andrade's receipt of the Barcelona Land Company PPM as we have  
 19 determined that Mr. Andrade did not receive the PPM pursuant to an offer.

## 20 2. Paul Meka Conviction

21 The Division contends that Mr. Harkins, Mr. Kerrigan, Mr. Simmons, and Barcelona Advisors  
 22 all made statements to investors that Mr. Harkins was the president or manager of the company while  
 23 omitting that Mr. Harkins was closely assisted by Paul Meka, a felon convicted in connection with an  
 24 \_\_\_\_\_

25 <sup>1100</sup> Tr. at 380, 390.

<sup>1101</sup> Tr. at 173, 229, 397, 664, 1222.

26 <sup>1102</sup> Tr. at 303-305.

<sup>1103</sup> As to both investments of Mr. Andrade.

27 <sup>1104</sup> As to the first four investments of Mr. Eaves.

28 <sup>1105</sup> We note that the Division makes an allegation against Mr. Simmons for telling Mr. Andrade about Mr. Harkins' successful business experience, but does not specifically include Mr. Simmons later in its fraud allegation from the AVC failure. Securities Division's Amended Post-Hearing Brief at 37, 58.

1 investment fraud scheme. The Division contends that the omission of this information was misleading  
2 because it reflected poorly on Mr. Harkins' judgment. The Division contends that this information  
3 would have been material to a reasonable investor, as evidenced by many investors stating the  
4 information would have been significant to their decision to invest.<sup>1106</sup>

5 Mr. Harkins contends that had the Division called Mr. Meka as a witness, Mr. Meka would  
6 have testified that he did not know the wrongdoing committed by others that led to his conviction, and  
7 that his conviction did not impair his ability to be a productive member of the Barcelona Advisors  
8 team. Mr. Harkins argues that Mr. Meka's employment had no negative impact on any investor and  
9 considers his conviction to be a bad thing that happened to a good person.

10 Mr. Harkins was closely assisted by Paul Meka, an employee of Barcelona Advisors.<sup>1107</sup> In  
11 November 2010, Mr. Meka had been convicted of a felony offense, misprision of a felony, for "rubber  
12 stamp[ing]" documents that were used by others to defraud investors.<sup>1108</sup> With Barcelona Advisors,  
13 Mr. Meka functioned as an office manager, with duties including keeping files and storing and printing  
14 the PPMs.<sup>1109</sup> As Mr. Meka had experience evaluating land parcels and commercial property, he was  
15 expected to work on due diligence toward the acquisition and valuation of properties and entitlement  
16 work.<sup>1110</sup>

17 Mr. Harkins and Barcelona Advisors stated, through the February 2013 PPM and April 2013  
18 PPM, that Mr. Harkins was President or Manager of the company.<sup>1111</sup> These statements were conveyed  
19 to Mr. Eaves, Mr. Woods, Mr. Jordan and Mr. Ramirez, who each received a PPM.<sup>1112</sup> As Mr. Kerrigan  
20 provided the April 2013 PPM to Mr. Jordan and Mr. Ramirez, he is also responsible for making the  
21 statements to those investors.<sup>1113</sup> Mr. Kerrigan and Barcelona Advisors gave Ms. Stewart advertising  
22 materials stating that Mr. Harkins was the President of Barcelona Advisors.<sup>1114</sup> Mr. Simmons told Mr.

23  
24 <sup>1106</sup> Tr. at 173-174, 229-230, 398, 664-665.

25 <sup>1107</sup> Tr. at 860-861.

26 <sup>1108</sup> Exhs. S-20a at 11, S-20b.

27 <sup>1109</sup> Tr. at 94, 350-351, 860-861, 1254-1255; Exh. H-11.

28 <sup>1110</sup> Tr. at 861-862; Exhs. H-11, S-76 at 101-102.

<sup>1111</sup> Exhs. S-5 at ACC007214, ACC007229, S-57 at ACC000737, ACC000751.

<sup>1112</sup> Tr. at 161-163, 192-195, 667-668, 1028-1029, 1064-1065.

<sup>1113</sup> Tr. at 161-163, 1028-1029.

<sup>1114</sup> Tr. at 269; S-174 at 15.

1 Andrade that Mr. Harkins managed Barcelona Advisors.<sup>1115</sup>

2 Prior to investing, Mr. Woods, Mr. Jordan, Mr. Ramirez, Ms. Stewart and Mr. Andrade were  
3 not informed that Mr. Harkins was closely assisted by Mr. Meka, a felon convicted in connection with  
4 an investment fraud scheme.<sup>1116</sup> Mr. Eaves was not informed about Mr. Meka's conviction before  
5 making his first five investments.<sup>1117</sup>

6 We find that a reasonable investor would want to know that a felon, convicted for his role in  
7 investment fraud, was working closely with the president of the company in which she planned to  
8 invest. The arguments raised by Mr. Harkins, that Mr. Meka is a good person and that the  
9 circumstances surrounding the conviction somehow mitigate his culpability, may be grounds for the  
10 company to provide more information than just the fact of the conviction, but do not justify the  
11 omission of that fact. Mr. Harkins' other argument, that Mr. Meka's employment had no negative  
12 impact on any investor, is irrelevant to the allegation of fraud. The Respondents had an affirmative  
13 duty to disclose information about Mr. Meka's background and his role with the company. The  
14 omission of this information constituted the omission of a material fact, in violation of A.R.S. § 44-  
15 1991(A).

16 We find that Mr. Harkins and Barcelona Advisors violated A.R.S. § 44-1991(A) by omitting to  
17 tell Mr. Woods, Mr. Jordan, Mr. Ramirez, and Mr. Eaves<sup>1118</sup> about Mr. Meka's background and role  
18 with the company. We find that Mr. Kerrigan and Barcelona Advisors violated A.R.S. § 44-1991(A)  
19 by omitting to tell Mr. Jordan, Mr. Ramirez, and Ms. Stewart information about Mr. Meka. We find  
20 that Barcelona Advisors violated A.R.S. § 44-1991(A) by omitting to tell Mr. Andrade about Mr.  
21 Meka.<sup>1119</sup>

22 We dismiss the allegation regarding the Mr. Meka omission against Mr. Simmons, as we have  
23 denied the Division's motion to conform as to direct liability allegations against him.

### 24 3. Robert Kerrigan Debts

25 The Division contends that Mr. Harkins, Mr. Kerrigan and Barcelona Advisors all made

26 <sup>1115</sup> Tr. at 380.

27 <sup>1116</sup> Tr. at 173-174, 229-230, 398, 664-665, 1223; Exh. S-32 at 81.

28 <sup>1117</sup> Tr. at 306-307.

<sup>1118</sup> As to the first five investments of Mr. Eaves.

<sup>1119</sup> As to both investments of Mr. Andrade.

1 statements to investors regarding Mr. Kerrigan's forty-five years of experience as a financial services  
2 provider and manager of privately held companies while omitting that Mr. Kerrigan owed unpaid taxes  
3 and had been sued regarding a bank loan. The Division contends that these omissions were misleading  
4 because Mr. Kerrigan's experience was mentioned in order to create confidence in the investment, and  
5 Mr. Kerrigan's bank loan and tax debt would undermine that confidence. The Division contends that  
6 this information would have been material to a reasonable investor, as evidenced by investors testifying  
7 that the information would have been significant to them or they would have wanted to know about the  
8 circumstances of the bank loan and tax debt.<sup>1120</sup>

9 Mr. Kerrigan contends that these items from his background have no bearing on the Division's  
10 investigation and should not be part of the Commission's decision.

11 Pursuant to a 2007 settlement agreement in a divorce proceeding with his ex-wife, Mr. Kerrigan  
12 was to make three installment payments of \$63,333.33, plus interest, secured by a bank line of  
13 credit.<sup>1121</sup> After Mr. Kerrigan failed to make the final payment, due on June 30, 2009, his ex-wife drew  
14 on the line of credit.<sup>1122</sup> When Mr. Kerrigan refused to repay his bank for the withdrawal, on the theory  
15 that his ex-wife was not authorized to draw on the line of credit, the bank sued and obtained a judgment  
16 for \$88,392.58.<sup>1123</sup> Mr. Kerrigan reached a settlement agreement with the bank for \$23,500.<sup>1124</sup>

17 In 2010, Mr. Kerrigan owed approximately \$80,000-\$90,000 in taxes.<sup>1125</sup> On July 16, 2014,  
18 the Internal Revenue Service filed a lien for \$22,909.36 for 2010 taxes still owed by Mr. Kerrigan.<sup>1126</sup>

19 Mr. Harkins and Barcelona Advisors stated, "[f]or the past 45 years [Mr. Kerrigan] has been  
20 active in the financial services industry both as a provider of financial services to private clients and  
21 through ownership and management of several privately held companies both in manufacturing and  
22 service distribution" to Mr. Eaves, Mr. Woods, Mr. Ramirez, and Mr. Jordan in the February 2013  
23 PPM and/or the April 2013 PPM.<sup>1127</sup> This same information was stated by Mr. Harkins and Barcelona  
24

25 <sup>1120</sup> Tr. at 174, 180-181, 185-186, 307-308, 446, 665.

26 <sup>1121</sup> Exhs. S-98 at 157-159, S-120.

27 <sup>1122</sup> Exh. S-121 at 2.

28 <sup>1123</sup> Exhs. K-2, S-122, S-123.

<sup>1124</sup> Exh. K-2.

<sup>1125</sup> Exh. S-98 at 102.

<sup>1126</sup> Exhs. S-98 at 101-102, S-100.

<sup>1127</sup> Tr. at 161-163, 193-194, 667-668, 1028-1029, 1064-1065; Exhs. S-5 at ACC007230, S-57 at ACC000752.

1 Advisors in the January 2014 PPM to Mr. Andrade.<sup>1128</sup> As Mr. Kerrigan provided the April 2013 PPM  
 2 to Mr. Jordan and Mr. Ramirez, he is also responsible for making the statements to those investors.<sup>1129</sup>  
 3 Barcelona Advisors' advertising material given to Ms. Stewart by Mr. Kerrigan and the company  
 4 contained the same statement.<sup>1130</sup> Prior to making their investments, Mr. Eaves, Mr. Woods, Ms.  
 5 Carolin and Mr. Jordan were not informed about Mr. Kerrigan's tax debt or the law suit brought by his  
 6 bank.<sup>1131</sup>

7 We concur with the Division's assertion that the Respondents used Mr. Kerrigan's experience  
 8 to generate confidence in the investment, and that disclosure of Mr. Kerrigan's debts would have  
 9 undermined such confidence by calling into question his money management skills. The Respondents  
 10 had an affirmative duty to disclose this information.

11 We find that Mr. Harkins and Barcelona Advisors violated A.R.S. § 44-1991(A) by omitting to  
 12 tell Mr. Woods, Mr. Jordan, and Mr. Eaves<sup>1132</sup> about Mr. Kerrigan's debts. We find that Mr. Kerrigan  
 13 and Barcelona Advisors violated A.R.S. § 44-1991(A) by omitting to tell Mr. Jordan and Ms. Stewart  
 14 about Mr. Kerrigan's debts.

15 Ms. Carolin received a PPM after she made her investments and was in a personal relationship  
 16 with Mr. Kerrigan at the time.<sup>1133</sup> As Ms. Carolin did not receive the statement from the PPMs  
 17 regarding Mr. Kerrigan's experience and she had her own personal knowledge of him as a person, Ms.  
 18 Carolin would not have been in a position to rely upon the statements regarding Mr. Kerrigan in the  
 19 PPM. Accordingly, we do not find an omission occurred as to Ms. Carolin, and we dismiss any  
 20 allegations of fraud regarding Mr. Kerrigan's debts as to this investor. We dismiss the alleged  
 21 violations from failing to tell Mr. Ramirez or Mr. Andrade as the Division has failed to meet its burden  
 22 of proof to establish that they were not informed about Mr. Kerrigan's debts.

#### 23 4. Plan B Business Plan

24 The Division contends that Mr. Harkins and Barcelona Advisers, through the January 2014  
 25

26 <sup>1128</sup> Tr. at 384, 416; Exh. S-58 at ACC005744.

<sup>1129</sup> Tr. at 161-163, 1028-1029.

<sup>1130</sup> Tr. at 269; Exh. S-174 at 15.

<sup>1131</sup> Tr. at 174, 307-308, 446, 665.

<sup>1132</sup> As to all six investments of Mr. Eaves.

<sup>1133</sup> Tr. at 426, 429, 463.

1 PPM, made statements to Mr. Andrade to create confidence in the company's business plan while  
 2 omitting to state that Barcelona Advisors was on its "Plan B" business plan after failing to raise the  
 3 necessary capital to fund its original business model. The Division contends that the omitted  
 4 information would have undermined the confidence of the statements. The Division contends that this  
 5 information would have been material to a reasonable investor, as evidenced by Mr. Andrade's  
 6 testimony that the omitted information would have been significant to his decision to invest.<sup>1134</sup>

7 Mr. Harkins contends that the Division does not understand the business plan and the structure  
 8 of the corporate entities. Mr. Harkins argues that the business plan of Barcelona Advisors, to act as an  
 9 advisor to USA Barcelona Realty, never changed. Mr. Harkins contends that Barcelona Advisors  
 10 advised USA Barcelona Realty "to move to another sector of it [sic] business plan when it became  
 11 clear that Mr. Weintraub was not going to perform on the \$70,000,000" he was supposed to raise for  
 12 USA Barcelona Realty.<sup>1135</sup>

13 The February 2013 PPM and the April 2013 PPM for the 12-6-12 Offering stated the following  
 14 business purpose of Barcelona Advisors:

15 • [Barcelona Advisors] has been formed to be the Advisor to a series of  
 16 private Funds and their Affiliates. Each Fund will be designed to sell  
 17 equity interest through exempt offerings or public offerings, the proceeds  
 18 of which will be used to acquire, on a leveraged or unleveraged basis,  
 19 apartments and hotels. The hotels will be predominately Marriott and  
 20 Hilton select/focus service, franchised licensed hotels located in the US  
 21 and Canada.<sup>1136</sup>

22 The February 2013 PPM and the April 2013 PPM further stated that "[o]n behalf of our Funds,  
 23 [Barcelona Advisors] intend[s] to arrange to acquire apartments and select/focus service hotels."<sup>1137</sup>

24 The January 2014 PPM for the 10-5-10 Offering stated the following business purpose of  
 25 Barcelona Advisors:

26 <sup>1134</sup> Tr. at 398-399.

27 <sup>1135</sup> Amended Post-Hearing Brief of Respondent Richard C. Harkins at 76.

28 <sup>1136</sup> Exhs. S-5 at ACC007217 (parentheticals removed, underscore added), S-57 at ACC000740 (parentheticals removed, boldface removed, underscore added).

<sup>1137</sup> Exhs. S-5 at ACC007224, S-57 at ACC000748 (underscore added to both).

1 The Company has been formed to be the Advisor to a series of Funds,  
2 each designed to obtain equity capital through securities offerings which  
3 may be either exempt or registered, the Offering Proceeds of which will  
4 be used to develop and acquire on a leveraged or unleveraged basis hotels  
5 and other qualified real estate properties. Hotels developed and acquired  
6 by the Funds shall be predominately Marriott, Hilton and Hyatt  
7 select/focus service, franchised hotels located in the United States.<sup>1138</sup>

8 The January 2014 PPM further stated that “[o]n behalf of our Funds, [Barcelona Advisors]  
9 intend[s] to arrange to develop or acquire select/focus service hotels.”<sup>1139</sup> The change in plan from  
10 acquisition of properties to development of properties arose from the failure of Mr. Weintraub to raise  
11 \$70 million in working capital.<sup>1140</sup>

12 Mr. Harkins and Barcelona Advisors made the following statements to Mr. Andrade, through  
13 the January 2014 PPM:

14 “We have an appropriate business model for both our acquisition and  
15 new development programs.”

16 “We have appropriately planned for the Company’s capital  
17 requirements.”

18 “We have organized and prepared to effectively raise the capital required  
19 for each Fund’s purposes.”<sup>1141</sup>

20 We agree with Mr. Harkins, at least at a basic level, that the business purpose of Barcelona  
21 Advisors was to act as an advisor to USA Barcelona Realty. However, the role of Barcelona Advisors  
22 was set forth more specifically in its PPMs. The February 2013 PPM and the April 2013 PPM both  
23 state that Barcelona Advisors would be arranging the acquisition of properties. By the time of the  
24 January 2014 PPM, Barcelona Advisors had altered its business plan to include advising on the  
25 development of hotels, a change necessitated by \$70 million of anticipated capital not arriving. The

26 \_\_\_\_\_  
27 <sup>1138</sup> Exh. S-58 at ACC005720 (underscore added).

<sup>1139</sup> Exh. S-58 at ACC005730 (underscore added).

<sup>1140</sup> Tr. at 793, 795, 808.

<sup>1141</sup> Tr. at 384, 416; Exh. S-58 at ACC005727.

1 January 2014 PPM made statements designed to raise confidence in investors over the company's  
 2 business plan and ability to raise capital. The company's change of business plan due to the failure to  
 3 generate anticipated capital is information that would have undermined the intent of these statements.  
 4 The Respondents had an affirmative duty to disclose this information. We find the omission of the  
 5 information about Barcelona Advisors' change in business plan as a result of failing to raise anticipated  
 6 capital constituted the omission of a material fact, and therefore constituted a violation of A.R.S. § 44-  
 7 1991(A). We find that Mr. Harkins and Barcelona Advisers violated A.R.S. § 44-1991(A) by omitting  
 8 to tell Mr. Andrade about the change of Barcelona Advisors' business plan as a result of the failure to  
 9 raise necessary capital.<sup>1142</sup>

#### 10 5. Robert Kerrigan Investments

11 In February 2013, Mr. Kerrigan made two \$30,000 investments in Barcelona Advisors for  
 12 which he received two notes with maturity dates of June 30, 2013.<sup>1143</sup> Barcelona Advisors never repaid  
 13 the principal on these two notes.<sup>1144</sup>

14 Mr. Kerrigan invested another \$70,000 in Barcelona Advisors for which Barcelona Advisors  
 15 issued a promissory note on October 1, 2013.<sup>1145</sup> Under the terms of the note, principal and unpaid  
 16 interest would be paid from proceeds Barcelona Advisors received from new investors in the 12-6-12  
 17 Offering.<sup>1146</sup> Barcelona Advisors made no payments on this note.<sup>1147</sup>

#### 18 a) Failure to Pay Robert Kerrigan Notes

19 The Division contends that Mr. Harkins and Barcelona Advisors stated to investors, in the  
 20 Barcelona Advisors notes, that the company would repay the investors' principal by a specific maturity  
 21 date. The Division contends that the failure to inform those investors who invested after June 30, 2013,  
 22 about the failure to repay Mr. Kerrigan's \$30,000 promissory notes was an omission that was  
 23 misleading because it would call into question Barcelona Advisors' ability to repay investors. The  
 24 Division contends that Mr. Kerrigan is also responsible for the omission because he discussed and  
 25

26 <sup>1142</sup> As to both investments of Mr. Andrade.

<sup>1143</sup> Exhs. S-133, S-134.

<sup>1144</sup> Exh. S-98 at 182-184, S-133, S-134.

<sup>1145</sup> Exhs S-98 at 184-185, S-135.

<sup>1146</sup> Exh. S-135.

<sup>1147</sup> Exh. S-98 at 184-185.

1 recommended the offerings to Mr. Woods, Ms. Carolin, Mr. Jordan, Mr. Ramirez, Ms. Chaimson, and  
2 Ms. Stewart, from which we can infer that he told them the notes had a maturity date. The Division  
3 further contends that Mr. Simmons is responsible as well because he told Mr. Andrade that he had no  
4 reason to worry about investing when Mr. Andrade considered making his second investment. The  
5 Division contends that information about Barcelona Advisors' failure to pay the two \$30,000 notes to  
6 Mr. Kerrigan would be material to a reasonable investor as it was concerning to the actual investors.<sup>1148</sup>

7 Mr. Harkins contends that Mr. Kerrigan was not the only member who made loans to Barcelona  
8 Advisors. Mr. Harkins contends that member loans were not repaid because the operating agreement  
9 used in the 12-6-12 and 10-5-10 Offerings required that member loans only be repaid from surplus  
10 working capital, and the company lacked the surplus working capital to make repayment.

11 Mr. Harkins and Barcelona Advisors stated to investors, in the company's notes, that they  
12 would be paid at the maturity date. Mr. Eaves, Mr. Woods, Ms. Carolin, Mr. Jordan, Mr. Ramirez, Ms.  
13 Chaimson, Mr. Andrade, and Ms. Stewart all made investments after June 30, 2013.<sup>1149</sup> Prior to their  
14 investments, Mr. Eaves, Mr. Woods, Ms. Carolin, Mr. Jordan, Mr. Andrade, and Ms. Stewart were not  
15 told about the company's failure to repay the two \$30,000 notes to Mr. Kerrigan.<sup>1150</sup> Mr. Kerrigan  
16 discussed the investment with, and recommended it to, Mr. Woods, Ms. Carolin, Mr. Jordan, Mr.  
17 Ramirez, Ms. Chaimson and Ms. Stewart, but Mr. Kerrigan did not tell them Barcelona Advisors failed  
18 to repay his two \$30,000 notes.<sup>1151</sup> Mr. Simmons told Mr. Andrade at the time of his second investment  
19 that there was no need for him to worry when he made his second investment, but made no mention  
20 that Barcelona Advisors had failed to repay Mr. Kerrigan's two \$30,000 notes.<sup>1152</sup>

21 Mr. Harkins testified that Barcelona Advisors did not repay the notes because he and Mr.  
22 Kerrigan knew at the time that the operating agreement did not permit repayment.<sup>1153</sup>

23 At his EUO on September 15, 2015, Mr. Harkins was asked if investors were told that an  
24 October 1, 2013, note to Mr. Kerrigan was to be paid from the proceeds from new investors.<sup>1154</sup> Mr.

25 <sup>1148</sup> Tr. at 176, 230-231, 308, 399, 447, 665.

26 <sup>1149</sup> Exhs. S-31b, S-40, S-41, S-42, S-43, S-45, S-46, S-47, S-48, S-49, S-51, S-53, S-54, S-55, S-56.

27 <sup>1150</sup> Tr. at 176, 230-231, 308, 399, 447, 665; Exh. S-98 at 56-58, 169-170, 185.

28 <sup>1151</sup> Tr. at 159, 222, 426-427, 660, 1022, 1026-1030, 1032, 1104; Exh. S-98 at 57-58.

<sup>1152</sup> Tr. at 391, 1223.

<sup>1153</sup> Tr. at 937-938.

<sup>1154</sup> Exh. S-32 at 82.

1 Harkins responded that telling investors was irrelevant because Barcelona Advisors had the authority  
2 to use the proceeds of the offerings for the general purposes of the company.<sup>1155</sup> Later, Mr. Harkins  
3 stated that he wanted to add a few things to the record at the EUO.<sup>1156</sup> At this time, Mr. Harkins testified  
4 that Mr. Kerrigan was not repaid because the operating agreement prohibits repaying member loans  
5 from cash flow.<sup>1157</sup> Mr. Harkins testified that he discovered this provision in the operating agreement  
6 during the lunch break on the day of the EUO.<sup>1158</sup>

7 Had Mr. Harkins and Mr. Kerrigan realized that Barcelona Advisors could not repay a member  
8 loan from the company's net cash flow at or about the time of the February 2013 investments, or even  
9 by the time those investments matured on June 30, 2013, it is not logical that the October 2013  
10 investment by Mr. Harkins would state that the principal and interest would be paid from new  
11 investments in the 12-6-12 Offering. Indeed, Mr. Harkins testified at his EUO that he discovered this  
12 provision in the operating agreement just that day during the lunch break. Accordingly, we find Mr.  
13 Harkins' hearing testimony, that he and Mr. Kerrigan were aware of this provision in the operating  
14 agreement, lacks credibility.

15 Regardless of the provisions of the operating agreement, Mr. Harkins' acknowledgement that  
16 Mr. Kerrigan was not repaid, in part, due to a lack of working capital, is precisely the type of  
17 information that the Division asserts was improperly omitted. Mr. Harkins' other argument, that other  
18 members made loans to Barcelona Advisors which were not repaid, is unpersuasive. The violations  
19 alleged from the omission to disclose the failure to pay the promissory note of Mr. Kerrigan are not  
20 rectified by the Division's decision not to allege additional violations.

21 Since the notes contained payment dates, the investors had a reasonable expectation of receiving  
22 repayment on those dates. However, the fact that Barcelona Advisors had failed to pay on notes to Mr.  
23 Kerrigan would cast doubt as to whether the company could timely repay the notes of new investors.  
24 This is especially true since, as Mr. Harkins has acknowledged, Mr. Kerrigan was not repaid in part  
25 due to Barcelona Advisors' lack of surplus working capital. We find that a reasonable investor would  
26

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27 <sup>1155</sup> Exh. S-32 at 82-83.

<sup>1156</sup> Exh. S-32 at 136.

<sup>1157</sup> Exh. S-32 at 139.

<sup>1158</sup> Exh. S-32 at 139.

1 have considered information about Barcelona Advisors' failure to pay Mr. Kerrigan's notes to have  
 2 been significant to her deliberations as the prior defaults reflected an added risk to the investment. We  
 3 find the omission of information about Barcelona Advisors' failure to repay the two \$30,000 notes to  
 4 Mr. Kerrigan constituted the omission of a material fact, and therefore constituted a violation of A.R.S.  
 5 § 44-1991(A).

6 We find that Mr. Harkins and Barcelona Advisors violated A.R.S. § 44-1991(A) by omitting to  
 7 tell Mr. Eaves,<sup>1159</sup> Mr. Woods, Ms. Carolin,<sup>1160</sup> Mr. Jordan, Mr. Andrade,<sup>1161</sup> and Ms. Stewart about  
 8 the failure to repay Mr. Kerrigan for the two \$30,000 notes. We adopt the inference made by the  
 9 Division that Mr. Kerrigan's discussion and recommendation of Barcelona Advisors' offerings would  
 10 include telling investors that the notes had a maturity date. Accordingly, we find that Mr. Kerrigan  
 11 violated A.R.S. § 44-1991(A) by omitting to tell Mr. Woods, Ms. Carolin,<sup>1162</sup> Mr. Jordan, Mr. Ramirez,  
 12 Ms. Chaimson, and Ms. Stewart that he had not been repaid by Barcelona Advisors on the two \$30,000  
 13 notes.

14 Regarding the failure to disclose Barcelona Advisors' failure to repay Mr. Kerrigan, we dismiss  
 15 the alleged violation by Mr. Simmons, as we have denied the Division's motion to conform as to direct  
 16 allegations against him. We dismiss the alleged violations against Mr. Harkins and Barcelona Advisors  
 17 from failing to inform Mr. Ramirez and Ms. Chaimson as the Division has failed to meet its burden of  
 18 proof to show that these two investors were not informed by Mr. Harkins of the company's failure to  
 19 repay Mr. Kerrigan on the \$30,000 notes.

20 b) Promised Use of Funds to Repay Robert Kerrigan

21 The Division contends that Mr. Harkins, Mr. Kerrigan, and Barcelona Advisors stated to  
 22 investors that the 12-6-12 Offering proceeds, less \$50,000 to reimburse management for time and  
 23 expenses in organizing the company, and \$30,000 to pay third party expenses related to the offering,  
 24 would be used to pursue the company's business plan. The Division alleges that Mr. Harkins, Mr.  
 25 Kerrigan and Barcelona Advisors omitted to tell those 12-6-12 Offering investors who invested after  
 26

27 <sup>1159</sup> As to the last five investments of Mr. Eaves.

<sup>1160</sup> As to both investments of Ms. Carolin.

<sup>1161</sup> As to both investments of Mr. Andrade.

28 <sup>1162</sup> As to both investments of Ms. Carolin.

1 October 1, 2013, that Barcelona Advisors had promised to use investment funds to pay back a \$70,000  
 2 note to Mr. Kerrigan. The Division contends that the omission is misleading because the statement  
 3 implies that funds would be used for the company's business plan rather than reward a company insider.  
 4 The Division contends that this information would be material to a reasonable investor, as evidenced  
 5 by Mr. Jordan's testimony that it would have been significant to his decision to invest.<sup>1163</sup>

6 Mr. Harkins contends that Mr. Kerrigan requested the October 1, 2013 note contain language  
 7 that Mr. Kerrigan be repaid from the proceeds of the 12-6-12 investments, but that Mr. Harkins  
 8 informed Mr. Kerrigan that the repayment could not be made pursuant to the operating restrictions.  
 9 For the reasons set forth stated in the section above, "Failure to Pay Robert Kerrigan Notes," we find  
 10 Mr. Harkins' hearing testimony not credible as to when he became aware of the operating agreement  
 11 restriction on payment of member loans.

12 Mr. Harkins and Barcelona Advisors stated to investors, through the April 2013 PPM:

13 Up to \$50,000 of the Proceeds raised from the Offering may be  
 14 reimbursed to our management for time and expenses incurred in the  
 15 organization of the Company. An additional \$30,000 will be used to pay  
 16 expenses to third party professionals for expenses relating to the  
 17 organization of the Company and conducting this Offering ... After  
 18 deduction of those expenses, all other Proceeds will be used by the  
 19 Company to pursue the business plan outlined in this Memorandum.<sup>1164</sup>

20 Mr. Kerrigan also made this statement to Mr. Jordan and Mr. Ramirez when he provided them  
 21 with a copy of the April 2013 PPM.<sup>1165</sup> Mr. Harkins, Mr. Kerrigan, and Barcelona Advisors did not  
 22 inform Mr. Jordan that the company had promised to use investment funds to repay a \$70,000 note to  
 23 Mr. Kerrigan.<sup>1166</sup> Mr. Kerrigan did not inform Mr. Ramirez that the company had promised to use  
 24 investment funds to repay him on the \$70,000 note.<sup>1167</sup>

25 The Company's written agreement to repay Mr. Kerrigan's \$70,000 note with proceeds of the

26 <sup>1163</sup> Tr. at 176-177.

27 <sup>1164</sup> Exh. S-57 at ACC000758.

28 <sup>1165</sup> Tr. at 162, 1028.

<sup>1166</sup> Tr. at 176-177.

<sup>1167</sup> Tr. at 1104.

1 12-6-12 Offering, directly contradicts information given to investors in the April 2013 PPM. We find  
2 the intended use of investor funds is significant information when considering making an investment.  
3 We find the omission of information that Barcelona Advisors pledged to repay a note to Mr. Kerrigan  
4 from new 12-6-12 Offering funds constituted the omission of a material fact, and therefore constituted  
5 a violation of A.R.S. § 44-1991(A).

6 We find that Mr. Harkins and Barcelona Advisors violated A.R.S. § 44-1991(A) by omitting to  
7 tell Mr. Jordan about the use of investor funds pursuant to the terms of Mr. Kerrigan's \$70,000 note.  
8 We find that Mr. Kerrigan violated A.R.S. § 44-1991(A) by omitting to tell this information to Mr.  
9 Jordan and Mr. Ramirez. We dismiss the alleged violations against Mr. Harkins and Barcelona  
10 Advisors from failing to inform Mr. Ramirez as the Division has failed to meet its burden of proof to  
11 show that this investor was not informed by Mr. Harkins of the company's promise in the \$70,000 note  
12 to Mr. Kerrigan.

13 6. Delayed 12-6-12 Interest Payments

14 The Division contends that Mr. Harkins and Barcelona Advisors stated to investors, Mr.  
15 Andrade and Ms. Stewart, in the Barcelona Advisors' notes, that the company would make interest  
16 payments at specific intervals. The Division contends that not informing Mr. Andrade and Ms. Stewart  
17 before they invested that Barcelona Advisors failed to make timely payments to investors in the 12-6-  
18 12 Offering was misleading as it would have called into question the company's ability to repay  
19 investors. The Division contends that Mr. Kerrigan is also responsible for the omission as he stated to  
20 Ms. Stewart the payment terms of the 10-5-10 notes. The Division further contends that Mr. Simmons  
21 is responsible as well because he told Mr. Andrade that he had no reason to worry about investing when  
22 Mr. Andrade considered making his second investment. The Division contends that information about  
23 Barcelona Advisors' failure to make interest payments due to 12-6-12 Offering investors on December  
24 31, 2013, would be material to subsequent reasonable investors as this information would have been  
25 significant to Ms. Stewart and Mr. Andrade.<sup>1168</sup>

26 Mr. Harkins contends that the delay in paying the 12-6-12 investors was agreed to by those  
27

28 <sup>1168</sup> Tr. at 232, 400.

1 investors and that they were paid after a minimal delay with a bonus. Mr. Harkins argues that interest  
2 payment deferral is not uncommon, particularly for an early stage company. Mr. Harkins contends that  
3 subsequent investors were not negatively impacted, and asserts that the Division's claim is  
4 overreaching.

5 Mr. Harkins and Barcelona Advisors stated to investors, Mr. Andrade and Ms. Stewart, in the  
6 company's notes, that they would be paid interest at specific intervals.<sup>1169</sup> Prior to investing, Mr.  
7 Andrade and Ms. Stewart were not told that Barcelona Advisors had failed to timely make interest  
8 payments due on December 31, 2013, to investors in the 12-6-12 Offering.<sup>1170</sup> Mr. Kerrigan discussed  
9 payment of the 10-5-10 notes with Ms. Stewart but did not tell her about the company's failure to make  
10 timely interest payments on December 31, 2013.<sup>1171</sup> Mr. Simmons told Mr. Andrade at the time of his  
11 second investment that there was no need for him to worry when he made his second investment, but  
12 made no mention that Barcelona Advisors had failed to timely make December 31, 2013, interest  
13 payments to investors.<sup>1172</sup>

14 We find that Barcelona Advisors' failure to make timely payments when due to investors would  
15 be significant information that a reasonable prospective investor would want to consider before making  
16 an investment. The company's failure to make timely payments to investors posed an added risk to the  
17 investment. We find the omission of the information that Barcelona Advisors failed to timely make  
18 interest payments to investors on December 31, 2013, constituted the omission of a material fact, and  
19 therefore constituted a violation of A.R.S. § 44-1991(A).

20 We find that Mr. Harkins and Barcelona Advisors violated A.R.S. § 44-1991(A) by omitting to  
21 tell Mr. Andrade<sup>1173</sup> and Ms. Stewart that the company had failed to timely make interest payments to  
22 investors on December 31, 2013. We find that Mr. Kerrigan violated A.R.S. § 44-1991(A) by omitting  
23 to tell Ms. Stewart about failure to make timely interest payments on December 31, 2013. We dismiss  
24 the allegation against Mr. Simmons, regarding the omission of the non-payment of interest on  
25 December 31, 2013, as we have denied the Division's motion to conform as to direct allegations against

26 <sup>1169</sup> Exhs. S-48, S-49, S-51.

27 <sup>1170</sup> Tr. at 232, 400, 1223.

28 <sup>1171</sup> Tr. at 232; Exh. S-98 at 60.

<sup>1172</sup> Tr. at 391, 400, 1223.

<sup>1173</sup> As to both investments of Mr. Andrade.

1 him.

2 7. Use of 10-5-10 Proceeds to Pay 12-6-12 Investors

3 The Division contends that Mr. Harkins and Barcelona Advisors stated to Mr. Andrade, through  
4 the January 2014 PPM, that the proceeds of the 10-5-10 Offering would be used to pursue the  
5 company's business plan after paying up to \$30,000 for expenses related to the offering. The Division  
6 contends that the failure to inform Mr. Andrade that his funds would be used to pay interest to prior  
7 investors in the 12-6-12 Offering was misleading. The Division contends that this omission would  
8 have been material to a reasonable investor as the use of new investors' funds to pay earlier investors  
9 is a hallmark of a Ponzi scheme and Mr. Andrade testified that the information would have been  
10 significant to his decision to invest.<sup>1174</sup>

11 Mr. Harkins contends that all sources of funds for a start-up company are working capital and  
12 that a company pays its expenses from working capital. In support of his contentions, Mr. Harkins  
13 cites two passages from the January 2014 PPM:<sup>1175</sup>

14 This Confidential Private Placement Offering Memorandum ("Offering"  
15 "Memorandum") is being made to provide USA Barcelona Realty  
16 Advisors, LLC ("USA BRA", "Company", "us", "we", "Advisor") with  
17 capital for the organization stage and initial operating expenses of USA  
18 Barcelona Hotel Company I, LLC ("USA HC-I") and its affiliates  
19 ("Affiliates") that will be formed to development, [sic] own and operate  
20 hotels.<sup>1176</sup>

21 Working Capital will be established from Offering Proceeds to address  
22 contingencies and operating requirements of the Company including  
23 loans made to USA HC-I for its organization period requirements.<sup>1177</sup>

24 Mr. Harkins states that early investors were paid interest from the funds of subsequent investors

25 \_\_\_\_\_  
26 <sup>1174</sup> Tr. at 400-401.

27 <sup>1175</sup> We note that the wording appearing in the Amended Post-hearing Brief of Respondent Richard C. Harkins is slightly  
28 different than that in Exhibit S-58. We rely upon the wording that appears in Exhibit S-58 as it is the only 10-5-10 Offering  
PPM that has been admitted in the record.

<sup>1176</sup> Exh. S-58 at ACC005713.

<sup>1177</sup> Exh. S-58 at ACC005714.

1 and member loans as these were the only sources of funds available to the Company.

2 Mr. Harkins and Barcelona Advisors stated to Mr. Andrade, through the January 2014 PPM:

3 Sales commissions on Unit sales will be paid from Offering Proceeds at  
4 the time Offering Proceeds are received by the Company. An additional  
5 \$30,000 will be used to pay expenses to third party professionals for  
6 expenses relating to the organization of the Company and conducting  
7 this Offering, including among other expenses, legal, printing, mailing,  
8 and accounting fees. After deduction of those expenses, all other  
9 Offering Proceeds will be used by the Company to pursue the business  
10 plan outlined in this Memorandum.<sup>1178</sup>

11 Mr. Andrade was not told that his investment would be used to pay interest to earlier  
12 investors.<sup>1179</sup> Mr. Harkins testified that the January 2014 PPM failed to disclose that Barcelona  
13 Advisors intended to use proceeds from the 10-5-10 Offering to make interest payments to earlier 12-  
14 6-12 investors.<sup>1180</sup>

15 We find that the use of funds from investments in the 10-5-10 Offering to make interest  
16 payments to previous 12-6-12 investors is information that would have been significant to investors in  
17 the 10-5-10 Offering. Payment of interest to the 12-6-12 investors is not part of the company's business  
18 purpose.<sup>1181</sup> The passage of the January 2014 PPM allowing expenditure of working capital for  
19 "contingencies and operating requirements" does not alleviate the duty of the Respondents to have told  
20 10-5-10 Offering investors about the interest payments to earlier investors.

21 We find that Mr. Harkins and Barcelona Advisors violated A.R.S. § 44-1991(A) by omitting to  
22 tell Mr. Andrade that funds from investments in the 10-5-10 Offering would be used to make interest  
23 payments to previous investors in the 12-6-12 Offering.<sup>1182</sup>

24 \_\_\_\_\_  
25 <sup>1178</sup> Exh. S-58 at ACC005751.

26 <sup>1179</sup> Tr. at 400-401.

27 <sup>1180</sup> Tr. at 875; Amended Notice at 11.

28 <sup>1181</sup> The January 2014 PPM stated that the business purpose of Barcelona Advisors was that "[t]he Company has been formed to be the Advisor to a series of Funds, each designed to obtain equity capital through securities offerings which may be either exempt or registered, the Offering Proceeds of which will be used to develop and acquire on a leveraged or unleveraged basis hotels and other qualified real estate properties." Exh. S-58 at ACC005720.

<sup>1182</sup> As to Mr. Andrade's first investment.

1                   8. Agreement with Chanen Construction Company

2                   The Division contends that Mr. Harkins, Barcelona Advisors and Barcelona Land Company  
3 stated to Mr. Andrade, through the Barcelona Land Company PPM, that Barcelona Land Company's  
4 parent company had entered into an agreement with Chanen Construction Company to coordinate with  
5 entitlement work and construction requirements. The Division contends that this was a false statement  
6 of fact that would be significant to a reasonable investor.

7                   We have determined, *supra*, that Mr. Andrade's receipt of the Barcelona Land Company PPM  
8 was not pursuant to an offer of a security. As such, any untrue statements contained within the  
9 Barcelona Land Company PPM were not stated to Mr. Andrade in connection with an offer or sale of  
10 a security. Accordingly we find no violation of A.R.S. § 44-1991(A) having been committed by Mr.  
11 Harkins, Barcelona Advisors, or Barcelona Land Company in connection with statements contained in  
12 the Barcelona Land Company PPM that was given to Mr. Andrade. The allegations pertaining to an  
13 agreement with Chanen Construction Company are dismissed with prejudice.

14                   9. Low-Risk Investment

15                   The Division contends that Mr. Kerrigan stated twice to Ms. Stewart that her investment in the  
16 10-5-10 Offering was a low-risk investment.<sup>1183</sup> The Division contends that this was a false statement  
17 of fact, citing the January 2014 PPM and the subscription agreements signed by Ms. Stewart, which  
18 both state that the investment is speculative and involves a high degree of risk.<sup>1184</sup> The Division  
19 contends that this information would have been significant to a reasonable investor as the level of risk  
20 is fundamental to the value of an investment and Ms. Stewart testified that the information was  
21 important to her decision to invest.<sup>1185</sup> In his Post-Hearing Brief, Mr. Kerrigan made no response to  
22 this allegation by the Division.

23                   We find that the level of risk an investment carries constitutes significant information that  
24 would be material to a reasonable investor. We find that Mr. Kerrigan and Barcelona Advisors violated  
25 A.R.S. § 44-1991(A) by misrepresenting the level of risk of the Barcelona Advisors 10-5-10 Offering.

26 . . .

27 <sup>1183</sup> Tr. at 222, 224, 245.

28 <sup>1184</sup> Exhs. S-35 at ACC000993, S-58 at ACC0005713.

<sup>1185</sup> Tr. at 223-224.

1           F. Control Person Liability

2                   1. Barcelona Advisors

3                           a) Contentions

4           The Division contends that Mr. Harkins, Mr. Kerrigan, Mr. Simmons, and Mr. Orr are liable as  
5 control persons for Barcelona Advisors' violations of the antifraud provisions of the Act. The Division  
6 contends that Mr. Kerrigan, Mr. Simmons, and Mr. Orr were control persons since at least February 1,  
7 2013, making them control persons for all of the company's investments except that of Ms. Bair, which  
8 was made on October 12, 2012.<sup>1186</sup>

9           The Division contends that Mr. Harkins has been the President of Barcelona Advisors since  
10 October 2012.<sup>1187</sup> Under the terms of the company's operating agreements, as President, Mr. Harkins  
11 had complete authority and exclusive control to conduct business on behalf of the company except for  
12 an enumerated list of "Major Decisions" that required approval of a majority of the four Executive  
13 Members, namely Mr. Harkins, Mr. Simmons, Mr. Kerrigan, and Mr. Orr.<sup>1188</sup> Barcelona Advisors had  
14 two operating agreements, one in effect from October 18, 2012, to April 25, 2013 ("First Operating  
15 Agreement"), and another in effect since April 25, 2013 ("Second Operating Agreement").<sup>1189</sup> Mr.  
16 Harkins has not contested these assertions from the Division.<sup>1190</sup>

17           The Division notes that Mr. Simmons was the Executive Vice President and Chief Operating  
18 Officer of Barcelona Advisors.<sup>1191</sup> The Division contends that as an officer, Mr. Simmons had,  
19 pursuant to the Second Operating Agreement, all specific rights and powers required to or appropriate  
20 to the management of the Company's business, affairs and purposes ..." including the power to operate  
21 and manage the company's interests and execute agreements.<sup>1192</sup>

22           The Division contends that from at least February 1, 2013, to at least August 8, 2014, Mr.

24 \_\_\_\_\_  
<sup>1186</sup> Exhs. S-5 at ACC7203, 7229-7230, S-31b.

25 <sup>1187</sup> Exh. S-57 at ACC000737. This position was previously called the Manager. See Exh. S-5 at ACC007214.

26 <sup>1188</sup> Exhs. S-5 at ACC007214-ACC007215, ACC007268-ACC007269, S-57 at ACC000737-ACC000738, ACC000790-  
ACC000792. The Executive Members are also referred to as the Executive Committee. See Exhs. S-57 at ACC000737.

27 <sup>1189</sup> Tr. at 931-932; Exhs. S-5 at ACC007261, S-57 at ACC000782.

28 <sup>1190</sup> Amended Post-Hearing Brief of Respondent Richard C. Harkins at 36, See also Securities Division's Amended Post-  
Hearing Brief at 4.

<sup>1191</sup> Tr. at 1186.

<sup>1192</sup> Exh. S-57 at ACC000790-791.

1 Harkins, Mr. Kerrigan, Mr. Simmons, and Mr. Orr were Executive Members of Barcelona Advisors.<sup>1193</sup>  
 2 Pursuant to the terms of the operating agreements, a majority of the Executive Members must approve  
 3 Barcelona Advisors' "Major Decisions," including decisions to incur liability for borrowed money,  
 4 issue any note, or admit new company members.<sup>1194</sup> The Division contends that this means that the  
 5 Executive Members' approval was required for each of the company's notes, such that the Executive  
 6 Members had the power to exclude any investor they did not approve.

7 The Division notes that, under the terms of Barcelona Advisors' offering memorandum, "as a  
 8 result of the limited voting rights of [members], the Executive Members have control of the company  
 9 through their exclusive power to approve all 'Major Decisions.'"<sup>1195</sup> Barcelona Advisors' non-  
 10 executive members cannot take part in the control of management to the company except to require  
 11 majority-in-interest approval for actions that would materially diminish their member interests and to  
 12 remove Executive Members for cause.<sup>1196</sup> The Division contends that the Executive Members, who  
 13 controlled major decisions, though not day-to-day business like the President, were roughly equivalent  
 14 to the directors of a corporation.<sup>1197</sup> Mr. Simmons testified that the role of Executive Members was to  
 15 protect the interests of non-voting members, a process the Division equates with corporate directors  
 16 and shareholders.<sup>1198</sup>

17 The Division notes that an April 12, 2013, corporate filing by Barcelona Advisors stated that  
 18 Mr. Harkins, Mr. Kerrigan, Mr. Simmons, and Mr. Orr were all limited liability company Managers of  
 19 Barcelona Advisors and that management of the company was vested in those four Managers.<sup>1199</sup> The  
 20 filing further stated that Mr. Harkins and Mr. Simmons each owned a 20% or greater interest in  
 21 Barcelona Advisors.<sup>1200</sup> Mr. Harkins testified that the corporate filing was accurate.<sup>1201</sup>

22 The Division contends that Mr. Harkins, Mr. Simmons, Mr. Kerrigan and Mr. Orr, as Executive  
 23

24 <sup>1193</sup> Exhs. S-5 at ACC007203, ACC007229, S-30 at ACC006360.

<sup>1194</sup> Exhs. S-5 at ACC007268-ACC007269, S-57 at ACC000791-ACC000792.

<sup>1195</sup> Exh. S-57 at ACC000789.

<sup>1196</sup> Exhs. S-5 at ACC007266, S-57 at ACC000787-790.

<sup>1197</sup> Exhs. S-5 at ACC007214-ACC007215, ACC007268-ACC007269, S-57 at ACC000737-ACC000738, ACC000791-ACC000792.

<sup>1198</sup> Tr. at 103; Exh. S-176.

<sup>1199</sup> Exh. S-3b.

<sup>1200</sup> Exh. S-3b.

<sup>1201</sup> Tr. at 911-913.

1 Members and Managers, all had legally enforceable control over Barcelona Advisors, regardless of  
2 whether they used that power effectively. The Division contends that Respondents' testimony that Mr.  
3 Harkins made decisions with some Executive Member input but without formal votes doesn't prove  
4 that the Executive Members lacked the power to control Barcelona Advisors, rather, it demonstrates  
5 that they failed to exercise the power they had.<sup>1202</sup>

6 The Division contends that in addition to the legally enforceable control that all Executive  
7 Members had, Mr. Harkins and Mr. Simmons exercised actual control as company officers.<sup>1203</sup> The  
8 Division contends that Mr. Harkins, as President, had complete authority to conduct business on behalf  
9 of the company, and he did so, such as his executing all of the Barcelona Advisors' notes. The Division  
10 contends that Mr. Simmons exercised his power as Executive Vice President and Chief Operating  
11 Officer by signing Mr. Andrade's subscription agreement, signing several independent contractor  
12 agreements, offering jobs to Mr. McDonough and Mr. Eaves, and approving Mr. Orr's expense  
13 reports.<sup>1204</sup> The Division contends that Mr. Simmons also took the lead in working on arrangements  
14 or relationships with important third parties.<sup>1205</sup> The Division further contends that Mr. Simmons  
15 exercised control as an administrator who put the company's administrative structure in place and as a  
16 supervisor who developed the company's management program.<sup>1206</sup>

17 The Division contends that Mr. Harkins, Mr. Kerrigan, Mr. Simmons, and Mr. Orr have failed  
18 to meet their burden of proof to establish an affirmative defense to control person liability that they  
19 acted in good faith and did not induce the violations. The Division contends that Mr. Harkins, Mr.  
20 Kerrigan, Mr. Simmons, and Mr. Orr failed to take reasonable steps to maintain and enforce a  
21 reasonable and proper system of supervision and internal controls. The Division contends that  
22 Barcelona Advisors: did not supervise or control its securities salesmen; did not establish guidelines  
23 for what securities salesmen told investors; and failed to monitor what its lead salesman, Mr. Kerrigan,  
24

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25 <sup>1202</sup> Tr. at 1174-1175; Exh. S-136 at 23-25.

26 <sup>1203</sup> In its post-hearing brief, the Divisions states that Mr. Harkins and Mr. Kerrigan had control as company officers, but  
27 then goes on to detail the control of Mr. Harkins and Mr. Simmons. Securities Division's Amended Post-Hearing Brief at  
28 65. We infer that the Division's allegation of actual control is properly directed against Mr. Simmons, not Mr. Kerrigan.

<sup>1204</sup> Tr. at 125, 372, 374, 721, 1193-1196, 1198; Exhs. S-36, H-6 at 5, 8, 12.

<sup>1205</sup> Tr. at 1186-1187.

<sup>1206</sup> Tr. at 1141-1142, 1178-1179, 1183-1184.

1 told investors about the company.<sup>1207</sup> The Division further contends that Mr. Harkins, Mr. Kerrigan  
2 and Mr. Simmons directly induced the acts underlying the fraud violations because they committed  
3 those violations.

4 Mr. Harkins contends that he was the sole control person of Barcelona Advisors. Mr. Harkins  
5 contends that Barcelona Advisors did not have securities salesmen because it was an issuer selling  
6 securities exempt from registration requirements.

7 Mr. Kerrigan has raised no arguments regarding the control person liability claims against him.

8 Mr. Simmons contends that Mr. Harkins testified that he was the sole controlling person of  
9 Barcelona Advisors,<sup>1208</sup> which was supported by the testimony of Mr. Simmons, Mr. Orr, and Mr.  
10 Eaves.<sup>1209</sup> Mr. Simmons contends that Mr. Harkins drafted the operating agreements, and that Mr.  
11 Harkins, as the Manager, was the gate keeper who requested approval of any Major Decisions.<sup>1210</sup> Mr.  
12 Simmons contends that he was not aware of, and did not consent to, being named an Executive Member  
13 in the February 2013 PPM and the First Operating Agreement, and a Manager of Barcelona Advisors  
14 in an April 12, 2013 filing with the Commission. Mr. Simmons contends that he was not actively  
15 involved with Barcelona Advisors until July 2013, and that his ownership interest in the company was  
16 only 6%.<sup>1211</sup> Mr. Simmons notes that Mr. Orr also contradicted Mr. Harkins' documents as to his own  
17 date of becoming an Executive Member. Mr. Simmons further contends that while he held the titles  
18 of Executive Vice President and Chief Operating Officer, these were not the equivalent of those roles  
19 at an established company, but were evolving roles at a startup company where he carried out Mr.  
20 Harkins' management decisions.<sup>1212</sup>

21 The Division contends that Mr. Simmons misrepresents the operating agreements which state  
22 that Mr. Harkins was not allowed to act on a Major Decision without the approval of a majority of the  
23 Executive Members.<sup>1213</sup> Under the operating agreements, formally submitting a Major Decision for  
24 approval merely forced the Executive Members to reach a decision within five days or be deemed to

25 <sup>1207</sup> Tr. at 743, 972, 1201-1203; Exh. S-98 at 47-49.

26 <sup>1208</sup> Tr. at 835-838, 902, 904-905, 909.

27 <sup>1209</sup> Tr. at 313, 721-722, 762, 1145-1146, 1233-1234, 1243.

28 <sup>1210</sup> Tr. at 836, 900.

<sup>1211</sup> Tr. at 1140, 1147-1148, 1176.

<sup>1212</sup> Tr. at 1151, 1172-1173, 1186.

<sup>1213</sup> Exhs. S-5 at ACC007268, S-57 at ACC000791.

1 have approved the Manager's request.<sup>1214</sup> The Division argues that Mr. Simmons's testimony that he  
2 only owned less than 10% of Barcelona Advisors is not supported by the record as no documentary  
3 evidence supports his testimony, while a corporate filing by Mr. Harkins stated that Mr. Simmons  
4 owned more than 20% of Barcelona Advisors and the April 2013 PPM stated that Mr. Simmons owned  
5 15% of Barcelona Advisors' Class A Units.<sup>1215</sup>

6 Mr. Orr contends that he became an Executive Member in July 2013.<sup>1216</sup> Like Mr. Simmons,  
7 Mr. Orr contends that Mr. Harkins was the only control person for Barcelona Advisors. Mr. Orr  
8 contends that the Division has failed to establish his knowledge of the statements made in the offering  
9 agreements and the April 12, 2013 filing with the Commission as to his status as an Executive Member  
10 and Manager of Barcelona Advisors. Mr. Orr argues that while he understood that Executive Members  
11 would make Major Decisions, he believed there was only one full meeting where a Major Decision  
12 was discussed and he never voted on a Major Decision.<sup>1217</sup>

13 b) Analysis and Conclusion

14 Under A.R.S. § 44-1999(B), "Every person who, directly or indirectly, controls any person  
15 liable for a violation of section 44-1991 or 44-1992 is liable jointly and severally with and to the same  
16 extent as the controlled person to any person to whom the controlled person is liable unless the  
17 controlling person acted in good faith and did not directly or indirectly induce the act underlying the  
18 action." For the purposes of A.R.S. § 44-1999(B), a person may include an individual, corporation or  
19 limited liability company.<sup>1218</sup> In *E. Vanguard Forex, Ltd. v. Arizona Corp. Comm'n*, the Arizona Court  
20 of Appeals interpreted A.R.S. § 44-1999(B) "as imposing presumptive control liability on persons who  
21 have the *power* to directly or indirectly control the activities of those persons or entities liable as  
22 primary violators of [A.R.S.] §§ 44-1991 and -1992."<sup>1219</sup> Therefore, to establish control "the evidence  
23 need only show that the person targeted as a controlling person had the legal power, either individually  
24

25 <sup>1214</sup> Exhs. S-5 at ACC007269, S-57 at ACC000792.

26 <sup>1215</sup> Exhs. S-3b, S-5 at ACC000739.

27 <sup>1216</sup> Tr. at 709.

28 <sup>1217</sup> Tr. at 719, 732-733, 1175; Exh. S-136 at 22.

<sup>1218</sup> A.R.S. § 44-1801(16).

<sup>1219</sup> *E. Vanguard Forex, Ltd. v. Arizona Corp. Comm'n*, 206 Ariz. 399, 412, 79 P.3d 86, 99 (App. 2003) (Emphasis in original).

1 or as part of a control group, to control the activities of the primary violator.”<sup>1220</sup> In *E. Vanguard*, the  
 2 Arizona Court of Appeals found sufficient evidence that two individuals were liable as control persons  
 3 based on their status as sole shareholders, officers and directors of a corporation, even though the  
 4 evidence did not show they “actively participated in [the corporation’s] formation, played any role in  
 5 its day-to-day operations, created its training program, instructed traders regarding how to obtain  
 6 clients, supervised any trades, or had any knowledge or notice of the misrepresentations made to  
 7 investors.”<sup>1221</sup> A.R.S. § 29-681(B) provides, in pertinent part:

8           If the articles of organization provide that management of the limited  
 9           liability company is vested in one or more managers, management of the  
 10          limited liability company is vested in a manager or managers, subject to  
 11          any provisions in an operating agreement restricting or enlarging the  
 12          management rights or responsibilities of one or more managers or classes  
 13          of managers or reserving specified management rights to the members  
 14          or classes of members. ... A manager also holds the office and has the  
 15          responsibilities that are accorded to him by the members and that are  
 16          provided in an operating agreement.

17           We find unpersuasive the arguments of Mr. Simmons and Mr. Orr that they did not become  
 18 Executive Members until July 2013, in light of the documentary evidence to the contrary. While the  
 19 testimony of the Respondents may indicate that Mr. Harkins controlled the day-to-day operations of  
 20 the company, Barcelona Advisors’ operating agreements and amended articles of organization establish  
 21 that Mr. Harkins, Mr. Simmons, Mr. Kerrigan and Mr. Orr all had the legal power, as Executive  
 22 Members and Managers of a limited liability company that vested management in its managers, to  
 23 control the activities of Barcelona Advisors. All four of the Executive Members participated at some  
 24 level to capitalize the company, in addition to any other duties they performed in service to the  
 25 company.<sup>1222</sup> Accordingly, we find the Executive Members should have known their legal power under  
 26 the operating agreements and under the Articles of Amendment.

27 <sup>1220</sup> *Id.*

28 <sup>1221</sup> *Id.* at 413, 79 P.3d at 100.

<sup>1222</sup> Tr. at 1203; Exh. S-176.

1 We find that Mr. Simmons, Mr. Kerrigan, and Mr. Orr were control persons of Barcelona  
2 Advisors beginning with the second of the eighteen investments considered. We find that Mr. Harkins  
3 has been a control person of Barcelona Advisors for the period of all eighteen investments considered.

4 A.R.S. § 44-1999(B) creates an affirmative defense for control persons who acted in good faith  
5 and did not induce the act underlying the action. A lack of scienter is not sufficient to establish the  
6 good faith prong of the defense.<sup>1223</sup> Minimally, “controlling persons must establish that they exercised  
7 due care by taking reasonable steps to maintain and enforce a reasonable and proper system of  
8 supervision and internal controls.”<sup>1224</sup>

9 Here, Mr. Harkins and Mr. Kerrigan have both been found individually liable for fraud  
10 violations. The weight of the evidence established that Mr. Simmons also engaged in fraud violations,  
11 for which liability has been found for Barcelona Advisors, though we have dismissed the direct  
12 violations alleged against Mr. Simmons because he did not consent to trying those issues not stated in  
13 the Amended T.O. and Notice. If Mr. Simmons had asserted an affirmative defense under A.R.S. §  
14 44-1999(B), he would have needed to try the issue of whether he induced fraudulent acts of Barcelona  
15 Advisors. Since Mr. Simmons has not asserted this affirmative defense in his Post-Hearing Briefs and  
16 he has expressly not consented to trying his direct actions, we deem Mr. Simmons to have waived the  
17 defense.

18 The Division has not alleged, and the record does not establish, that Mr. Orr directly or  
19 indirectly induced any of the fraud violations of Barcelona Advisors. However, the record does not  
20 establish that Mr. Orr, or any of the Executive Members, took reasonable steps to maintain and enforce  
21 a reasonable and proper system of supervision and controls for the sale of Barcelona Advisors’  
22 securities. As such, Mr. Harkins, Mr. Kerrigan, Mr. Simmons and Mr. Orr cannot establish that they  
23 acted in good faith pursuant to the affirmative defense of A.R.S. § 44-1999(B).

## 24 2. Barcelona Land Company

25 The Division contends that Mr. Harkins has been the President of Barcelona Land Company  
26 since January 2014, and Mr. Simmons has been the Executive Vice President from at least April 2014

27 \_\_\_\_\_  
28 <sup>1223</sup> *E. Vanguard Forex*, 206 Ariz. at 414, 79 P.3d at 101.

<sup>1224</sup> *Id.*

1 to at least August 2014. The Division contends that Mr. Hawkins and Mr. Simmons are liable as control  
2 persons for Barcelona Land Company's anti-fraud violations.

3 We have dismissed, *supra*, the anti-fraud violations alleged against Barcelona Land Company.  
4 Accordingly, we dismiss the alleged anti-fraud violations against Mr. Harkins and Mr. Simmons arising  
5 from their alleged status as control persons over Barcelona Land Company.

6 G. Marital Community Liability

7 The Division contends that the marital communities of the Simmonses and the Orrs are liable  
8 for any restitution and administrative penalties ordered. In their Post-Hearing Brief, Mr. Simmons and  
9 the Simmons marital community contend that no liability should attach to the marital community as  
10 the Division has not established the alleged violations against Mr. Simmons. Mr. Orr, in his Post-  
11 Hearing Brief, raises no contention regarding the Orr marital community.

12 The Commission has the authority to join a spouse in an action to determine the liability of the  
13 marital community.<sup>1225</sup> With limited exceptions, all property acquired by either the husband or the  
14 wife during marriage is the community property of both husband and wife.<sup>1226</sup> The Arizona Supreme  
15

16 <sup>1225</sup> **A.R.S. § 44-2031. Jurisdiction and venue of offenses and actions; joinder of spouse**

17 A. The superior court in this state shall have jurisdiction over violations of this chapter, the rules and orders of the  
18 commission under this chapter and all actions brought to enforce any liability or duty created under this chapter, except  
19 actions or proceedings brought under section 44-2032, paragraph 2, 3 or 4 or appeals filed under article 12 of this chapter,  
20 over which the superior court in Maricopa county shall have exclusive jurisdiction.

21 B. Any action authorized by this chapter may be brought in the county in which the defendant is found, is an inhabitant or  
22 transacts business, or in the county where the transaction took place, and in such cases, process may be served in any other  
23 county in which the defendant is an inhabitant or in which the defendant is found.

24 C. The commission may join the spouse in any action authorized by this chapter to determine the liability of the marital  
25 community.

26 A.R.S. § 44-2031(C) was amended effective July 24, 2014, pursuant to Laws 2014, Ch. 87 § 1, to include the following  
27 sentence: This subsection does not authorize the commission to join any individual who is divorced from the defendant at  
28 the time an action authorized by this chapter is filed.

<sup>1226</sup> **A.R.S. § 25-211. Property acquired during marriage as community property; exceptions; effect of service of a  
petition**

A. All property acquired by either husband or wife during the marriage is the community property of the husband and wife  
except for property that is:

1. Acquired by gift, devise or descent.

2. Acquired after service of a petition for dissolution of marriage, legal separation or annulment if the petition results in a  
decree of dissolution of marriage, legal separation or annulment.

B. Notwithstanding subsection A, paragraph 2, service of a petition for dissolution of marriage, legal separation or  
annulment does not:

1. Alter the status of preexisting community property.

2. Change the status of community property used to acquire new property or the status of that new property as community  
property.

3. Alter the duties and rights of either spouse with respect to the management of community property except as prescribed  
pursuant to section 25-315, subsection A, paragraph 1, subdivision (a).

1 Court has found that “the presumption of law is, in the absence of the contrary showing, that all property  
2 acquired and all business done and transacted during coverture, by either spouse, is for the  
3 community.”<sup>1227</sup>

4 Under A.R.S. § 25-214(B), “spouses have equal management, control and disposition rights  
5 over their community property and have equal power to bind the community.”<sup>1228</sup> Either spouse may  
6 contract debts and otherwise act for the benefit of the community except as prohibited under A.R.S. §  
7 25-214.<sup>1229</sup> “[A] debt is incurred at the time of the actions that give rise to the debt.”<sup>1230</sup> “In an action  
8 on such a debt or obligation the spouses shall be sued jointly and the debt or obligation shall be satisfied:  
9 first, from the community property, and second, from the separate property of the spouse contracting  
10 the debt or obligation.”<sup>1231</sup> “A debt incurred by a spouse during marriage is presumed to be a  
11 community obligation; a party contesting the community nature of a debt bears the burden of  
12 overcoming that presumption by clear and convincing evidence.”<sup>1232</sup>

13 Mr. Simmons has been married to Janet B. Simmons since August 1963.<sup>1233</sup> Mr. Orr has been

14 <sup>1227</sup> *Johnson v. Johnson*, 131 Ariz. 38, 45, 638 P.2d 705, 712 (1981), citing *Benson v. Hunter*, 23 Ariz. 132, 134-35, 202 P.  
15 233, 233-34 (1921).

16 <sup>1228</sup> **A.R.S. § 25-214. Management and control**

17 A. Each spouse has the sole management, control and disposition rights of each spouse's separate property.

18 B. The spouses have equal management, control and disposition rights over their community property and have equal power  
19 to bind the community.

20 C. Either spouse separately may acquire, manage, control or dispose of community property or bind the community, except  
21 that joinder of both spouses is required in any of the following cases:

22 1. Any transaction for the acquisition, disposition or encumbrance of an interest in real property other than an unpatented  
23 mining claim or a lease of less than one year.

24 2. Any transaction of guaranty, indemnity or suretyship.

25 3. To bind the community, irrespective of any person's intent with respect to that binder, after service of a petition for  
26 dissolution of marriage, legal separation or annulment if the petition results in a decree of dissolution of marriage, legal  
27 separation or annulment.

28 <sup>1229</sup> **A.R.S. § 25-215. Liability of community property and separate property for community and separate debts**

A. The separate property of a spouse shall not be liable for the separate debts or obligations of the other spouse, absent  
agreement of the property owner to the contrary.

B. The community property is liable for the premarital separate debts or other liabilities of a spouse, incurred after  
September 1, 1973 but only to the extent of the value of that spouse's contribution to the community property which would  
have been such spouse's separate property if single.

C. The community property is liable for a spouse's debts incurred outside of this state during the marriage which would  
have been community debts if incurred in this state.

D. Except as prohibited in section 25-214, either spouse may contract debts and otherwise act for the benefit of the  
community. In an action on such a debt or obligation the spouses shall be sued jointly and the debt or obligation shall be  
satisfied: first, from the community property, and second, from the separate property of the spouse contracting the debt or  
obligation.

<sup>1230</sup> *Arab Monetary Fund v. Hashim*, 219 Ariz. 108, 111, 193 P.3d 802, 805 (Ct. App. 2008).

<sup>1231</sup> A.R.S. § 25-215(D).

<sup>1232</sup> *Hrudka v. Hrudka*, 186 Ariz. 84, 91-92, 919 P.2d 179, 186-87 (Ct. App. 1995).

<sup>1233</sup> Exh. S-76 at 18.

1 married to Susan S. Orr since September 1984.<sup>1234</sup> The securities law violations committed by Mr.  
2 Simmons and Mr. Orr, as control persons, occurred while they were married to their respective spouses.  
3 Any debt created by an order for restitution and administrative penalties arising from those violations  
4 committed by Mr. Simmons and Mr. Orr would be considered as having been incurred at the time of  
5 the violation. The Respondents have presented no evidence to rebut the legal presumption that such  
6 debt would be a liability of the respective marital communities.

7 H. Securities Salesman Registration

8 Though not currently registered, Mr. Kerrigan was a registered securities salesman in Arizona  
9 at the time he sold Barcelona Advisors securities.<sup>1235</sup>

10 The Division alleges that Mr. Kerrigan engaged in unethical and dishonest practices in the  
11 securities industry in violation of A.R.S. § 44-1962<sup>1236</sup> and A.A.C. R14-4-130.<sup>1237</sup> The Division alleges  
12 that Mr. Kerrigan violated A.R.S. § 44-1962(A)(2) by violating Chapter 12 of the Act through the fraud  
13

14 <sup>1234</sup> Exh. S-136 at 13-14.

15 <sup>1235</sup> Exh. S-2a; Tr. at 1013, 1082.

16 <sup>1236</sup> A.R.S. § 44-1962 provides, in pertinent part:

17 A. After a hearing or notice and opportunity for a hearing as provided by article 11 of this chapter, the commission may  
18 enter an order suspending for a period of not to exceed one year, denying or revoking the registration of a salesman if the  
19 commission finds that:

\* \* \*

20 2. The salesman has violated this chapter or any rule or order of the commission under this chapter.

\* \* \*

21 8. The salesman is subject to an order of an administrative tribunal, an SRO or the SEC denying, suspending or revoking  
22 membership or registration as a broker or dealer in securities or an investment adviser or investment adviser representative  
23 for at least six months.

\* \* \*

24 10. The salesman has engaged in dishonest or unethical practices in the securities industry.

\* \* \*

25 B. In addition to denying, revoking or suspending the registration, if the commission finds that a salesman has engaged in  
26 an act, practice or transaction described in subsection A, paragraph 10 or 11, the commission may do one or more of the  
27 following:

28 1. Assess administrative penalties.

2. Order the salesman to cease and desist from engaging in the act, practice or transaction or doing any other act in  
furtherance of the act, practice or transaction.

3. Take appropriate affirmative action, as prescribed by the commission, to correct the conditions resulting from the act,  
practice or transaction, including a requirement to provide restitution.

<sup>1237</sup>A.A.C. R14-4-130 provides, in pertinent part:

A. For purposes of A.R.S. §§ 44-1961(A)(13) and 44-1962(10), dishonest or unethical practices in the securities industry  
shall include but not be limited to the following:

\* \* \*

14. Employing, in connection with the purchase or sale of a security, a manipulative or deceptive device or contrivance.

\* \* \*

17. While registered as a salesman, effecting securities transactions which have not been recorded on the records of the  
dealer with whom such salesman is registered at the time of the transaction.

1 he committed in connection with the offers and sales of Barcelona Advisors securities. The Division  
2 contends that Mr. Kerrigan violated A.R.S. § 44-1962(A)(8) by being subject to an order of an SRO<sup>1238</sup>  
3 denying, suspending or revoking his membership for at least six months. The Division contends that  
4 Mr. Kerrigan violated A.R.S. § 44-1962(A)(10) by engaging in dishonest or unethical practices in the  
5 securities industry by employing a manipulative or deceptive device or contrivance in connection with  
6 the sale of a security, namely, by telling Ms. Burleson that money would be “rolling in” from an  
7 investment with Barcelona Advisors. The Division also contends that Mr. Kerrigan violated A.R.S. §  
8 44-1962(A)(10) by engaging in dishonest or unethical practices in the securities industry by effecting  
9 securities transactions which were not recorded on the records of the dealer with whom Mr. Kerrigan  
10 was registered at the time of the transaction.

11 In his Post-Hearing Brief, Mr. Kerrigan contends that he has “done nothing wrong” and has  
12 “abided to the letter of the law.”<sup>1239</sup> Mr. Kerrigan argues that he strongly believed in the investment  
13 with Barcelona Advisors and states that he invested over \$200,000 of his personal funds. Mr. Kerrigan  
14 argues that the Division’s contention regarding the SRO is incorrect as FINRA never sought  
15 information that he refused, and he submitted a letter terminating his security license with FINRA  
16 because he was retiring.

17 We have considered the fraud violations alleged against Mr. Kerrigan, *supra*, and have found  
18 him responsible for numerous violations of A.R.S. § 44-1991 for misrepresenting the level of risk of  
19 the 10-5-10 Offering and for omissions related to the failure of AVC, the felony conviction of Paul  
20 Meka, Mr. Kerrigan’s debts, Mr. Kerrigan’s investments in Barcelona Advisors, and the failure to  
21 timely pay interest to 12-6-12 Offering investors. These violations of the anti-fraud provisions of the  
22 Act constitute a violation of A.R.S. § 44-1962(A)(2).

23 The evidence of record established that Mr. Kerrigan signed a Letter of Acceptance, Waiver  
24 and Consent (“AWC”) for alleged FINRA rule violations on April 27, 2016.<sup>1240</sup> The AWC found that  
25 Mr. Kerrigan violated FINRA rules by refusing to provide requested documents and information.<sup>1241</sup>

26 <sup>1238</sup> Under A.R.S. §44-1801(27), a self-regulatory organization or SRO is defined as any national securities or commodities  
27 exchange, registered association or registered clearing agency.

<sup>1239</sup> Post-Hearing Brief of Respondent Robert J. Kerrigan at 4.

<sup>1240</sup> Tr. at 1118-1119; Exh. S-175.

<sup>1241</sup> Exh. S-175.

1 Under the terms of the AWC, Mr. Kerrigan consented to the sanction of “[a] bar from association with  
2 any FINRA member in any capacity” effective May 11, 2016, when the AWC was accepted by  
3 FINRA.<sup>1242</sup> We find that the FINRA AWC constitutes an order of an SRO. As the AWC’s ban on  
4 association with any FINRA member contained no time limit, we find that the order effectively  
5 suspended or revoked his membership for at least six months. Accordingly, we find that Mr. Kerrigan  
6 violated A.R.S. § 44-1962(A)(8).

7 Division investigator Dulance Morin testified that he spoke with Ms. Burleson about her  
8 investment and she stated that Mr. Kerrigan told her the money would be rolling in.<sup>1243</sup> Mr. Kerrigan  
9 testified in his EUO that he did not use the phrase “rolling in” with Ms. Burleson.<sup>1244</sup> In its Post-  
10 Hearing Brief, the Division attacks Mr. Kerrigan’s credibility as to one inconsistency: Mr. Kerrigan  
11 testified in his EUO that he was to manage a \$70 million fund, but that he was not responsible for  
12 raising capital, however, at the hearing he admitted that he was at Barcelona Advisors to raise working  
13 capital.<sup>1245</sup> However, we note that Mr. Kerrigan testified openly at his EUO about information he gave  
14 to investors regarding Barcelona Advisors.<sup>1246</sup> In considering the conflicting testimony, we give  
15 greater weight to Mr. Kerrigan’s testimony under oath than the hearsay statement of Ms. Burleson,  
16 who was not called to testify as a witness at the hearing and, therefore, not subject to cross-examination.  
17 As such, we find that the Division has failed to meet its burden of proof to establish the allegation that  
18 Mr. Kerrigan employed a manipulative or deceptive device or contrivance by stating to Ms. Burleson  
19 that money would be “rolling in.” We dismiss the Division’s allegation that Mr. Kerrigan violated  
20 A.R.S. § 44-1962(A)(10) by engaging in dishonest or unethical practices in the securities industry  
21 pursuant to A.A.C. R14-4-130(A)(14).

22 Mr. Kerrigan was registered with the broker/dealer FFEC.<sup>1247</sup> Barcelona Advisors investors  
23 Mr. and Mrs. Eaves, Ms. Burleson, Mr. Woods, Mr. Ramirez, and Ms. Stewart were clients of Mr.  
24 Kerrigan and FFEC.<sup>1248</sup> Mr. Kerrigan’s sales of Barcelona Advisors securities were not recorded on

25 <sup>1242</sup> Tr. at 1118-1119; Exh. S-175.

26 <sup>1243</sup> Tr. at 633.

27 <sup>1244</sup> Exh. S-98 at 63-64.

28 <sup>1245</sup> Tr. at 1039-1040; Exh. S-98 at 39-40, 151-152.

<sup>1246</sup> Exh. S-98 at 29-31, 52-64.

<sup>1247</sup> Exhs. S-2b, S-98 at 12-13, 65-66, 70.

<sup>1248</sup> Exhs. S-98 at 57-60, 97-98, S-99 at ACC006211.

1 the books and records of FFEC.<sup>1249</sup> The evidence of record establishes that Mr. Kerrigan effected  
 2 Barcelona Advisors' securities transactions without recording them with his dealer. As such Mr.  
 3 Kerrigan violated A.R.S. § 44-1962(A)(10) by engaging in dishonest or unethical practices in the  
 4 securities industry, pursuant to A.A.C. R14-4-300(A)(17).

#### 5 I. Remedies

6 The Division contends that the Respondents should be ordered to pay restitution and  
 7 administrative penalties for violations of the Arizona Securities Act. The Division also recommends  
 8 the revocation of Mr. Kerrigan's registration as a securities salesman. The Respondents have made  
 9 requests for sanctions and reimbursement.

#### 10 1. Restitution

11 The Division asserts that Barcelona Advisors raised a total of \$1,405,000 from investors in  
 12 violation of the Act, with \$86,876 repaid to investors. The Division requests that Mr. Harkins and  
 13 Barcelona Advisors be ordered to jointly and severally pay restitution in the amount of \$1,318,124.  
 14 The Division requests that Mr. Simmons, Mr. Kerrigan and Mr. Orr be ordered to pay, jointly and  
 15 severally with Mr. Harkins and Barcelona Advisors, restitution in the amount of \$1,302,223,  
 16 representing all investments except for that of Ms. Bair, who invested before Mr. Simmons, Mr.  
 17 Kerrigan and Mr. Orr became control persons of Barcelona Advisors. The Division further requests  
 18 that Barcelona Land Company be ordered to pay, jointly and severally with Mr. Harkins, Mr. Simmons,  
 19 Mr. Kerrigan, Mr. Orr and Barcelona Advisors, restitution in the amount of \$5,000, representing the  
 20 second investment of Mr. Andrade. The Division requests that pre-judgment interest be assessed on  
 21 all restitution ordered. While the individual Respondents argue against their liability, none have  
 22 challenged the restitution amounts asserted by the Division

23 The Commission has the authority to order restitution pursuant to A.R.S. §§ 44-1962 and 44-  
 24 2032.<sup>1250</sup> Of the eighteen investments for which the Division seeks restitution, we have found at least

25 <sup>1249</sup> Tr. at 1083; Exh. S-98 at 65, 71.

26 <sup>1250</sup> A.R.S. § 44-2032 provides, in pertinent part:

27 If it appears to the commission, either on complaint or otherwise, that any person has engaged in, is engaging in or is about  
 to engage in any act, practice or transaction that constitutes a violation of this chapter, or any rule or order of the commission  
 under this chapter, the commission, in its discretion may:

28 1. Issue an order directing such person to cease and desist from engaging in the act, practice or transaction, or doing any  
 other act in furtherance of the act, practice or transaction, and to take appropriate affirmative action within a reasonable

1 one fraud violation committed by Barcelona Advisors in all but three investments: the investment of  
 2 Ms. Bair and the two investments of Ms. Burleson. As such, all control persons are liable to the same  
 3 extent as Barcelona Advisors for the other fifteen investments. We have found Mr. Harkins and  
 4 Barcelona Advisors committed registration violations in the offer and sale of Ms. Bair's investment.  
 5 We have found registration violations committed by Mr. Harkins, Mr. Kerrigan and Barcelona  
 6 Advisors in the offer and sale of Ms. Burleson's two investments. We have found Barcelona Land  
 7 Company to have committed no violations, and therefore, we assess no restitution against it.

8 Based upon our findings of violations and liability, we adjust the Division's recommended  
 9 restitution to the following amounts, each to be assessed jointly and severally, and to apply to respective  
 10 marital communities: \$1,318,124 against Barcelona Advisors, \$1,318,124 against Mr. Harkins,  
 11 \$1,302,223 against Mr. Kerrigan, \$1,215,353 against Mr. Simmons, and \$1,215,353 against Mr. Orr.

## 12 2. Administrative Penalties

13 The Division recommends an order of administrative penalties against the Respondents in the  
 14 following amounts: \$130,000 against Barcelona Advisors, \$130,000 against Mr. Harkins, \$120,000  
 15 against Mr. Kerrigan, \$80,000 against Mr. Simmons, \$60,000 against Mr. Orr, and \$15,000 against  
 16 Barcelona Land Company. The Division does not specifically state its reasoning for the recommended  
 17 penalty amounts.

18 Under A.R.S. §§ 44-2036(A) and 44-1962(B), the Commission has authority to assess an  
 19 administrative penalty of no more than \$5,000 for each violation committed.<sup>1251</sup> We find the  
 20 recommended administrative penalties appropriate as to Barcelona Advisors, Mr. Harkins, and Mr.  
 21 Kerrigan. As we have dismissed the allegations of direct liability against Mr. Simmons and Mr. Orr,  
 22 we find that lesser administrative penalties are appropriate as to these Respondents. Since all  
 23 allegations against Barcelona Land Company have been dismissed, we assess no administrative penalty  
 24 against it.

25 \_\_\_\_\_  
 26 period of time, as prescribed by the commission, to correct the conditions resulting from the act, practice or transaction  
 including, without limitation, a requirement to provide restitution as prescribed by rules of the commission....

27 <sup>1251</sup> A.R.S. § 44-2036 provides, in pertinent part:

28 A. A person who, in an administrative action, is found to have violated any provision of this chapter or any rule or order of  
 the commission may be assessed an administrative penalty by the commission, after a hearing, in an amount of not to exceed  
 five thousand dollars for each violation.

1 Accordingly, we assess administrative penalties in the following amounts: \$130,000 against  
2 Barcelona Advisors, \$130,000 against Mr. Harkins, \$120,000 against Mr. Kerrigan, \$40,000 against  
3 Mr. Simmons, and \$30,000 against Mr. Orr.

### 4 3. Registration

5 Pursuant to A.R.S. § 44-1962, the Commission has discretion to impose a suspension of up to  
6 one year or to revoke the registration of a securities salesman who has engaged in dishonest or unethical  
7 practices in the securities industry. The Division recommends that Mr. Kerrigan's registration as a  
8 securities salesman be revoked based upon four alleged violations of A.R.S. § 44-1962(A). As  
9 mitigating factors, Mr. Kerrigan cites his clean record and asks us to consider that he has "lost  
10 everything, including [my] health."<sup>1252</sup> We have dismissed one violation of A.R.S. § 44-1962(A), but  
11 have found Mr. Kerrigan responsible for the other three violations, including several acts of fraud in  
12 connection with the offer or sale of securities. In light of the many fraudulent omissions attributable  
13 to Mr. Kerrigan, we find revocation to be an appropriate remedy.

### 14 4. Counterclaims

15 Three of the Respondents have asserted claims for monetary awards. Mr. Simmons argues that  
16 sanctions should be imposed against the Division for improperly raising direct claims against him for  
17 the first time in the Division's Post-Hearing Brief and that Mr. Simmons should be reimbursed for costs  
18 and fees required to deal with the Division's claims. Mr. Orr requests that the Commission reimburse  
19 him for the expense and time he had to incur for the hearing and "other issues related to this case."<sup>1253</sup>  
20 Mr. Harkins contends he should be compensated \$5,000,000 for defamation, malicious prosecution,  
21 pain and suffering and loss of business opportunities. Mr. Harkins contends that Barcelona Advisors  
22 should be compensated \$3,500,000, and that the Division should be "chastised for its abuses and over-  
23 reaches."<sup>1254</sup> None of the Respondents seeking compensation have cited a legal basis supporting their  
24 request for an order of a monetary award.

25 Although we have dismissed certain allegations made by the Division, we have still found Mr.  
26 Harkins, Mr. Simmons and Mr. Orr all responsible for violations of the Act, directly and/or as control

27 <sup>1252</sup> Post-Hearing Brief of Respondent Richard J. Kerrigan at 4.

28 <sup>1253</sup> Respondent's, Bruce Orr. Post-Hearing Brief at 19.

<sup>1254</sup> Amended Post-Hearing Brief of Respondent Richard C. Harkins at 109.

1 persons of Barcelona Advisors. The Division has prevailed on significant issues raised against Mr.  
 2 Harkins, Mr. Simmons, and Mr. Orr, justifying nearly all of the restitution amounts the Division sought  
 3 against these Respondents. Accordingly, we find no basis to grant the relief requested by Mr. Harkins,  
 4 Mr. Simmons and Mr. Orr.

5 \* \* \* \* \*

6 Having considered the entire record herein and being fully advised in the premises, the  
 7 Commission finds, concludes, and orders that

### 8 FINDINGS OF FACT

9 1. Since October 2012, Richard C. Harkins has been a resident of the State of Arizona.<sup>1255</sup>  
 10 Since November 28, 2012, Mr. Harkins has been an unmarried man.<sup>1256</sup> Mr. Harkins has not been  
 11 registered by the Commission as a securities salesman or dealer.<sup>1257</sup>

12 2. From at least October 2012, until August 2015, Robert J. Kerrigan was an unmarried  
 13 man, a resident of the state of Arizona, registered by the Commission as a securities salesman with  
 14 CRD no. 268516, and registered in Arizona with First Financial Equity Corporation, as a securities  
 15 dealer with CRD no. 16507.<sup>1258</sup>

16 3. Since October 2012, George T. Simmons has been a married man and a resident of the  
 17 state of Arizona.<sup>1259</sup> Mr. Simmons has not been registered by the Commission as a securities salesman  
 18 or dealer.<sup>1260</sup> Mr. Simmons usually goes by the name Tom Simmons.<sup>1261</sup>

19 4. Since October 2012, Janet B. Simmons has been the spouse of George T. Simmons.<sup>1262</sup>

20 5. Since October 2012, Bruce L. Orr has been a married man and a resident of the state of  
 21 California.<sup>1263</sup> Mr. Orr has not been registered by the Commission as a securities salesman or dealer.<sup>1264</sup>

23 <sup>1255</sup> Amended T.O. and Notice at ¶ 2; Answer of Respondent Richard C. Harkins to Amended T.O. and Notice at ¶ 2.

24 <sup>1256</sup> *Id.*

25 <sup>1257</sup> Exh. S-1a.

25 <sup>1258</sup> Exhs. S-2a, S-2b; Amended T.O. and Notice at ¶ 3; Answer of Respondent Robert J. Kerrigan to Amended T.O. and Notice at ¶ 3.

26 <sup>1259</sup> Amended T.O. and Notice at ¶ 4; Answer of Respondent George T. Simmons to Amended T.O. and Notice at ¶ 4.

26 <sup>1260</sup> *Id.*

27 <sup>1261</sup> Tr. at 1130-1131.

27 <sup>1262</sup> Exh. S-76 at 18.

28 <sup>1263</sup> Exh. S-136 at 6, 13-14.

28 <sup>1264</sup> Exh. S-136 at 13.

1           6.       Since October 2012, Susan S. Orr has been the spouse of Bruce L. Orr.<sup>1265</sup>

2           7.       Barcelona Advisors is a limited liability company that was organized under the laws of  
3 the state of Arizona in November 2010 under the name of Barcelona Administration Company, LLC,  
4 before amending its name on April 12, 2013.<sup>1266</sup> Barcelona Advisors' office was in Scottsdale,  
5 Arizona.<sup>1267</sup> Barcelona Advisors has not been registered by the Commission as a securities salesman  
6 or dealer.<sup>1268</sup> Barcelona Advisors' securities have not been registered by the Commission.<sup>1269</sup>

7           8.       Since October 2012, Mr. Harkins has been the President or Manager of Barcelona  
8 Advisors.<sup>1270</sup> In that role, pursuant to the company's operating agreements, Mr. Harkins has had  
9 complete authority and exclusive control to conduct any business on behalf of the company in the sole  
10 and absolute discretion of the President except for an enumerated list of Major Decisions which require  
11 approval of a majority of four Executive Members.<sup>1271</sup>

12          9.       Mr. Simmons was Executive Vice President and Chief Operating Officer of Barcelona  
13 Advisors.<sup>1272</sup>

14          10.      From at least February 1, 2013, to at least August 8, 2014, Mr. Harkins, Mr. Kerrigan,  
15 Mr. Simmons, and Mr. Orr were Executive Members of Barcelona Advisors.<sup>1273</sup> Under the terms of  
16 Barcelona Advisors' operating agreements, a majority of the Executive Members must approve  
17 Barcelona Advisors' Major Decisions, including decisions to incur liability for borrowed money, issue  
18 any note, or admit new company members.<sup>1274</sup>

19          11.      Pursuant to Barcelona Advisors' April 12, 2013 Articles of Amendment filed with the  
20 Commission, the management of Barcelona Advisors was vested in its managers, identified as Mr.  
21 Harkins, Mr. Kerrigan, Mr. Simmons and Mr. Orr. Mr. Harkins and Mr. Simmons were each named  
22

23 \_\_\_\_\_  
<sup>1265</sup> Tr. at 768; Exh. S-136 at 13-14.

24 <sup>1266</sup> Exhs. S-3a, S-3b.

25 <sup>1267</sup> Tr. at 389, 764.

26 <sup>1268</sup> Exh. S-1b.

27 <sup>1269</sup> Tr. at 842; Exhs. S-5 at ACC007207, S-57 at ACC000729, S-58 at ACC005715.

28 <sup>1270</sup> Exhs. S-5 at ACC007214, S-57 at ACC000737.

<sup>1271</sup> Exhs. S-5 at ACC007214-ACC007215, ACC007268-ACC007269, S-57 at ACC000737-ACC000738, ACC000790-ACC000792.

<sup>1272</sup> Tr. at 1186.

<sup>1273</sup> Exhs. S-5 at ACC007203, ACC007229, S-30 at ACC006360.

<sup>1274</sup> Exhs. S-5 at ACC007268-ACC007269, S-57 at ACC000791-ACC000792.

1 as holding 20% or greater interest in Barcelona Advisors.<sup>1275</sup>

2 12. Barcelona Land Company is a limited liability company that was organized under the  
3 laws of the state of Arizona in January 2014.<sup>1276</sup> Barcelona Land Company has not been registered by  
4 the Commission as a securities salesman or dealer.<sup>1277</sup>

5 13. From at least October 12, 2012, to November 25, 2013, Barcelona Advisors offered and  
6 sold promissory notes and investment contracts in the form of membership units in Barcelona Advisors  
7 within and from Arizona pursuant to its 12-6-12 Offering.<sup>1278</sup> Barcelona Advisors prepared a private  
8 placement offering memorandum for investors describing the 12-6-12 Offering, dated October 18,  
9 2012, with amended versions dated February 1, 2013 and April 29, 2013.<sup>1279</sup> The 12-6-12 Offering  
10 generated nine investments from eight different investors.<sup>1280</sup>

11 14. Since at least December 23, 2013, Barcelona Advisors offered and sold promissory  
12 notes within and from Arizona pursuant to its 10-5-10 Offering.<sup>1281</sup> Barcelona Advisors prepared a  
13 private placement offering memorandum for investors describing the 10-5-10 Offering, dated January  
14 1, 2014.<sup>1282</sup> The 10-5-10 Offering generated two investments from two different investors.<sup>1283</sup>

15 15. On June 11, 2014, Mr. Harkins signed and sent a letter to all current Barcelona Advisors  
16 investors requesting short-term loans to assist in the company's capital needs, in exchange for  
17 promissory notes with 10% annual interest, a 3% bonus and a 90 day maturity date and membership  
18 units in Barcelona Advisors.<sup>1284</sup>

19 16. From July 17, 2013 to September 4, 2013, Barcelona Advisors made newspaper  
20 advertisements of an 8-8 Offering of promissory notes.<sup>1285</sup> No sales of notes were made under the 8-8  
21

22 \_\_\_\_\_  
<sup>1275</sup> Exh. S-3b.

<sup>1276</sup> Exh. S-4.

<sup>1277</sup> Amended T.O. and Notice at ¶ 7; Answer of Respondent Richard C. Harkins to Amended T.O. and Notice at ¶ 7.

<sup>1278</sup> Tr. at 158, 165, 189-190, 1095; Exhs. S-6, S-8, S-9, S-10, S-11, S-12, S-13, S-31b, S-33, S-34, S-37, S-38, S-39, S-40, S-41, S-43, S-45, S-46, S-47, S-158, S-165.

<sup>1279</sup> Exhs. S-5, S-57.

<sup>1280</sup> Tr. at 158, 165, 189-190, 1095; Exhs. S-6, S-8, S-9, S-10, S-11, S-12, S-13, S-31b, S-33, S-34, S-37, S-38, S-39, S-40, S-41, S-43, S-45, S-46, S-47, S-158, S-165.

<sup>1281</sup> Tr. at 378.

<sup>1282</sup> Exhs. S-32 at 86, S-58.

<sup>1283</sup> Tr. at 221-222; Exhs. S-31b, S-35, S-36, S-48, S-49, S-50, S-148.

<sup>1284</sup> Exhs. S-32 at 114-115, S-65, S-66.

<sup>1285</sup> Tr. at 807; Exh. S-25 at ACC006214-ACC006235.

1 Offering.<sup>1286</sup>

2 17. Barcelona Advisors generated an additional seven investments from three investors who  
3 had also invested in the 12-6-12 Offering or the 10-5-10 Offering.<sup>1287</sup> These investments were made  
4 under different terms than the 12-6-12 Offering and the 10-5-10 Offering.<sup>1288</sup> Investors received  
5 promissory notes on these investments, sometimes with LLC Units or rights to purchase LLC Units.<sup>1289</sup>

6 18. By executing Barcelona Advisors' notes, LLC Unit subscription agreements and LLC  
7 Unit purchase rights, Mr. Harkins made thirty sales of unregistered securities.<sup>1290</sup> Mr. Harkins also  
8 made sixteen offers for the sale of unregistered securities.<sup>1291</sup>

9 19. Mr. Kerrigan made twelve offers for sale of unregistered securities.<sup>1292</sup>

10 20. Barcelona Advisors omitted to inform some Barcelona Advisors investors that: 1) Mr.  
11 Harkins' prior real estate venture, AVC, had failed;<sup>1293</sup> 2) Mr. Harkins was assisted by Paul Meka, who  
12 had a felony conviction in connection with an investment fraud scheme;<sup>1294</sup> 3) Mr. Kerrigan owed  
13 unpaid taxes and had been sued regarding a bank loan;<sup>1295</sup> 4) Barcelona Advisors had moved to a "Plan  
14 B" business plan after failing to raise necessary capital to fund its original business model;<sup>1296</sup> 5)  
15 Barcelona Advisors failed to repay promissory notes to Mr. Kerrigan;<sup>1297</sup> 6) Barcelona Advisors  
16 promised to use 12-6-12 investment funds obtained after October 1, 2013, to repay a \$70,000 note to  
17 Mr. Kerrigan;<sup>1298</sup> 7) Barcelona Advisors failed to make timely payments to 12-6-12 investors;<sup>1299</sup> and  
18 8) 10-5-10 Offering proceeds would be used to pay interest to prior 12-6-12 Offering investors.<sup>1300</sup>

19 21. Mr. Kerrigan twice told one investor that her investment in the 10-5-10 Offering was a  
20

<sup>1286</sup> Tr. at 807-808.

<sup>1287</sup> Exhs. S-7, S-31b, S-42, S-51, S-53, S-54, S-55, S-56, S-169, S-184.

<sup>1288</sup> *Id.*

<sup>1289</sup> *Id.*

<sup>1290</sup> Exhs. S-6 – S-13, S-33, S-35, S-37 – S-43, S-45 – S-49, S-51, S-53 – S-56, S-184.

<sup>1291</sup> Tr. at 289-291, 293-294, 431, 634, 844, 1008-1009; Exhs. S-32 at 79-80, 96, S-60.

<sup>1292</sup> Tr. at 159, 190-191, 222-225, 426-427, 633, 660-662, 988, 1023, 1026-1030, 1032; Exhs. S-98 at 29-30, 36, 56-59,  
24 169-170.

<sup>1293</sup> Tr. at 173, 229, 303-305, 397, 664, 1222.

<sup>1294</sup> Tr. at 173-174, 229-230, 306-307, 398, 664-665, 1223; Exh. S-32 at 81.

<sup>1295</sup> Tr. at 174, 307-308, 446, 665.

<sup>1296</sup> Tr. at 398.

<sup>1297</sup> Tr. at 159, 176, 222, 230-231, 308, 391, 399, 426-427, 447, 660, 665, 1022, 1026-1030, 1032; Exh. S-98 at 56-58, 169-  
27 170, 185.

<sup>1298</sup> Tr. at 176-177, 1104.

<sup>1299</sup> Tr. at 232, 400, 1223.

<sup>1300</sup> Tr. at 400-401.

1 low-risk investment, even though the PPM and subscription agreements stated that the investment is  
2 speculative and involves a high degree of risk.<sup>1301</sup>

3 22. Barcelona Land Company prepared a private placement offering memorandum dated  
4 May 5, 2014 for a \$10,000,000 offering of membership units.<sup>1302</sup> No offers in Barcelona Land  
5 Company were made.<sup>1303</sup>

6 23. The eighteen investments in Barcelona Advisors raised a total of \$1,405,000 for the  
7 company.<sup>1304</sup> A total of \$86,876 was repaid to investors, leaving a balance of \$1,318,124 unpaid from  
8 the original investments.<sup>1305</sup>

9 24. These findings of fact are based upon the Discussion above, and those findings are  
10 incorporated herein.

### 11 CONCLUSIONS OF LAW

12 1. The Commission has jurisdiction of this matter pursuant to Article XV of the Arizona  
13 Constitution and A.R.S. § 44-1801, *et. seq.*

14 2. The findings contained in the Discussion above are incorporated herein.

15 3. Within or from Arizona, Respondents USA Barcelona Realty Advisors, LLC, Richard  
16 C. Harkins and Robert J. Kerrigan offered and sold securities, within the meaning of A.R.S. § 44-1801.

17 4. The Respondents failed to meet their burden of proof pursuant to A.R.S. § 44-2033 to  
18 establish that the securities offered and sold herein were exempt from regulation under the Act.

19 5. Respondents USA Barcelona Realty Advisors, LLC, and Richard C. Harkins violated  
20 A.R.S. § 44-1841 by offering and selling securities that were neither registered nor exempt from  
21 registration.

22 6. Respondent Robert J. Kerrigan violated A.R.S. § 44-1841 by offering securities that  
23 were neither registered nor exempt from registration.

24 7. Respondents USA Barcelona Realty Advisors, LLC, and Richard C. Harkins violated  
25 A.R.S. § 44-1842 by offering and selling securities while not being registered as dealers or salesmen.

26 <sup>1301</sup> Tr. at 222, 224, 245; Exhs. S-35 at ACC000993, S-58 at ACC0005713.

27 <sup>1302</sup> Tr. at 882; Exhs. S-32 at 95; S-59.

28 <sup>1303</sup> Tr. at 882, 901.

<sup>1304</sup> Exh. S-31b.

<sup>1305</sup> *Id.*

1           8.       Respondents USA Barcelona Realty Advisors, LLC, Richard C. Harkins, and Robert J.  
2 Kerrigan committed fraud in the offer and sale of securities, in violation of A.R.S. § 44-1991, in the  
3 manner set forth hereinabove.

4           9.       Respondents Richard C. Harkins, Robert J. Kerrigan, George T. Simmons, and Bruce  
5 L. Orr directly or indirectly controlled USA Barcelona Realty Advisors, LLC, within the meaning of  
6 A.R.S. § 44-1999, and are jointly and severally liable with USA Barcelona Realty Advisors, LLC, for  
7 violations of A.R.S. § 44-1991.

8           10.      Respondent Robert J. Kerrigan violated A.R.S. § 44-1962(A)(2) by committing fraud  
9 in connection with the offer or sale of securities, a violation of A.R.S. § 44-1991.

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

12          12.      Respondent Robert J. Kerrigan violated A.R.S. § 44-1962(A)(10) by engaging in  
13 dishonest or unethical practices in the securities industry by effecting securities transactions which  
14 were not recorded on the records of the dealer with whom he was registered as a salesman at the time  
15 of the transactions, in violation of A.A.C. R14-4-130(A)(17).

16          13.      Respondents USA Barcelona Realty Advisors, LLC's, Richard C. Harkins', George T.  
17 Simmons', and Bruce L. Orr's conduct is grounds for a cease and desist order pursuant to A.R.S. § 44-  
18 2032.

19          14.      Respondent Robert J. Kerrigan's conduct is grounds for a cease and desist order  
20 pursuant to A.R.S. §§ 44-1962(B) and 44-2032.

21          15.      Respondents USA Barcelona Realty Advisors, LLC's, Richard C. Harkins', George T.  
22 Simmons', and Bruce L. Orr's conduct is grounds for an order of restitution pursuant to A.R.S. § 44-  
23 2032 and A.A.C. R-14-4-308, and for which the marital communities of George T. Simmons and Janet  
24 B. Simmons and Bruce L. Orr and Susan S. Orr should be jointly and severally liable subject to the  
25 limitations of A.R.S. § 25-215.

26          16.      Respondent Robert J. Kerrigan's conduct is grounds for an order of restitution pursuant  
27 to A.R.S. §§ 44-1962(B) and 44-2032.

28          17.      Respondents USA Barcelona Realty Advisors, LLC's, Richard C. Harkins', George T.

1 Simmons', and Bruce L. Orr's conduct is grounds to order administrative penalties pursuant to A.R.S.  
2 § 44-2036, and for which the marital communities of George T. Simmons and Janet B. Simmons, and  
3 Bruce L. Orr and Susan S. Orr, should be jointly and severally liable subject to the limitations of A.R.S.  
4 § 25-215.

5 18. Respondent Robert J. Kerrigan's conduct is grounds to order administrative penalties  
6 pursuant to A.R.S. §§ 44-1962(B) and 44-2036.

7 19. Respondent Robert J. Kerrigan's conduct is grounds to revoke his registration as a  
8 securities salesman with the Commission pursuant to A.R.S. § 44-1962(A)(2), (8) and (10).

9 **ORDER**

10 IT IS THEREFORE ORDERED that pursuant to the authority granted to the Commission under  
11 A.R.S. § 44-2032, Respondents USA Barcelona Realty Advisors, LLC, and Richard C. Harkins, shall  
12 cease and desist from their actions, as described above, in violation of A.R.S. §§ 44-1841, 44-1842 and  
13 44-1991.

14 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under  
15 A.R.S. §§ 44-1962 and 44-2032, Respondent Robert J. Kerrigan shall cease and desist from his actions,  
16 as described above, in violation of A.R.S. §§ 44-1841, 44-1842, 44-1991, 44-1962(A)(2), (8) and (10)  
17 and A.A.C. R14-4-130(A)(17).

18 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under  
19 A.R.S. § 44-2032, Respondents George T. Simmons and Bruce L. Orr shall cease and desist from their  
20 actions, as described above, in violation of A.R.S. §§ 44-1991 and 44-1999.

21 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under  
22 A.R.S. § 44-1962(A)(2), (8) and (10), Respondent Robert J. Kerrigan's registration as a securities  
23 salesman in Arizona is revoked.

24 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under  
25 A.R.S. § 44-2032, Respondents USA Barcelona Realty Advisors, LLC, and Richard C. Harkins, jointly  
26 and severally, shall make restitution in the amount of \$1,318,124, payable to the Arizona Corporation  
27 Commission within 90 days of the effective date of this Decision. Such restitution shall be made  
28 pursuant to A.A.C. R14-4-308 subject to legal setoffs by the Respondents and confirmed by the

1 Director of Securities.

2 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under  
3 A.R.S. §§ 44-1962 and 44-2032, Respondent Robert J. Kerrigan shall make restitution, jointly and  
4 severally with Respondents USA Barcelona Realty Advisors, LLC, and Richard C. Harkins, in the  
5 amount of \$1,302,223, payable to the Arizona Corporation Commission within 90 days of the effective  
6 date of this Decision. Such restitution shall be made pursuant to A.A.C. R14-4-308 subject to legal  
7 setoffs by the Respondent and confirmed by the Director of Securities.

8 IT IS FURTHER ORDERED that pursuant to the authority granted to the Commission under  
9 A.R.S. § 44-2032, Respondents George T. Simmons and Bruce L. Orr, individually, and, to the extent  
10 allowable pursuant to A.R.S. § 25-215, the marital communities of George T. Simmons and Janet B.  
11 Simmons and Bruce L. Orr and Susan S. Orr, jointly and severally with Respondents USA Barcelona  
12 Realty Advisors, LLC, Richard C. Harkins and Robert J. Kerrigan, shall make restitution in the amount  
13 of \$1,215,353, payable to the Arizona Corporation Commission within 90 days of the effective date of  
14 this Decision. Such restitution shall be made pursuant to A.A.C. R14-4-308 subject to legal setoffs by  
15 the Respondents and confirmed by the Director of Securities.

16 IT IS FURTHER ORDERED that all ordered restitution payments shall be deposited into an  
17 interest-bearing account(s), if appropriate, until distributions are made.

18 IT IS FURTHER ORDERED that the ordered restitution shall bear interest at the rate of the  
19 lesser of 10 percent *per annum*, or at a rate *per annum* that is equal to one percent plus the prime rate  
20 as published by the Board of Governors of the Federal Reserve System of Statistical Release H.15, or  
21 any publication that may supersede it on the date that the judgment is entered.

22 IT IS FURTHER ORDERED that the Commission shall disburse the restitution funds on a *pro*  
23 *rata* basis to the investors shown on the records of the Commission. Any restitution funds that the  
24 Commission cannot disburse because an investor refuses to accept such payment, or any restitution  
25 funds that cannot be disbursed to an investor because the investor is deceased and the Commission  
26 cannot reasonably identify and locate the deceased investor's spouse or natural children surviving at  
27 the time of distribution, shall be disbursed on a *pro rata* basis to the remaining investors shown on the  
28 records of the Commission. Any funds that the Commission determines it is unable to or cannot

1 feasibly disburse shall be transferred to the general fund of the State of Arizona.

2 IT IS FURTHER ORDERED that Respondent USA Barcelona Realty Advisors, LLC, shall pay  
3 to the State of Arizona administrative penalties in the amount of \$130,000 for USA Barcelona Realty  
4 Advisors, LLC's multiple violations of the registration and antifraud provisions of the Securities Act,  
5 pursuant to A.R.S. § 44-2036. Said administrative penalties shall be payable by either cashier's check  
6 or money order payable to "the State of Arizona" and presented to the Arizona Corporation  
7 Commission for deposit in the general fund for the State of Arizona.

8 IT IS FURTHER ORDERED that Respondent Richard C. Harkins shall pay to the State of  
9 Arizona administrative penalties in the amount of \$130,000 for USA Barcelona Realty Advisors,  
10 LLC's and Mr. Harkins' multiple violations of the registration and antifraud provisions of the Securities  
11 Act, pursuant to A.R.S. § 44-2036. Said administrative penalties shall be payable by either cashier's  
12 check or money order payable to "the State of Arizona" and presented to the Arizona Corporation  
13 Commission for deposit in the general fund for the State of Arizona.

14 IT IS FURTHER ORDERED that Respondent Robert J. Kerrigan, shall pay to the State of  
15 Arizona administrative penalties in the amount of \$120,000 for USA Barcelona Realty Advisors,  
16 LLC's and Mr. Kerrigan's multiple violations of the registration and antifraud provisions of the  
17 Securities Act, pursuant to A.R.S. §§ 44-1962(B) and 44-2036. Said administrative penalties shall be  
18 payable by either cashier's check or money order payable to "the State of Arizona" and presented to  
19 the Arizona Corporation Commission for deposit in the general fund for the State of Arizona.

20 IT IS FURTHER ORDERED that Respondent George T. Simmons, individually, and the  
21 marital community of George T. Simmons and Janet B. Simmons, jointly and severally, shall pay to  
22 the State of Arizona administrative penalties in the amount of \$40,000 for USA Barcelona Realty  
23 Advisors, LLC's multiple violations of the antifraud provisions of the Securities Act, pursuant to  
24 A.R.S. §§ 44-2036 and 25-215. Said administrative penalties shall be payable by either cashier's check  
25 or money order payable to "the State of Arizona" and presented to the Arizona Corporation  
26 Commission for deposit in the general fund for the State of Arizona.

27 IT IS FURTHER ORDERED that Respondent Bruce L. Orr, individually, and the marital  
28 community of Bruce L. Orr and Susan S. Orr, jointly and severally, shall pay to the State of Arizona

1 administrative penalties in the amount of \$30,000 for USA Barcelona Realty Advisors, LLC’s multiple  
2 violations of the antifraud provisions of the Securities Act, pursuant to A.R.S. §§ 44-2036 and 25-215.  
3 Said administrative penalties shall be payable by either cashier’s check or money order payable to “the  
4 State of Arizona” and presented to the Arizona Corporation Commission for deposit in the general fund  
5 for the State of Arizona.

6 IT IS FURTHER ORDERED that the payment obligations for these administrative penalties  
7 shall be subordinate to the restitution obligations ordered herein and shall become immediately due and  
8 payable only after restitution payments have been paid in full or upon Respondents’ default with respect  
9 to Respondents’ restitution obligations.

10 IT IS FURTHER ORDERED that if Respondents fail to pay the administrative penalties  
11 ordered hereinabove, any outstanding balance plus interest, at the rate of the lesser of ten percent *per*  
12 *annum* or at a rate *per annum* that is equal to one percent plus the prime rate as published by the Board  
13 of Governors of the Federal Reserve System in Statistical Release H.15 or any publication that may  
14 supersede it on the date that the judgment is entered, may be deemed in default and shall be immediately  
15 due and payable, without further notice.

16 IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order, any  
17 outstanding balance shall be in default and shall be immediately due and payable without notice or  
18 demand. The acceptance of any partial or late payment by the Commission is not a waiver of default  
19 by the Commission.

20 IT IS FURTHER ORDERED that default shall render Respondents liable to the Commission  
21 for its cost of collection and interest at the maximum legal rate.

22 IT IS FURTHER ORDERED that if any of the Respondents fail to comply with this Order, the  
23 Commission may bring further legal proceedings against the Respondent(s) including application to  
24 the Superior Court for an order of contempt.

25 ...  
26 ...  
27 ...  
28 ...

1 IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-1974, upon application the  
2 Commission may grant a rehearing of this Order. The application must be received by the Commission  
3 at its offices within twenty (20) calendar days after entry of this Order. Unless otherwise ordered, filing  
4 an application for rehearing does not stay this Order. If the Commission does not grant a rehearing  
5 within twenty (20) calendar days after filing the application, the application is considered to be denied.  
6 No additional notice will be given of such denial.

7 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

8 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

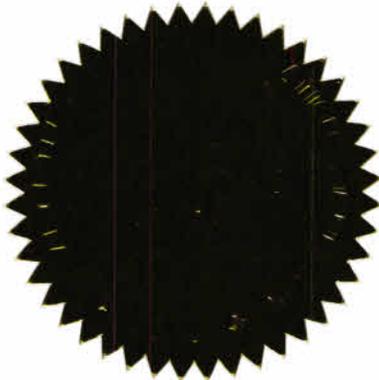
9  
10   
11 CHAIRMAN FORESE

  
12 COMMISSIONER DUNN

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14 COMMISSIONER TOBIN

  
15 COMMISSIONER OLSON

  
16 COMMISSIONER BURNS



17 IN WITNESS WHEREOF, I, TED VOGT, Executive Director of  
18 the Arizona Corporation Commission, have hereunto set my  
19 hand and caused the official seal of the Commission to be affixed  
20 at the Capitol, in the City of Phoenix, this 3rd day  
of January 2018.



21 TED VOGT  
22 EXECUTIVE DIRECTOR

23 DISSENT \_\_\_\_\_

24 DISSENT \_\_\_\_\_  
25 MP:aw(rt)

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SERVICE LIST FOR:

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; and BRUCE L. ORR and SUSAN S. ORR

DOCKET NO.:

S-20938A-15-0308

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**Consented to Service by Email**