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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.

Table of Contents

1		
2	Procedural History.....	4
3	DISCUSSION.....	9
4	I. Brief Summary.....	9
5	II. Testimony.....	11
6	Patrick McDonough.....	11
7	William Jordan.....	16
8	Rodney Eaves.....	18
9	Pam Stewart.....	22
10	Richard Andrade.....	26
11	Kathleen Ann Carolin.....	29
12	Steve Chanen.....	32
13	Darius Taylor.....	33
14	Dulance Morin.....	35
15	Avi Beliak.....	35
16	Bruce Orr.....	36
17	Richard Harkins.....	41
18	Robert Kerrigan.....	52
19	George Thomas Simmons.....	59
20	III. Offerings.....	67
21	12-6-12 Offering.....	67
22	10-5-10 Offering.....	68
23	Barcelona Land Company.....	69
24	June 2014 Offering.....	69
25	8-8 Offering.....	70
26	IV. Transactions.....	71
27	Kelly Bair (Investment 1).....	71
28	Rodney and Melissa Eaves – First Investment (Investment 2).....	71
	Roberta Burleson – Two Investments (Investments 3 and 4).....	72
	Richard Woods (Investment 5).....	73
	Kathleen Carolin – Two Investments (Investments 6 and 8).....	73
	Rodney and Melissa Eaves – Second Investment (Investment 7).....	75
	William Jordan (Investment 9).....	75
	Ridick Ramirez (Investment 10).....	76
	Nancy Chaimson (Investment 11).....	76
	Rodney and Melissa Eaves – Additional Investments	
	(Investments 12, 15, 17, and 18).....	76
	Pam Stewart (Investment 13).....	78
	Richard Andrade – First Investment (Investment 14).....	79
	Richard Andrade – Second Investment (Investment 16).....	81
	V. Legal Argument.....	82
	A. Filings by the Parties.....	82
	B. Motion to Conform.....	84
	1. Argument.....	84
	2. Analysis.....	90
	a) Amendments Pertaining to Barcelona Land Company	
	and Mr. Kerrigan.....	90

	b) Amendments Pertaining to Mr. Simmons.....	91
1	c) Amendments Pertaining to Mr. Orr.....	93
2	3. Conclusion.....	95
3	C. Classification of the Investments.....	95
4	1. Barcelona Advisors Notes.....	95
5	2. Barcelona Advisors Membership Units.....	102
6	a) LLC Units.....	103
7	b) Right to Purchase LLC Units.....	104
8	3. Exemptions to Registration Requirements.....	105
9	a) Integration.....	106
10	b) Exemptions.....	109
11	D. Registration Violations.....	112
12	1. Richard Harkins.....	112
13	2. Robert Kerrigan.....	115
14	3. George T. Simmons.....	116
15	a) Credibility of Mr. Simmons.....	116
16	b) Credibility of Division Witnesses.....	119
17	c) Analysis and Conclusion.....	121
18	4. Bruce Orr.....	122
19	5. Barcelona Advisors.....	123
20	6. Barcelona Land Company.....	124
21	E. Fraud Violations.....	125
22	1. AVC Failure.....	126
23	2. Paul Meka Conviction.....	128
24	3. Robert Kerrigan Debts.....	130
25	4. Plan B Business Plan.....	132
26	5. Robert Kerrigan Investments.....	135
27	a) Failure to Pay Robert Kerrigan Notes.....	135
28	b) Promised Use of Funds to Repay Robert Kerrigan.....	138
	6. Delayed 12-6-12 Interest Payments.....	140
	7. Use of 10-5-10 Proceeds to Pay 12-6-12 Investors.....	142
	8. Agreement with Chanen Construction Company.....	144
	9. Low-Risk Investment.....	144
	F. Control Person Liability.....	145
	1. Barcelona Advisors.....	145
	a) Contentions.....	145
	b) Analysis and Conclusion.....	149
	2. Barcelona Land Company.....	151
	G. Marital Community Liability.....	152
	H. Securities Salesman Registration.....	154
	I. Remedies.....	157
	1. Restitution.....	157
	2. Administrative Penalties.....	158
	3. Registration.....	159
	4. Counterclaims.....	159
	FINDINGS OF FACT.....	160
	CONCLUSIONS OF LAW.....	164
	ORDER.....	166

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.

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

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

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

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

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

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

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

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

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

* * * * *

DISCUSSION

I. Brief Summary

This is an enforcement action brought against Respondents USA Barcelona Realty Advisors, LLC, USA Barcelona Hotel Land Company I, LLC, Richard C. Harkins, Robert J. Kerrigan, George T. Simmons, and Bruce L. Orr for alleged violations of the Arizona Securities Act. The Division alleges that the Respondents offered and/or sold unregistered securities, in violation of A.R.S. § 44-1841. Respondents Barcelona Advisors, Barcelona Land Company, Mr. Harkins, Mr. Simmons and Mr. Orr are alleged to have made offers and/or sales of unregistered securities while not registered as 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, 2013.¹ 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.² 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.³ 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.⁴ 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.⁵ Mr. McDonough's work for Barcelona Advisors concluded
20 when he resigned on June 12, 2014.⁶

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, 2014.⁷ Mr. McDonough testified he

25 ¹ Tr. at 60, 124-125.

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

27 ³ Tr. at 61-62, 112-113.

28 ⁴ Tr. at 126-127, 129.

⁵ Tr. at 150.

⁶ Tr. at 63-64.

⁷ 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.⁸

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.”⁹ 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.¹⁰
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.”¹¹ 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.¹² 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.¹³

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.”¹⁴ 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.¹⁵ 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.¹⁶ On cross
22 examination, Mr. McDonough admitted that he didn’t know for sure whether Mr. Orr had done due
23

24 ⁸ Tr. at 138-139.

25 ⁹ Exh. S-59 at ACC005854.

26 ¹⁰ Tr. at 67-68.

27 ¹¹ Exh. S-59 at ACC005854.

28 ¹² Tr. at 68, 70-71.

¹³ Tr. at 68-69, 71, 151.

¹⁴ Exh. S-59 at ACC005854.

¹⁵ Tr. at 69-72, 106-107.

¹⁶ 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.¹⁷
 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.¹⁸

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."¹⁹ Mr. McDonough testified that there was, in fact, no agreement made with
 9 Chanen at least through his resignation on June 12, 2014.²⁰ Mr. McDonough testified that he had made
 10 the initial contact with Chanen through Steve Betts, Chanen's vice president of business development.²¹
 11 After that, a series of meetings and discussions took place involving Steve Chanen, Mr. Betts, Mr.
 12 Harkins, Mr. Simmons and Mr. McDonough.²² Mr. McDonough testified that by the time he left, no
 13 conclusion had been reached from these discussions.²³

14 Mr. McDonough testified that Barcelona Advisors also had 12-6-12 and 10-5-10 note
 15 offerings.²⁴ 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.²⁵ 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.²⁶
 20 Mr. McDonough testified that he believed the investment was "Ponzi-like" and that he knew previous
 21

22 ¹⁷ Tr. at 108-109.

23 ¹⁸ Tr. at 110, 133-134, 145.

24 ¹⁹ Exh. S-59 at ACC005862.

25 ²⁰ Tr. at 75.

26 ²¹ Tr. at 75, 136.

27 ²² Tr. at 137.

28 ²³ Tr. at 137.

²⁴ 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.*

²⁵ Tr. at 78.

²⁶ 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.²⁷ 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.²⁸ 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."²⁹

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.³⁰ 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.³¹ 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.³² 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.³³ 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.³⁴ 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.³⁵ Mr. McDonough testified that Mr. Simmons
 21 signed his contract and made decisions pertaining to him, but did not make decisions regarding the
 22

23 ²⁷ Tr. at 81-82.

24 ²⁸ Tr. at 82.

25 ²⁹ Tr. at 82-83.

26 ³⁰ Tr. at 84.

27 ³¹ Tr. at 84.

28 ³² 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.

29 ³³ Tr. at 85-86.

30 ³⁴ Tr. at 86.

31 ³⁵ Tr. at 88, 90, 153-154.

1 offer and sale of securities.³⁶ 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.³⁷
 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.³⁸ 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.³⁹ 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.⁴⁰

9 Mr. McDonough testified that Mr. Orr was the contact person on the California land parcels.⁴¹
 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.⁴² 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.⁴³ Mr. McDonough believed that Mr. Meka and Mr. Harkins had a close relationship and that
 14 they knew each other prior to Barcelona Advisors.⁴⁴ 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.”⁴⁵

17 Mr. McDonough testified that he met Rodney Eaves at a meeting in Sedona in 2013 when Mr.
 18 Eaves was an investor.⁴⁶ 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.⁴⁷ Mr. McDonough acknowledged that the Barcelona Land Company PPM lists Mr.

22 ³⁶ Tr. at 155-156.

23 ³⁷ Tr. at 89.

24 ³⁸ Tr. at 89-90, 142-143.

25 ³⁹ Tr. at 91.

26 ⁴⁰ Tr. at 92, 139.

27 ⁴¹ Tr. at 93.

28 ⁴² 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.

⁴³ Tr. at 94, 123-124.

⁴⁴ Tr. at 95.

⁴⁵ Tr. at 95.

⁴⁶ Tr. at 96-97.

⁴⁷ Tr. at 96-98.

1 Eaves as the vice president of development and construction management.⁴⁸

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.⁴⁹ 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.”⁵⁰ 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.”⁵¹ 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.⁵² 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.⁵³ 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.⁵⁴ Mr. McDonough testified that he never
18 received the pay owed him.⁵⁵ 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.⁵⁶

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.⁵⁷ Mr. Jordan first learned about Barcelona Advisors around October 2013

24 ⁴⁸ Tr. at 130-131; Exh. S-59 at ACC005877.

⁴⁹ Tr. at 98, 101-102.

25 ⁵⁰ Tr. at 114-115.

⁵¹ Tr. at 145.

26 ⁵² Tr. at 99, 155.

⁵³ Tr. at 100.

27 ⁵⁴ Tr. at 119-120.

⁵⁵ Tr. at 101.

28 ⁵⁶ Tr. at 102-103.

⁵⁷ Tr. at 158-159.

1 through his investment advisor, Mr. Kerrigan.⁵⁸ They discussed the Barcelona Advisors investment
 2 opportunity in Mr. Kerrigan's office in Arizona.⁵⁹ 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."⁶⁰ Mr. Jordan understood that the business
 5 would be buying, and possibly building, hotels.⁶¹ 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.⁶² Mr. Jordan subsequently received a signed promissory note reflecting his
 8 investment.⁶³ Mr. Jordan testified he did not know either Mr. Orr or Mr. Simmons, and he did not
 9 know Mr. Harkins.⁶⁴

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.⁶⁵ Mr. Jordan also testified that he received
 12 a status report letter in the mail from Barcelona Advisors.⁶⁶ The letter was signed by Mr. Harkins, Mr.
 13 Simmons, Mr. Orr, and Mr. Kerrigan.⁶⁷

14 Prior to investing, Mr. Jordan was not informed that Mr. Harkins' previous real estate venture
 15 had failed.⁶⁸ 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.⁶⁹ 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.⁷⁰ 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.⁷¹

⁵⁸ Tr. at 159-160, 166.

⁵⁹ Tr. at 160-161.

⁶⁰ Tr. at 161-162; Exh. S-57.

⁶¹ Tr. at 161.

⁶² Tr. at 165, 168, 170; Exhs. S-11; S-158.

⁶³ Tr. at 168-169; Exh. S-45.

⁶⁴ Tr. at 178, 182.

⁶⁵ Tr. at 171-172; Exhs. S-150 at ACC001561, S-163.

⁶⁶ Tr. at 172-173.

⁶⁷ Exh. S-27.

⁶⁸ Tr. at 173.

⁶⁹ 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.

⁷⁰ Tr. at 173-174.

⁷¹ 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.⁷² 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.⁷³ 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.⁷⁴ Mr. Jordan testified that this information would
 6 not have been significant to his decision to invest because business plans evolve over time.⁷⁵ Prior to
 7 investing, Mr. Jordan was not told that Barcelona Advisors failed to pay back money owed to Mr.
 8 Kerrigan.⁷⁶ Mr. Jordan testified that this information would have been significant to his decision to
 9 invest.⁷⁷ Prior to investing, Mr. Jordan was not told whether Barcelona Advisors had promised to repay
 10 Mr. Kerrigan with Mr. Jordan's investment funds.⁷⁸ Mr. Jordan testified that this information would
 11 have been significant to his decision to invest.⁷⁹ Mr. Jordan testified that he would not have invested
 12 in Barcelona Advisors had he been told this series of facts.⁸⁰ 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.⁸¹

15 Rodney Eaves -

16 Mr. Eaves testified that he is an Arizona resident who made six investments in Barcelona
 17 Advisors totaling \$780,000.⁸² Mr. Eaves first learned about Barcelona Advisors in December 2012,
 18 from Mr. Kerrigan at the latter's office in Arizona.⁸³ Mr. Eaves testified that Mr. Kerrigan told him
 19 Barcelona Advisors was a start-up company in the select service hotel industry.⁸⁴ 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.

23 ⁷² Tr. at 174.

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

27 ⁷⁴ Tr. at 175-176.

28 ⁷⁵ Tr. at 176.

⁷⁶ Tr. at 176.

⁷⁷ Tr. at 176.

⁷⁸ Tr. at 176.

⁷⁹ Tr. at 177.

⁸⁰ Tr. at 177.

⁸¹ Tr. at 188.

⁸² Tr. at 189-190, 281, 309.

⁸³ Tr. at 190-191, 328.

⁸⁴ 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.⁸⁵ 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.⁸⁶ 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.⁸⁷ Mr. Eaves understood that Mr. Simmons was a vice
 7 president and that he was on the Executive Committee with Mr. Harkins.⁸⁸ Later, in February 2013,
 8 Mr. Eaves received a private placement memorandum for a million dollar offering from Mr. Kerrigan.⁸⁹
 9 Mr. Eaves testified that he relied on the information in the private placement memorandum in making
 10 each of his investments.⁹⁰ 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."⁹¹ Mr. Eaves signed
 14 a subscription agreement stating that he was an accredited investor.⁹² 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.⁹³ 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.⁹⁴

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.⁹⁵

23 ⁸⁵ Tr. at 192.

24 ⁸⁶ Tr. at 192-193, 196, 331; Exh. S-170.

25 ⁸⁷ Tr. at 196-197, 330.

26 ⁸⁸ Tr. at 198.

27 ⁸⁹ Tr. at 192-194, 333; Exh. S-5.

28 ⁹⁰ Tr. at 297.

⁹¹ Tr. at 199-201; Exh. S-33.

⁹² Exh. S-33.

⁹³ Tr. at 337-339; Exh. S-33.

⁹⁴ Tr. at 201-202, 333, 370; Exh. S-38.

⁹⁵ Tr. at 203, 206, 341; Exh. S-7.

1 Mr. Eaves signed a loan and investment agreement concurrent to making his second investment.⁹⁶ 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.⁹⁷ Mr. Eaves testified that he
 4 relied on the information in the private placement memorandum when he made his second
 5 investment.⁹⁸ Mr. Eaves again received a signed promissory note for his investment.⁹⁹

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.¹⁰⁰ Mr.
 8 Eaves testified that he made the investment to protect his prior investments of \$500,000.¹⁰¹ Mr. Eaves'
 9 third investment was \$125,000 for a promissory note.¹⁰² Mr. Eaves' fourth investment, made on
 10 February 28, 2014, was also \$125,000 for a promissory note.¹⁰³ 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.¹⁰⁴

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.¹⁰⁵ Mr. Eaves' fifth investment,
 15 made on July 14, 2014, was in the amount of \$15,000 for a promissory note.¹⁰⁶ 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.¹⁰⁷ Mr. Eaves' sixth investment, made on August 1, 2014, was in the amount of
 18 \$15,000 for a promissory note.¹⁰⁸ Mr. Eaves paid for both the fifth and sixth investments by check to
 19 Mr. Harkins in Arizona.¹⁰⁹

20 Mr. Eaves testified that he received some interest payments from Barcelona Advisors.¹¹⁰ Mr.

21 ⁹⁶ Tr. at 339-340; Exh. S-7.

22 ⁹⁷ Tr. at 203-204, 341.

23 ⁹⁸ Tr. at 205.

24 ⁹⁹ Tr. at 207, 371-372; Exh. S-42.

25 ¹⁰⁰ Tr. at 282, 345.

26 ¹⁰¹ Tr. at 282-283.

27 ¹⁰² Tr. at 284; Exh. S-53.

28 ¹⁰³ Tr. at 285; Exh. S-54.

¹⁰⁴ Tr. at 287-288, 346-347.

¹⁰⁵ Tr. at 289, 291.

¹⁰⁶ Tr. at 291-293; Exhs. S-55, S-168.

¹⁰⁷ Tr. at 293-294.

¹⁰⁸ Tr. at 294-295; Exhs. S-56, S-167.

¹⁰⁹ Tr. at 296-297.

¹¹⁰ Tr. at 298.

1 Eaves received five checks for interest payments, for a total amount of \$38,157.41.¹¹¹ Mr. Eaves
 2 testified that he has not received any principal payments from Barcelona Advisors.¹¹²

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.¹¹³ 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.¹¹⁴ 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.¹¹⁵ 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.¹¹⁶ Prior to investing, Mr. Eaves was not told
 12 that Mr. Kerrigan had a judgment and a tax lien against him.¹¹⁷ 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.¹¹⁸ Prior to investing, Mr. Eaves was not told whether
 15 Barcelona Advisors had previously defaulted on promissory notes to Mr. Kerrigan.¹¹⁹ 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.¹²⁰

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.¹²¹ Mr. Eaves testified that Mr. Simmons
 20 signed the independent contractor agreement.¹²² Mr. Eaves initially researched potential properties for

21 ¹¹¹ Tr. at 298-303; Exhs. S-149, S-154, S-155, S-159.

22 ¹¹² Tr. at 303.

23 ¹¹³ Tr. at 303-305.

24 ¹¹⁴ Tr. at 304-306.

25 ¹¹⁵ Tr. at 306.

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

27 ¹¹⁷ Tr. at 307.

28 ¹¹⁸ Tr. at 307-308.

¹¹⁹ Tr. at 308.

¹²⁰ Tr. at 308.

¹²¹ 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.

¹²² Tr. at 372.

1 the company, and he later became a member of the Executive Committee in the first week of August,
 2 2014.¹²³ Mr. Eaves testified that as an Executive Member, he had a voting right on any company
 3 decision.¹²⁴ 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.¹²⁵ Mr.
 5 Eaves testified that Mr. Kerrigan's primary role was to find investors.¹²⁶ 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.¹²⁷ Staff meetings
 8 were generally informal discussions often about the upcoming agenda and bringing in capital, and did
 9 not involve voting on decisions.¹²⁸ 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.¹²⁹ Mr. Orr never
 11 asked Mr. Eaves to make any investment.¹³⁰

12 Mr. Eaves also testified that he was present for three or four meetings with general contractor,
 13 Chanen.¹³¹ 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.¹³²

15 Pam Stewart

16 Ms. Stewart testified that she is an Arizona resident who invested \$100,000 in Barcelona
 17 Advisors.¹³³ 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.¹³⁴ 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

22 ¹²³ Tr. at 311, 349.

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

24 ¹²⁵ Tr. at 313-314.

25 ¹²⁶ Tr. at 317.

26 ¹²⁷ Tr. at 317-320.

27 ¹²⁸ Tr. at 319, 326, 352.

28 ¹²⁹ Tr. at 320-321, 327.

¹³⁰ Tr. at 325.

¹³¹ Tr. at 321.

¹³² Tr. at 322.

¹³³ Tr. at 221-222.

¹³⁴ Tr. at 222-223, 225, 269.

1 Corporation (“FFEC”).¹³⁵ 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.¹³⁶ 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.¹³⁷ 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.¹³⁸ Ms. Stewart relied upon her long relationship with Mr. Kerrigan and his assurance
 8 that this was a low-risk investment.¹³⁹ At the time of her investment, Ms. Stewart was an accredited
 9 investor.¹⁴⁰

10 Ms. Stewart testified that she has not received any principal or interest payments on her
 11 investment.¹⁴¹ 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.¹⁴² Ms.
 13 Stewart testified that she signed a document on or about August 19, 2014, consenting to a deferment
 14 of her interest payments.¹⁴³ 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.¹⁴⁴ 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.¹⁴⁵

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.¹⁴⁶ However, when presented with a copy of the offering memorandum at hearing,
 22

23 ¹³⁵ Tr. at 223.

24 ¹³⁶ Tr. at 224.

25 ¹³⁷ Tr. at 225-227, 268-269; Exh. S-35.

26 ¹³⁸ Tr. at 227-228, 237, 271.

27 ¹³⁹ Tr. at 237.

28 ¹⁴⁰ Tr. at 256.

¹⁴¹ Tr. at 228.

¹⁴² Tr. at 228-229; Exh. S-60.

¹⁴³ Tr. at 276.

¹⁴⁴ Tr. at 233, 267, 272.

¹⁴⁵ Tr. at 272-273, 277-278.

¹⁴⁶ Tr. at 235-236; Exh. S-35.

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

¹⁴⁷ Tr. at 247-248, 256, 279-280.

¹⁴⁸ Exh. S-35 at ACC000992.

¹⁴⁹ Tr. at 258.

¹⁵⁰ Exh. S-35 at ACC000992.

¹⁵¹ Tr. at 261.

¹⁵² Exh. S-35 at ACC000992.

¹⁵³ Tr. at 261-262.

¹⁵⁴ Tr. at 262-263; Exh. S-35 at ACC000992-ACC000993.

¹⁵⁵ Tr. at 263; Exh. S-35 at ACC000993.

¹⁵⁶ Tr. at 263; Exh. S-35 at ACC000993.

¹⁵⁷ Tr. at 269-271.

1 that she felt comfortable signing after only a brief opportunity to review it because she trusted Mr.
 2 Kerrigan.¹⁵⁸ 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.¹⁵⁹

4 Prior to investing, Ms. Stewart was not informed that Mr. Harkins' previous real estate venture
 5 had failed.¹⁶⁰ 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."¹⁶¹ 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.¹⁶² Ms. Stewart testified this information would
 9 have been significant to her decision to invest as it would not "sound like a solid investment."¹⁶³ 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.¹⁶⁴ 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."¹⁶⁵ Prior to investing, Ms. Stewart
 14 was not told that Barcelona Advisors failed to pay back money owed to Mr. Kerrigan.¹⁶⁶ 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.¹⁶⁷ Prior to investing, Ms. Stewart was not told that
 17 Barcelona Advisors failed to make interest payments to previous investors.¹⁶⁸ Ms. Stewart testified
 18 that this information would have stopped her from making her investment.¹⁶⁹ Prior to investing, Ms.
 19 Stewart was not told whether her funds would be used to make payments to earlier investors.¹⁷⁰ Ms.

21 ¹⁵⁸ Tr. at 273.

22 ¹⁵⁹ Tr. at 269-270, 276-277.

23 ¹⁶⁰ Tr. at 229.

24 ¹⁶¹ 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.

26 ¹⁶² Tr. at 229-230.

27 ¹⁶³ 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.

¹⁶⁴ Tr. at 230.

¹⁶⁵ 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.

¹⁶⁶ Tr. at 230-231.

¹⁶⁷ Tr. at 231.

¹⁶⁸ Tr. at 232.

¹⁶⁹ Tr. at 232.

¹⁷⁰ 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.”¹⁷¹

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

6 Richard Andrade

7 Mr. Andrade testified that he is an Arizona resident who made two investments, totaling
8 \$55,000, in Barcelona Advisors.¹⁷⁵ 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, 2013.¹⁷⁶ 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.¹⁷⁷ 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.¹⁷⁸ 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.¹⁷⁹ Mr. Andrade testified that Mr. Simmons told him Barcelona Advisors was a good
18 investment based upon the track record of the individuals involved.¹⁸⁰ Mr. Andrade testified that Mr.
19 Simmons asked him to invest at the lunch meeting.¹⁸¹

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.¹⁸²

22 ¹⁷¹ Tr. at 233.

23 ¹⁷² Tr. at 255.

24 ¹⁷³ Tr. at 271.

25 ¹⁷⁴ Tr. at 254.

26 ¹⁷⁵ Tr. at 376.

27 ¹⁷⁶ Tr. at 376, 378, 380.

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

¹⁷⁸ Tr. at 379.

¹⁷⁹ Tr. at 380.

¹⁸⁰ Tr. at 382.

¹⁸¹ Tr. at 387.

¹⁸² 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.¹⁸³ Mr. Andrade responded that he was not in a position to make an investment at the time.¹⁸⁴
 4 On April 5, 2014, in Arizona, Mr. Andrade initialed and signed a subscription agreement and made an
 5 initial investment of \$50,000.¹⁸⁵ The agreement was also signed by Mr. Simmons for Barcelona
 6 Advisors.¹⁸⁶ Mr. Andrade testified that he used money from an IRA to make the investment.¹⁸⁷ 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.¹⁸⁸ In the subscription agreement, Mr.
 9 Andrade indicated that he was an accredited investor, with net worth exceeding \$1,000,000.¹⁸⁹ Mr.
 10 Andrade testified that he read the warranties and representations contained in the subscription
 11 agreement¹⁹⁰ and they were correct.¹⁹¹

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.¹⁹² On or about June 16, 2014,
 14 Mr. Andrade met with Mr. Harkins and Mr. Simmons at Barcelona Advisors' offices in Scottsdale.¹⁹³
 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.¹⁹⁴ Mr. Andrade testified that he made his second investment at this meeting when he gave a
 18 \$5,000 check to Mr. Harkins.¹⁹⁵ This second investment was not made pursuant to an offering
 19 memorandum and no subscription agreement was completed.¹⁹⁶ Mr. Andrade testified that he made

21 ¹⁸³ Tr. at 382-383; Exh. S-171.

22 ¹⁸⁴ Tr. at 382; Exh. S-171.

23 ¹⁸⁵ Tr. at 384-386, 388, 408; Exh. S-36.

24 ¹⁸⁶ Tr. at 386; Exh. S-36.

25 ¹⁸⁷ Tr. at 388, 412.

26 ¹⁸⁸ Tr. at 388.

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

28 ¹⁹⁰ 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.

¹⁹¹ Tr. at 409-410; Exh. S-36.

¹⁹² Tr. at 389, 411.

¹⁹³ Tr. at 389, 411.

¹⁹⁴ Tr. at 390-391.

¹⁹⁵ Tr. at 391, 393-396; Exhs. S-51, S-169.

¹⁹⁶ 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.¹⁹⁷ 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.¹⁹⁸ 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.¹⁹⁹ Mr. Andrade
 6 testified that he has never received any payments of interest or principal on his investments.²⁰⁰

7 Prior to investing, Mr. Andrade was not informed that Mr. Harkins' previous real estate venture
 8 had failed.²⁰¹ 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.²⁰² 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.²⁰³ 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.²⁰⁴ 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.²⁰⁵ 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.²⁰⁶ 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.²⁰⁷ 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.²⁰⁸ Prior to
 21 investing, Mr. Andrade was not told that Barcelona Advisors promised to repay one of the company's

22 ¹⁹⁷ Tr. at 396.

23 ¹⁹⁸ 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.

24 ¹⁹⁹ Tr. at 396; Exh. S-172.

25 ²⁰⁰ Tr. at 397.

26 ²⁰¹ Tr. at 397.

27 ²⁰² Tr. at 397.

28 ²⁰³ Tr. at 398.

²⁰⁴ Tr. at 398.

²⁰⁵ Tr. at 398.

²⁰⁶ Tr. at 398-399.

²⁰⁷ Tr. at 399.

²⁰⁸ Tr. at 399.

1 directors with his investment funds.²⁰⁹ 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.²¹⁰ Prior to investing, Mr. Andrade was not told that Barcelona Advisors
 4 had failed to make interest payments to previous investors.²¹¹ 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.²¹² Prior to investing, Mr.
 7 Andrade was not told that his funds would be used to make payments to earlier investors.²¹³ 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.²¹⁴ Mr. Andrade testified that had he been aware
 10 of the things that were not presented to him, he would not have invested.²¹⁵

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.²¹⁶ Ms. Carolin testified that she first learned about the Barcelona Advisors investment
 15 through her boyfriend, Mr. Kerrigan.²¹⁷ Mr. Kerrigan recommended Barcelona Advisors as a good
 16 investment paying a high rate of interest.²¹⁸ Ms. Carolin knew that Mr. Kerrigan had invested money
 17 in Barcelona Advisors, and that he was actively soliciting investors.²¹⁹ Ms. Carolin testified that she
 18 received a copy of the private placement memorandum after she made her investments.²²⁰ Ms. Carolin
 19 testified that she signed a subscription agreement when she made her first investment of \$25,000 on
 20 June 30, 2013.²²¹ Ms. Carolin testified that she believed she received the subscription agreement from
 21

22 ²⁰⁹ Tr. at 399-400.

23 ²¹⁰ Tr. at 400.

24 ²¹¹ Tr. at 400.

25 ²¹² Tr. at 400.

26 ²¹³ Tr. at 400-401.

27 ²¹⁴ Tr. at 401.

28 ²¹⁵ Tr. at 401.

²¹⁶ Tr. at 425-426, 462.

²¹⁷ Tr. at 426, 462.

²¹⁸ Tr. at 426-427.

²¹⁹ Tr. at 447.

²²⁰ Tr. at 429, 463; Exh. S-57.

²²¹ 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.²²² 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.²²³

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 \$200,000.²²⁴ 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.²²⁵ 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."²²⁶ 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.²²⁷ Ms. Carolin testified that she thought they "let me in because I
11 was a friend."²²⁸ Ms. Carolin signed the subscription agreement, but admitted that she probably did
12 not read all of it.²²⁹ Pursuant to the investment, Ms. Carolin received a 12-6-12 promissory note.²³⁰

13 On July 14, 2015, Ms. Carolin made a second investment of \$25,000.²³¹ 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."²³² Pursuant to
16 the investment, Ms. Carolin again received a 12-6-12 promissory note.²³³ 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."²³⁴ Ms. Carolin testified that she made
19 her investments to earn income for retirement.²³⁵ 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 _____
22 ²²² Tr. at 431.

23 ²²³ Tr. at 448-449.

24 ²²⁴ Tr. at 431-432.

25 ²²⁵ Tr. at 432.

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

27 ²²⁷ Tr. at 433, 449-450.

28 ²²⁸ Tr. at 473.

²²⁹ Tr. at 469.

²³⁰ Tr. at 434-435; Exh. S-40.

²³¹ Tr. at 436; Exh. S-34.

²³² 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.

²³³ Tr. at 437-438; Exh. S-43.

²³⁴ Tr. at 438-439.

²³⁵ Tr. at 439.

1 Advisors before.²³⁶

2 Ms. Carolin received five checks for interest payments from Barcelona Advisors, for a total
3 amount of \$5,793.²³⁷ 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, 2013.²³⁸ Ms. Carolin testified that she never received any principal payments from
6 Barcelona Advisors.²³⁹ 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.²⁴⁰

8 Prior to investing, Ms. Carolin was not informed that Mr. Harkins' previous real estate venture
9 had failed.²⁴¹ 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.²⁴²
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.²⁴³ 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.²⁴⁴ Prior to investing, Ms. Carolin testified that she was
15 not informed that Barcelona Advisors had failed to pay back money to Mr. Kerrigan.²⁴⁵ 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.²⁴⁶ 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.²⁴⁷ Ms. Carolin testified that she did know Mr. Meka had a previous conviction, but she did

21 ²³⁶ Tr. at 445.

22 ²³⁷ Tr. at 439-442; Exhs. S-150 at ACC001557-ACC001558, S-160, S-164.

23 ²³⁸ Tr. at 442-445; Exhs. S-157, S-161.

24 ²³⁹ Tr. at 444.

25 ²⁴⁰ Tr. at 448.

26 ²⁴¹ Tr. at 446.

27 ²⁴² Tr. at 446. When presented with additional information regarding the prior business failure, Ms. Carolin testified that
28 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.

²⁴³ Tr. at 446.

²⁴⁴ 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.

²⁴⁵ Tr. at 447.

²⁴⁶ Tr. at 447.

²⁴⁷ Tr. at 447.

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

3 Steve Chanen

4 Mr. Chanen testified that he is president and CEO of Chanen Construction Company, an
5 Arizona based general contracting firm.²⁴⁹ Mr. Chanen testified that he was introduced to Barcelona
6 Advisors for the prospect of building sixteen hotels.²⁵⁰ Mr. Chanen testified that he was present for
7 numerous meetings with Barcelona Advisors beginning in the spring or early summer of 2014.²⁵¹ Mr.
8 Chanen testified that Mr. Harkins usually ran the meetings for Barcelona Advisors.²⁵² 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.²⁵³ 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.²⁵⁴ Mr. Chanen testified that Chanen had no
13 interest in these financing propositions and so informed Barcelona Advisors.²⁵⁵

14 Mr. Chanen testified that Mr. Harkins brought in copies of a draft private offering memorandum
15 for his review.²⁵⁶ 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.²⁵⁷ 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.²⁵⁸

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

23 ²⁴⁸ Tr. at 452-453.

24 ²⁴⁹ Tr. at 504.

25 ²⁵⁰ Tr. at 507.

26 ²⁵¹ Tr. at 508.

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

28 ²⁵³ Tr. at 510-512.

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

²⁵⁵ Tr. at 514-515, 538.

²⁵⁶ Tr. at 516, 530-531.

²⁵⁷ Tr. at 518-519.

²⁵⁸ Tr. at 514, 519.

Company, LLC have reached an agreement that Chanen will coordinate with [USA Barcelona Hotel Land Company I, LLC] the Entitlement work²⁵⁹ on the Land Parcels and handle all site development and construction requirements for the New Build Affiliates.”²⁶⁰ The May 5, 2014, memorandum goes on to say that, “Our Parent Company has reached agreement with Chanen Construction Company to coordinate with us in the Entitlement work and handle all site development and construction requirements of the New Build Affiliates.”²⁶¹ Mr. Chanen testified that as of May 5, 2014, Chanen had no agreement to do anything with any Barcelona entity and the statements in the May 5, 2014, memorandum regarding Chanen coordinating entitlement work were false.²⁶² The May 5, 2014, memorandum also contained an image of Chanen’s company logo and a description of the company.²⁶³ Mr. Chanen testified that he never authorized Barcelona Land Company to use this information or the Chanen logo in a private offering memorandum, but rather he had specifically drafted certain information which was all that he authorized to be used.²⁶⁴ Mr. Chanen did not know whether the May 5, 2014, memorandum had ever been used in an offering or whether any offers or sales were made for Barcelona Land Company.²⁶⁵

Darius Taylor

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

Mr. Taylor testified that he was present for the preparation of Richard Woods for the hearing.²⁶⁸

²⁵⁹ 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.

²⁶⁰ Exh. S-59 at ACC005822. The memorandum identifies USA Barcelona Realty Holding Company, LLC (also referred 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.

²⁶¹ Exh. S-59 at ACC005862.

²⁶² 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.

²⁶³ Exh. S-59 at ACC005862.

²⁶⁴ 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.

²⁶⁵ Tr. at 531-532.

²⁶⁶ Tr. at 556-557.

²⁶⁷ Tr. at 558.

²⁶⁸ 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.²⁶⁹ Mr. Taylor testified
 2 that Mr. Woods said Mr. Kerrigan had been a family friend and his financial advisor for 30 years.²⁷⁰
 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.²⁷¹
 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.²⁷² 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.²⁷³ 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.²⁷⁴ Mr. Taylor testified that Mr. Woods was an
 10 accredited investor and signed a subscription agreement pursuant to his investment.²⁷⁵ Mr. Taylor
 11 testified that Mr. Woods said he had received approximately \$10,000 in interest but none of his
 12 principal was returned.²⁷⁶

13 Mr. Taylor testified that, prior to investing, Mr. Woods was not informed that Mr. Harkins'
 14 previous real estate venture had failed.²⁷⁷ Mr. Taylor testified that Mr. Woods said this information
 15 would have been significant to him.²⁷⁸ 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.²⁷⁹ Mr. Taylor testified that this information would have been significant to
 18 Mr. Woods.²⁸⁰ 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.²⁸¹ Mr. Taylor testified that
 20 Mr. Woods would have wanted to talk with Mr. Kerrigan about this had he known.²⁸² Mr. Taylor

²⁶⁹ Tr. at 659-660.

²⁷⁰ Tr. at 661.

²⁷¹ Tr. at 661-662.

²⁷² Tr. at 662, 668-669.

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

²⁷⁴ Tr. at 663, 668-669.

²⁷⁵ Tr. at 671-672; Exh. S-9.

²⁷⁶ Tr. at 664.

²⁷⁷ Tr. at 664.

²⁷⁸ Tr. at 664.

²⁷⁹ Tr. at 664.

²⁸⁰ Tr. at 665.

²⁸¹ Tr. at 665.

²⁸² 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.²⁸³ Mr. Taylor testified that this information would have been
 3 significant to Mr. Woods.²⁸⁴ Mr. Taylor testified that Mr. Woods would not have invested had he
 4 known these things as he was not interested in taking risks.²⁸⁵

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.²⁸⁶

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.²⁸⁷ While employed by the Securities Division, Mr. Morin was the primary
 11 investigator on the Barcelona Advisors case.²⁸⁸ Mr. Morin testified that the Division retrieved
 12 documents pertinent to the case from Barcelona Advisors' office.²⁸⁹

13 Mr. Morin testified that, pursuant to his investigation, he interviewed Roberta Burleson, an
 14 Arizona resident who invested in Barcelona Advisors.²⁹⁰ Mr. Morin testified that Ms. Burleson
 15 invested \$50,000 on two different occasions in 2013, for a total of \$100,000.²⁹¹ 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.²⁹² 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.²⁹³

21 Avi Beliak

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

23 ²⁸³ Tr. at 665.

24 ²⁸⁴ Tr. at 665.

25 ²⁸⁵ Tr. at 665.

26 ²⁸⁶ Tr. at 667.

27 ²⁸⁷ Tr. at 627-628.

28 ²⁸⁸ Tr. at 628-629

²⁸⁹ Tr. at 629-632.

²⁹⁰ Tr. at 632.

²⁹¹ Tr. at 633.

²⁹² Tr. at 633.

²⁹³ Tr. at 633-634.

1 Arizona Corporation Commission.²⁹⁴ 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.²⁹⁵ Based upon his review of documents, Mr. Beliak testified that Barcelona Advisors
 4 raised approximately \$1.4 million from approximately ten investors.²⁹⁶ Mr. Beliak further testified that
 5 approximately \$87,000 was paid back to investors, leaving approximately \$1.3 million owed to the
 6 investors.²⁹⁷ 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.²⁹⁸

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.²⁹⁹ Mr. Orr has been married to Susan Orr for 32 years.³⁰⁰ 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.³⁰¹ 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.³⁰² Mr. Orr worked as an
 14 independent contractor for Barcelona Advisors and took the lead on looking for hotel development
 15 opportunities.³⁰³ 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.³⁰⁴ 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.³⁰⁵ 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
 22 ²⁹⁴ Tr. at 675.

23 ²⁹⁵ Tr. at 676-685; Exhs. S-31(a), S-31(b).

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

25 ²⁹⁷ Tr. at 683-684; Exh. S-31(b).

26 ²⁹⁸ Tr. at 694.

27 ²⁹⁹ Tr. at 706, 710.

28 ³⁰⁰ Tr. at 768.

³⁰¹ Tr. at 707.

³⁰² Tr. at 708.

³⁰³ Tr. at 708.

³⁰⁴ 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.

³⁰⁵ Tr. at 710.

1 involved in discussions, and later, Mr. Eaves worked with Mr. Orr on opportunities and due
 2 diligence.³⁰⁶ 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.³⁰⁷ Mr. Orr
 4 testified that he did not recall major decisions being discussed in general staff meetings.³⁰⁸

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

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.³¹⁵ Mr. Orr saw more of Mr. Eaves when
 15 Mr. Eaves began working for Barcelona Advisors.³¹⁶ Mr. Eaves became an Executive Member after
 16 Mr. Orr was no longer an Executive Member.³¹⁷ 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.³¹⁸ Mr. Orr testified that, as an Executive Member, he did not make any decisions
 19 regarding the offer and sale of securities.³¹⁹ Mr. Orr testified that he did not consider himself a control

21 ³⁰⁶ Tr. at 709.

22 ³⁰⁷ Tr. at 709-710.

23 ³⁰⁸ Tr. at 761-762.

24 ³⁰⁹ Tr. at 711-712.

25 ³¹⁰ Tr. at 712.

26 ³¹¹ Tr. at 712.

27 ³¹² Tr. at 712-713.

28 ³¹³ Tr. at 713.

³¹⁴ Tr. at 713-714.

³¹⁵ 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.

³¹⁶ Tr. at 714.

³¹⁷ Tr. at 715.

³¹⁸ Tr. at 718-719.

³¹⁹ Tr. at 720.

1 person of Barcelona Advisors and that he had to report to other people.³²⁰ 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.”³²¹ Mr. Orr testified that Mr. Harkins, as president, was in control of the day-to-day
 4 business of Barcelona Advisors.³²² 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.³²³

7 Mr. Orr testified that he had never met William Jordan, Pam Stewart, or Richard Andrade.³²⁴
 8 Mr. Orr testified that he met Kathleen Carolin once at the Barcelona Advisors office when she was
 9 doing accounting work.³²⁵ 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.³²⁶ 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.³²⁷ Mr. Orr testified that, as a hotel expert, he attended some of the Barcelona Advisors’ meetings
 14 with Mr. Chanen.³²⁸

15 Mr. Orr testified that Mr. Simmons was the Executive Vice President and Chief Operating
 16 Officer.³²⁹ 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.³³⁰ Mr. Orr testified that he made
 18 presentations to Mr. Simmons on hotel development, due diligence, and profitability potential.³³¹

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

21 ³²⁰ Tr. at 720.

22 ³²¹ Tr. at 721-722.

23 ³²² Tr. at 762.

24 ³²³ Tr. at 763.

25 ³²⁴ Tr. at 714-716.

26 ³²⁵ Tr. at 716.

27 ³²⁶ Tr. at 716-717.

28 ³²⁷ 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.

³²⁸ Tr. at 717.

³²⁹ Tr. at 722.

³³⁰ Tr. at 722-723.

³³¹ Tr. at 723.

1 who would make them “more formal” for inclusion in the private offering memoranda.³³² 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.³³³ Mr. Orr “sometimes” objected to the way Mr. Harkins
 4 presented these figures as being unrealistic.³³⁴ Mr. Orr testified that he did not know whether Mr.
 5 Harkins corrected the draft memoranda before they were given to investors.³³⁵ 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.³³⁶

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.³³⁷ 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.³³⁸ 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.³³⁹ 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.³⁴⁰ Mr. Orr testified that he previously made a loan of \$5,000 to Barcelona Advisors in 2012,
 16 which was repaid with interest.³⁴¹

17 Mr. Orr testified that the Executive Member role was supposed to be an advisory one.³⁴²
 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.³⁴³ At the hearing, Mr. Orr testified that he
 21 was involved in an advisory capacity, but he did not have a voting role.³⁴⁴

22 ³³² Tr. at 724.

23 ³³³ Tr. at 725-726.

24 ³³⁴ Tr. at 726.

25 ³³⁵ Tr. at 726, 770.

26 ³³⁶ Tr. at 758, 759, 761; Exh. S-57, S-58.

27 ³³⁷ Tr. at 726-728; Exhs. S-179, S-180.

28 ³³⁸ Tr. at 728-729.

³³⁹ Tr. at 729-730.

³⁴⁰ Tr. at 770.

³⁴¹ Tr. at 730-731.

³⁴² Tr. at 731-732.

³⁴³ Tr. at 732-734; Exh. S-136 at 22-23.

³⁴⁴ 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.³⁴⁵ Mr. Orr testified that he and the other Executive
 4 Members discussed how the notes were structured.³⁴⁶ Mr. Orr testified that they also discussed the
 5 company would have to pay similar interest and bonuses on the 10-5-10 notes.³⁴⁷ Mr. Orr testified that
 6 he had proposed adding Mr. Eaves as an Executive Member.³⁴⁸

7 Mr. Orr testified that he did not meet with investors.³⁴⁹ Mr. Orr testified that he had authorized
 8 Mr. Simmons to sign a December 31, 2013, letter to investor William Jordan on his behalf.³⁵⁰ 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.³⁵¹

11 Mr. Orr attended a dinner with investors in October 2014, where he was present to answer
 12 questions regarding the hotel projects.³⁵² Mr. Orr's expense report for Barcelona Advisors contained
 13 an entry for drinks with prospective investors on January 14, 2014.³⁵³ Mr. Orr testified that he did not
 14 solicit investments at that meeting but turned them over to Mr. McDonough or Mr. Wilkerson.³⁵⁴ 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, 2014.³⁵⁵ 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."³⁵⁶ 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.³⁵⁷ Mr. Orr testified

21 ³⁴⁵ Tr. at 737.

22 ³⁴⁶ Tr. at 738.

23 ³⁴⁷ Tr. at 739.

24 ³⁴⁸ Tr. at 739.

25 ³⁴⁹ Tr. at 740.

26 ³⁵⁰ Tr. at 740-741; Exh. S-65.

27 ³⁵¹ Tr. at 741-742; Exh. S-26.

28 ³⁵² Tr. at 748; Exh. S-173 at ACC007311.

³⁵³ Tr. at 749; Exh. S-173 at ACC007316.

³⁵⁴ Tr. at 750.

³⁵⁵ 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

³⁵⁶ 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.

³⁵⁷ Tr. at 753; Exh. S-173 at ACC007328.

1 that he never met with investors to solicit money.³⁵⁸ Mr. Orr testified that any potential investors he
 2 met were passed on to Mr. McDonough or Mr. Wilkerson.³⁵⁹ 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.³⁶⁰

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.³⁶¹ Mr. Orr testified that in late November 2013, Mr. Weintraub revealed to the
 8 company that he had brought in no capital.³⁶² 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.³⁶³ 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.³⁶⁴

13 Richard Harkins

14 Mr. Harkins testified that he is self-employed, presently developing computer programs for real
 15 estate applications.³⁶⁵ 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 2009.³⁶⁶ Mr. Harkins was President and Chief Executive Officer of AVC.³⁶⁷
 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.³⁶⁸ AVC moved forward on several sites and by September 2007 had
 22

23 ³⁵⁸ Tr. at 756-757.

24 ³⁵⁹ Tr. at 822-824.

25 ³⁶⁰ Tr. at 822, 824; Exh. O-1.

26 ³⁶¹ Tr. at 768-769.

27 ³⁶² Tr. at 769.

28 ³⁶³ Tr. at 770.

³⁶⁴ Tr. at 771.

³⁶⁵ Tr. at 782-783.

³⁶⁶ Tr. at 783.

³⁶⁷ Tr. at 783, 858.

³⁶⁸ 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.³⁶⁹ 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.³⁷⁰ 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.³⁷¹ Afterwards, Mr. Harkins refocused his attention to the hotel acquisition and development industry
 8 and commenced the activities of Barcelona Advisors in 2009.³⁷²

9 Mr. Harkins testified that initial efforts in Barcelona Advisors suffered from capital market
 10 specialists who did not perform.³⁷³ 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.³⁷⁴ Mr. Weintraub was supposed to raise capital for construction and acquisition and believed
 13 he could raise \$70 million over 12 months.³⁷⁵ 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.³⁷⁶ However, Mr. Weintraub
 17 failed to provide capital, and thereby changed the staging of the Barcelona Advisors business plan from
 18 acquisition to construction.³⁷⁷ Mr. Harkins testified that Barcelona Advisors sought a major partner
 19 that could assist with capital, and selected Chanen Construction Company.³⁷⁸ 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

23 ³⁶⁹ Tr. at 788-789.

24 ³⁷⁰ Tr. at 789-790.

25 ³⁷¹ 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.

26 ³⁷² Tr. at 792.

27 ³⁷³ Tr. at 792-793.

28 ³⁷⁴ Tr. at 793.

³⁷⁵ Tr. at 795.

³⁷⁶ Tr. at 795.

³⁷⁷ Tr. at 793.

³⁷⁸ Tr. at 793.

1 predesign work.³⁷⁹ 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.³⁸⁰ 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."³⁸¹

6 Mr. Kerrigan first became involved with Barcelona Advisors after meeting Mr. Harkins at a
 7 social club in early 2012.³⁸² 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.³⁸³ Mr. Harkins testified that he
 9 knew Mr. Simmons as he had been married to Mr. Simmons' sister.³⁸⁴ Mr. Harkins testified that Mr.
 10 Simmons was not involved in the solicitation of investors.³⁸⁵ 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.³⁸⁶

13 Mr. Harkins testified that the Division misclassified the investments in Barcelona Advisors.³⁸⁷
 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.³⁸⁸ 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.³⁸⁹ 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.³⁹⁰ 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
 22 ³⁷⁹ Tr. at 794.

23 ³⁸⁰ Tr. at 888-889. Mr. Harkins conceded that an email exchange between him and Mr. Chanen did not indicate that there
 24 was an agreement between the two companies or that Mr. Chanen had authorized the use of his corporate logo. Tr. at 935-
 25 936; Exh. H-8.

26 ³⁸¹ Tr. at 984.

27 ³⁸² Tr. at 796.

28 ³⁸³ Tr. at 796.

³⁸⁴ Tr. at 796.

³⁸⁵ Tr. at 1256-1258.

³⁸⁶ Tr. at 797.

³⁸⁷ Tr. at 801-803.

³⁸⁸ Tr. at 801, 842; Exh. H-5.

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

³⁹⁰ Tr. at 801-802, 868; Exh. H-5.

1 B member interest.³⁹¹ 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.³⁹² 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.³⁹³ 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.³⁹⁴ 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.³⁹⁵ Mr.
 12 Harkins acknowledged that Mr. Eaves made two additional investments of \$15,000 each on July 14,
 13 2014, and August 1, 2014.³⁹⁶ 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.³⁹⁷

16 Mr. Harkins testified that he first met Rodney Eaves as a possible investor in October 2012,
 17 through Mr. Kerrigan.³⁹⁸ Mr. Harkins testified that Mr. Eaves first invested in the 12-6-12 offering on
 18 March 11, 2013.³⁹⁹ 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 2014.⁴⁰⁰ Mr. Eaves resigned his
 20 position as Executive Member when Barcelona Advisors closed its office.⁴⁰¹

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

23 ³⁹¹ Tr. at 805, 845.

24 ³⁹² Tr. at 805, 845, 856.

25 ³⁹³ Tr. at 805, 844-845.

26 ³⁹⁴ 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.

27 ³⁹⁵ Tr. at 869-870; Amended T.O. and Notice at 9.

28 ³⁹⁶ Tr. at 870; Amended T.O. and Notice at 9.

³⁹⁷ Tr. at 870; Amended T.O. and Notice at 10.

³⁹⁸ Tr. at 967.

³⁹⁹ Tr. at 969.

⁴⁰⁰ Tr. at 968-972.

⁴⁰¹ 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.⁴⁰² 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.⁴⁰³ 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.⁴⁰⁴ Mr. Harkins testified that
 7 Barcelona Advisors made no offers or sales under the 8-8 program.⁴⁰⁵ 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.⁴⁰⁶ 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.⁴⁰⁷ 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, 2013.⁴⁰⁸ 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, 2013.⁴⁰⁹ Mr. Harkins testified that the 8-8
 17 program was also intended to raise working capital.⁴¹⁰ As advertised, the principal and accrued interest
 18 for the 8-8 investments would be due and payable on December 31, 2014.⁴¹¹

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.⁴¹² Mr. Harkins testified that Barcelona Advisors started its 10-5-10 program which
 22

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

24 ⁴⁰³ Tr. at 806; Exh. H-5.

25 ⁴⁰⁴ Tr. at 807, 929.

26 ⁴⁰⁵ Tr. at 807-808, 841.

27 ⁴⁰⁶ Tr. at 808.

28 ⁴⁰⁷ 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.

⁴⁰⁸ Tr. at 925; Exh. S-5 at ACC007213.

⁴⁰⁹ Tr. at 925, 927-928; Exh. S-57.

⁴¹⁰ Tr. at 929-930.

⁴¹¹ Tr. at 930; Exh. S-25 at ACC006216.

⁴¹² Tr. at 809.

1 “reset the clock” for the date of entry by investors.⁴¹³ 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.⁴¹⁴ Mr. Harkins testified that he
 4 continued to work on the Barcelona Advisors business from his home office.⁴¹⁵

5 Mr. Harkins testified that Mr. McDonough became involved in Barcelona Advisors after
 6 meeting Mr. Kerrigan.⁴¹⁶ 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.⁴¹⁷
 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.⁴¹⁸ 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.⁴¹⁹ 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.⁴²⁰ 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.⁴²¹

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

22 ⁴¹³ Tr. at 809, 872-873.

23 ⁴¹⁴ Tr. at 810, 873.

24 ⁴¹⁵ Tr. at 810.

25 ⁴¹⁶ Tr. at 960.

26 ⁴¹⁷ Tr. at 961-962.

27 ⁴¹⁸ Tr. at 960-961.

28 ⁴¹⁹ Tr. at 962-967.

⁴²⁰ Tr. at 966.

⁴²¹ 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.

⁴²² 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.

⁴²³ 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.⁴²⁴ Mr. Harkins testified that Mr. Orr rarely
 5 attended the Monday meetings.⁴²⁵

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.⁴²⁶ As there were four Executive Members, Mr. Harkins carried the tie breaking
 9 vote.⁴²⁷

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.⁴²⁸ The offering
 13 memorandum stated that Executive Member loans are to be repaid from the net cash flow of the
 14 company.⁴²⁹ However, Mr. Harkins testified that the definition of net cash flow does not include
 15 member loans.⁴³⁰ 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.⁴³¹ 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.⁴³²

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.⁴³³ 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

24 ⁴²⁴ Tr. at 836-838.

25 ⁴²⁵ Tr. at 836.

26 ⁴²⁶ Tr. at 836-837.

27 ⁴²⁷ Tr. at 971.

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

⁴²⁹ Tr. at 839, 940; Exh. S-58 at ACC005781.

⁴³⁰ Tr. at 839; Exh. S-58 at ACC005763.

⁴³¹ Tr. at 840.

⁴³² Tr. at 864, 940-941.

⁴³³ 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.⁴³⁴ 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.⁴³⁵

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.⁴³⁶ 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.⁴³⁷ 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.⁴³⁸ 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.⁴³⁹

16 Mr. Harkins testified that in April 2014, two investors invested a collective total of \$150,000
 17 in Barcelona Advisors' January 2014 Offering.⁴⁴⁰ 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.⁴⁴¹ 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.⁴⁴² 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

24 ⁴³⁴ Tr. at 943.

⁴³⁵ Tr. at 944, 946.

⁴³⁶ Tr. at 842; Amended T.O. and Notice at 5.

⁴³⁷ Tr. at 842, 902.

⁴³⁸ Tr. at 843; Amended T.O. and Notice at 5.

⁴³⁹ Tr. at 843.

⁴⁴⁰ Tr. at 871; Amended T.O. Notice at 10.

⁴⁴¹ 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.

⁴⁴² 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, 2015.⁴⁴³ Mr. Harkins testified that at least one
 3 offeree was given a January 1, 2014 private placement memorandum about the 10-5-10 Offering.⁴⁴⁴
 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.⁴⁴⁵ 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.”⁴⁴⁶ 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.⁴⁴⁷ 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.⁴⁴⁸ 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.⁴⁴⁹ Working capital is further
 16 defined as the cash reserves of the company to cover normal operating costs and expenditures.⁴⁵⁰ Mr.
 17 Harkins testified that the payment of principal and interest on indebtedness is a normal operating
 18 expense.⁴⁵¹ 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

21 _____
 22 ⁴⁴³ Tr. at 872; Amended T.O. and Notice at 10.

23 ⁴⁴⁴ Tr. at 873-874; Amended T.O. and Notice at 10.

24 ⁴⁴⁵ Tr. at 874; Amended T.O. and Notice at 11.

25 ⁴⁴⁶ Tr. at 874, 913; Amended T.O. and Notice at 11.

26 ⁴⁴⁷ Tr. at 874; Amended T.O. and Notice at 11.

27 ⁴⁴⁸ Tr. at 875; Amended T.O. and Notice at 11.

28 ⁴⁴⁹ Tr. at 876; Exh. S-58 at ACC005714.

⁴⁵⁰ 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.

⁴⁵¹ Tr. at 877.

1 no payments of interest or principal were made on member loans.⁴⁵²

2 Mr. Harkins testified that he provided Ms. Bair with a private placement memorandum for the
3 purpose of investing.⁴⁵³ 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.”⁴⁵⁴

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.⁴⁵⁵ 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.⁴⁵⁶ 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.⁴⁵⁷

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.⁴⁵⁸ 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.”⁴⁵⁹ 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.⁴⁶⁰ Mr. Harkins testified that he accepted and signed all subscription agreements and notes
18 for the October 2012 Offering.⁴⁶¹ Mr. Harkins testified that it was his job to review each subscription
19 agreement and ascertain that the subscriber was an accredited investor.⁴⁶² Ms. Burleson wrote on her
20 subscription agreement that she qualified as an accredited investor based on “relationship with
21 sponsor.”⁴⁶³ Mr. Harkins testified that he accepted Ms. Burleson as an accredited investor based upon
22

23 ⁴⁵² Tr. at 877.

24 ⁴⁵³ Tr. at 844.

25 ⁴⁵⁴ Tr. at 844.

26 ⁴⁵⁵ Tr. at 978-979.

27 ⁴⁵⁶ Tr. at 844, 979.

28 ⁴⁵⁷ Tr. at 979-980.

⁴⁵⁸ Tr. at 844, 989, 1007-1008.

⁴⁵⁹ Tr. at 990.

⁴⁶⁰ Tr. at 987-988, 1008; Exh. S-184.

⁴⁶¹ Tr. at 845; Amended T.O. and Notice at 6.

⁴⁶² Tr. at 845, 990-991.

⁴⁶³ Tr. at 992; Exh. S-8 at ACC000891.

1 Mr. Kerrigan's representation of knowledge of her net worth, as Ms. Burleson was unsure if she would
2 qualified.⁴⁶⁴

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.⁴⁶⁵ 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.⁴⁶⁶ 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.⁴⁶⁷
11 Mr. Harkins testified that Mr. Meka had no dealing with investors.⁴⁶⁸ 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."⁴⁶⁹

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.⁴⁷⁰ 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.⁴⁷¹ 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.⁴⁷² Mr.
22 Harkins testified that they went to another part of their business plan due to "changing conditions" and
23

24 ⁴⁶⁴ Tr. at 991-992.

25 ⁴⁶⁵ Tr. at 860-861, 1255-1256.

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

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

28 ⁴⁶⁸ Tr. at 863, 1255; Exh. H-11.

⁴⁶⁹ Tr. at 863, 1255-1256.

⁴⁷⁰ Tr. at 865, 948-950; Exhs. S-67, S-80.

⁴⁷¹ Tr. at 865-866, 950.

⁴⁷² Tr. at 865.

1 he saw no need to make such a disclosure in the January 2014 private placement memorandum.⁴⁷³ 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.⁴⁷⁴

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.⁴⁷⁵ 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.⁴⁷⁶ Mr. Harkins testified that no units were ever offered in Barcelona Land Company.⁴⁷⁷

9 Mr. Harkins testified that the only major decision made by the Executive Members was to close
 10 the office.⁴⁷⁸ 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.⁴⁷⁹ Mr. Harkins testified that the authority to manage the affairs of
 13 Barcelona Advisors was vested in the president except for major decisions.⁴⁸⁰

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.⁴⁸¹ 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.⁴⁸² 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.⁴⁸³ Mr. Kerrigan testified that a client, Roberta Burleson,
 21

22 ⁴⁷³ Tr. at 878, 953; Amended T.O. and Notice at 11.

23 ⁴⁷⁴ Tr. at 950-954.

24 ⁴⁷⁵ Tr. at 881-882.

25 ⁴⁷⁶ Tr. at 882, 977, 1258.

26 ⁴⁷⁷ Tr. at 901.

27 ⁴⁷⁸ 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.

28 ⁴⁷⁹ Tr. at 900.

⁴⁸⁰ Tr. at 910.

⁴⁸¹ Tr. at 1012.

⁴⁸² Tr. at 1013.

⁴⁸³ 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.⁴⁸⁴ 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.⁴⁸⁵ 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.⁴⁸⁶
 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.⁴⁸⁷ 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, 2013.⁴⁸⁸ The two
 10 notes had maturity dates of June 30, 2013.⁴⁸⁹ 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.⁴⁹⁰

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.⁴⁹¹ 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.⁴⁹² Mr. Kerrigan testified that Mr. Eaves made
 18 his initial investment of \$250,000 in March of 2013.⁴⁹³ Mr. and Mrs. Eaves made a second investment
 19 of \$250,000 on July 18, 2013.⁴⁹⁴ Mr. and Mrs. Eaves made an additional investment of \$125,000 on
 20 December 30, 2013.⁴⁹⁵ On December 31, 2013, Mr. Kerrigan received a check from Barcelona

⁴⁸⁴ Tr. at 1013.

⁴⁸⁵ Tr. at 1013-1014, 1068, 1088.

⁴⁸⁶ Tr. at 1014, 1039.

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

⁴⁸⁸ Tr. at 1090-1091; Exhs. S-133, S-134.

⁴⁸⁹ Tr. at 1091-1092; Exhs. S-133, S-134.

⁴⁹⁰ Tr. at 1016, 1093.

⁴⁹¹ Tr. at 1016-1017, 1074.

⁴⁹² Tr. at 1017-1018.

⁴⁹³ Tr. at 1074.

⁴⁹⁴ Tr. at 1095; Exh. S-31b.

⁴⁹⁵ Tr. at 1102; Exh. S-31b.

1 Administration Company, LLC, for \$4,200.⁴⁹⁶ On February 28, 2014, Mr. and Mrs. Eaves made
 2 another investment of \$125,000.⁴⁹⁷ On March 3, 2014, Mr. Kerrigan received a check from Barcelona
 3 Administration Company, LLC, for \$4,200.⁴⁹⁸ On April 1, 2014, Mr. Kerrigan received a check from
 4 Barcelona Administration Company, LLC, for \$4,200.⁴⁹⁹

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.⁵⁰⁰ Mr. Kerrigan testified that there “may be a couple” of his clients who subscribed to
 8 Barcelona Advisors without reviewing the offering memorandum.⁵⁰¹ 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.⁵⁰²

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

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.⁵⁰⁵ Mr. Kerrigan testified that, at the time, Ms. Burleson had a
 18 net worth in excess of \$1 million, making her an accredited investor.⁵⁰⁶ 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.⁵⁰⁷ Ms. Burleson invested \$100,000 on May 31, 2013.⁵⁰⁸

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

22 ⁴⁹⁶ Tr. at 1102; Exh. S-129.

23 ⁴⁹⁷ Tr. at 1102; Exh. S-31b.

24 ⁴⁹⁸ Tr. at 1102-1103; Exh. S-130.

25 ⁴⁹⁹ Tr. at 1103; Exh. S-132.

26 ⁵⁰⁰ Tr. at 1018-1019.

27 ⁵⁰¹ Tr. at 1063-1064.

28 ⁵⁰² Tr. at 1064-1065, 1083.

⁵⁰³ Tr. at 1019, 1034, 1076.

⁵⁰⁴ Tr. at 1077.

⁵⁰⁵ Tr. at 1020.

⁵⁰⁶ Tr. at 1020-1021.

⁵⁰⁷ Tr. at 1021.

⁵⁰⁸ Tr. at 1095; Exh. S-31(b).

1 regarding the 12-6-12 investment.⁵⁰⁹ Mr. Kerrigan testified that Mr. Woods' net worth would have
 2 been over \$1 million at the time, making him an accredited investor.⁵¹⁰ Mr. Kerrigan testified that he
 3 gave Mr. Woods subscription agreements for him and his wife.⁵¹¹ Mr. Woods invested \$100,000 on
 4 July 2, 2013.⁵¹²

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.⁵¹³ 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.⁵¹⁴ Mr. Kerrigan testified that he recommended the investment to Ms. Carolin.⁵¹⁵ 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.⁵¹⁶
 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.⁵¹⁷
 13 Mr. Kerrigan denied marking the box on Ms. Carolin's subscription agreement stating that she was an
 14 accredited investor.⁵¹⁸ 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 \$25,000.⁵¹⁹ Ms. Carolin invested \$25,000 on July 5, 2013, and another
 17 \$25,000 on July 30, 2013.⁵²⁰ On July 31, 2013, Mr. Kerrigan received a check from Barcelona Advisors
 18 for \$4,200.⁵²¹ On August 30, 2013, Mr. Kerrigan received a check from Barcelona Administration
 19 Company, LLC, for \$4,200.⁵²²

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

22 ⁵⁰⁹ Tr. at 1022.

23 ⁵¹⁰ Tr. at 1023.

24 ⁵¹¹ Tr. at 1023.

25 ⁵¹² Tr. at 1095; Exh. S-31(b).

26 ⁵¹³ Tr. at 1023, 1046.

27 ⁵¹⁴ Tr. at 1024, 1046.

28 ⁵¹⁵ Tr. at 1047.

⁵¹⁶ Tr. at 1024.

⁵¹⁷ Tr. at 1025.

⁵¹⁸ Tr. at 1048.

⁵¹⁹ Tr. at 1049.

⁵²⁰ Tr. at 1095-1096; Exh. S-31(b).

⁵²¹ Tr. at 1096; Exh. S-124.

⁵²² Tr. at 1096; Exh. S-125.

1 involvement with Barcelona Advisors.⁵²³ 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.⁵²⁴ Mr. Kerrigan testified that Mr. Jordan claimed to have a net worth
 4 in excess of \$1 million.⁵²⁵ Mr. Jordan, as Cheyenne Kassie, LLC, made an investment of \$50,000 in
 5 Barcelona Advisors on October 2, 2013.⁵²⁶ On October 8, 2013, Mr. Kerrigan received a check from
 6 Barcelona Advisors for \$4,200.⁵²⁷

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.⁵²⁸ Mr. Kerrigan testified that Mr. Ramirez had a net worth over \$1 million
 10 at the time.⁵²⁹ Mr. Ramirez, through RJR Group, LLC, made an investment of \$100,000 in Barcelona
 11 Advisors on October 22, 2013.⁵³⁰ On November 1, 2013, Mr. Kerrigan received a check from
 12 Barcelona Advisors for \$4,200.⁵³¹

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.⁵³² 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.⁵³³ 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.⁵³⁴ 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.⁵³⁵ Ms. Chaimson, through the Nancy Chaimson Revocable Trust, made an investment of
 20

21 _____
 22 ⁵²³ 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.

23 ⁵²⁴ Tr. at 1026.

24 ⁵²⁵ Tr. at 1026.

25 ⁵²⁶ Tr. at 1100; Exh. S-31b.

26 ⁵²⁷ Tr. at 1100; Exh. S-126.

27 ⁵²⁸ Tr. at 1026-1029.

28 ⁵²⁹ Tr. at 1028.

⁵³⁰ Tr. at 1101; Exh. S-31b.

⁵³¹ Tr. at 1101; Exh. S-127.

⁵³² Tr. at 1029.

⁵³³ Tr. at 1030.

⁵³⁴ Tr. at 1030.

⁵³⁵ Tr. at 1030-1031.

1 \$50,000 in Barcelona Advisors on November 25, 2013.⁵³⁶ On December 2, 2013, Mr. Kerrigan
2 received a check from Barcelona Advisors for \$4,200.⁵³⁷

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.⁵³⁸ Mr. Kerrigan testified that he met with Ms. Stewart and her
5 husband, discussed the offering, and provided them with a subscription agreement.⁵³⁹ Ms. Stewart,
6 through JP Stewart Enterprises, LLC, made an investment of \$100,000 in Barcelona Advisors on April
7 3, 2014.⁵⁴⁰ On April 16, 2014, Mr. Kerrigan received a check from Barcelona Advisors for \$2,100.⁵⁴¹

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.⁵⁴² 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.⁵⁴³ 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.⁵⁴⁴ Mr. Kerrigan testified
14 that he negotiated with the state of Tennessee and paid \$2.50 in April 2008 to release the lien.⁵⁴⁵

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.⁵⁴⁶ 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.⁵⁴⁷
19 Mr. Kerrigan testified that the bank filed a lien against him because the line of credit was in his name.⁵⁴⁸
20 Mr. Kerrigan testified that he negotiated with the bank and settled the lien for \$23,500, paid on March
21

22 ⁵³⁶ Tr. at 1101-1102; Exh. S-31b.

23 ⁵³⁷ Tr. at 1102; Exh. S-128.

24 ⁵³⁸ Tr. at 1032-1033.

25 ⁵³⁹ Tr. at 1033-1034.

26 ⁵⁴⁰ Tr. at 1103; Exh. S-31b.

27 ⁵⁴¹ Tr. at 1103; Exh. S-131.

28 ⁵⁴² Tr. at 1035.

⁵⁴³ Tr. at 1035-1036.

⁵⁴⁴ Tr. at 1036.

⁵⁴⁵ Tr. at 1036, 1077; Exh. K-1.

⁵⁴⁶ Tr. at 1037-1038.

⁵⁴⁷ Tr. at 1038, 1077-1078.

⁵⁴⁸ Tr. at 1038.

1 30, 2011.⁵⁴⁹

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.⁵⁵⁰ As of October 5, 2015, the tax lien
4 was in the amount of \$22,909.36.⁵⁵¹ 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 2014.⁵⁵² Mr. Kerrigan testified
6 that when he introduced Ms. Burleson, 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.⁵⁵³

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, 2013.⁵⁵⁴ 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.⁵⁵⁵

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.⁵⁵⁶
16 Mr. Kerrigan testified that he did not invite any of the attendees.⁵⁵⁷ 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.⁵⁵⁸ 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.⁵⁵⁹

22 _____
23 ⁵⁴⁹ 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.

24 ⁵⁵⁰ Tr. at 1085-1087; Exh. S-100.

25 ⁵⁵¹ Tr. at 1085; Exh. S-100.

26 ⁵⁵² Tr. at 1087-1088.

27 ⁵⁵³ Tr. at 1103-1104.

28 ⁵⁵⁴ Tr. at 1104.

⁵⁵⁵ Tr. at 1104.

⁵⁵⁶ Tr. at 1070.

⁵⁵⁷ Tr. at 1070.

⁵⁵⁸ Tr. at 1071-1072.

⁵⁵⁹ Tr. at 1073.

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

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

George Thomas Simmons

Mr. Simmons testified that he graduated college with degrees in economics and engineering in 1964 and worked as an engineer with “Fortune 500 type companies” until he retired in 1998.⁵⁶⁸ Mr. Simmons testified that he then founded, or co-founded, nine different companies prior to joining Barcelona Advisors.⁵⁶⁹ Mr. Simmons testified that he also worked on the board of several non-profit companies over the years since 1973.⁵⁷⁰

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

⁵⁶⁰ Tr. at 1097; Exh. S-135.

⁵⁶¹ Tr. at 1097; Exh. S-135.

⁵⁶² Tr. at 1097.

⁵⁶³ Tr. at 1098.

⁵⁶⁴ Tr. at 1128.

⁵⁶⁵ Tr. at 1128-1129.

⁵⁶⁶ Tr. at 1118-1119; Exh. S-175.

⁵⁶⁷ Tr. at 1120-1121.

⁵⁶⁸ Tr. at 1132-1133.

⁵⁶⁹ Tr. at 1133.

⁵⁷⁰ Tr. at 1133-1134.

1 investment trust (“REIT”) that would ultimately be taken public.⁵⁷¹ Mr. Simmons testified that he
 2 learned more about the concept in 2011, in a meeting he had with Mr. Harkins and Mr. Kerrigan.⁵⁷²
 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.⁵⁷³ 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.⁵⁷⁴

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.⁵⁷⁵ 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 2013.⁵⁷⁶ 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.⁵⁷⁷ Mr. Simmons testified that everyone on the
 15 payroll reported to Mr. Harkins.⁵⁷⁸ 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.⁵⁷⁹ 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.⁵⁸⁰ 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.⁵⁸¹ 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

23 ⁵⁷¹ Tr. at 1134-1135.

24 ⁵⁷² Tr. at 1135-1136.

25 ⁵⁷³ Tr. at 1137.

26 ⁵⁷⁴ Tr. at 1137.

27 ⁵⁷⁵ Tr. at 1138.

28 ⁵⁷⁶ Tr. at 1140-1141, 1148.

⁵⁷⁷ Tr. at 1141, 1159, 1178-1179, 1184, 1202.

⁵⁷⁸ Tr. at 1143.

⁵⁷⁹ Tr. at 1143.

⁵⁸⁰ Tr. at 1144.

⁵⁸¹ Tr. at 1145, 1186.

1 written in excess of \$5,000.⁵⁸² 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 2013.⁵⁸³ Mr.
 3 Simmons testified that he had no role in drafting the offering memoranda.⁵⁸⁴ Mr. Simmons testified
 4 that he worked on identifying a potential board of directors for the Hotel Land Company.⁵⁸⁵ 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.⁵⁸⁶

8 Mr. Simmons testified that after he joined Barcelona Advisors he met Mr. Orr.⁵⁸⁷ 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.⁵⁸⁸ Mr. Simmons testified that Mr. Orr's responsibilities did not include capital
 11 formation.⁵⁸⁹ Mr. Simmons testified that he believed he was the person working closest with Mr. Orr,
 12 but Mr. Orr did not report to him.⁵⁹⁰ Mr. Simmons testified that he and Mr. Orr met with major hotel
 13 companies and hotel management companies.⁵⁹¹ 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.⁵⁹² These criteria included location,
 16 ownership, and debt structure of the property being considered, as well as zoning.⁵⁹³ 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.⁵⁹⁴ 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.⁵⁹⁵

22 ⁵⁸² Tr. at 1145-1146.

23 ⁵⁸³ Tr. at 1146.

24 ⁵⁸⁴ Tr. at 1146.

25 ⁵⁸⁵ Tr. at 1240-1241.

26 ⁵⁸⁶ Tr. at 1242.

27 ⁵⁸⁷ Tr. at 1148.

28 ⁵⁸⁸ Tr. at 1160.

⁵⁸⁹ Tr. at 1181.

⁵⁹⁰ Tr. at 1187.

⁵⁹¹ Tr. at 1187-1188.

⁵⁹² Tr. at 1190-1191.

⁵⁹³ Tr. at 1190-1191.

⁵⁹⁴ Tr. at 1192.

⁵⁹⁵ 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.⁵⁹⁶ 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.⁵⁹⁷
 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.⁵⁹⁸ Mr. Simmons testified that Mr. McDonough was supervised and trained by
 8 Mr. Harkins.⁵⁹⁹ Mr. Simmons testified that on two occasions he was asked to critique Mr.
 9 McDonough's ability to explain the company in presentations.⁶⁰⁰ 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.⁶⁰¹ 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 2014.⁶⁰² 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.⁶⁰³ 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.⁶⁰⁴ 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, 2014.⁶⁰⁵

21 Mr. Simmons testified that he recalled meeting Mr. Eaves for the first time at the company's
 22

23 ⁵⁹⁶ Tr. at 1149.

24 ⁵⁹⁷ Tr. at 1150-1151; Exh. S-177.

25 ⁵⁹⁸ Tr. at 1152.

26 ⁵⁹⁹ Tr. at 1152, 1184, 1234-1235.

27 ⁶⁰⁰ Tr. at 1185. Mr. Simmons testified that Mr. Harkins was present both times and he thought other persons were also
 28 present on the other occasion. Tr. at 1185-1186.

⁶⁰¹ Tr. at 1152-1154.

⁶⁰² Tr. at 1153, 1155.

⁶⁰³ Tr. at 1156-1157.

⁶⁰⁴ Tr. at 1157-1158.

⁶⁰⁵ Tr. at 1194-1196; Exh. H-6.

1 retreat meeting in Sedona.⁶⁰⁶ 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.⁶⁰⁷ 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.⁶⁰⁸
 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.⁶⁰⁹ 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, 2014.⁶¹⁰ 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.⁶¹¹ 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.⁶¹² 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.⁶¹³

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.⁶¹⁴ 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.⁶¹⁵ Mr.
 22 Simmons testified that Mr. Wilkerson brought in Mr. Andrade as an investor for \$50,000 in early April
 23

24 ⁶⁰⁶ Tr. at 1161.

⁶⁰⁷ Tr. at 1162-1164.

⁶⁰⁸ Tr. at 1163-1164.

⁶⁰⁹ Tr. at 1164-1165.

⁶¹⁰ Tr. at 1204-1205.

⁶¹¹ Tr. at 1193.

⁶¹² Tr. at 1237-1238.

⁶¹³ Tr. at 1238-1239.

⁶¹⁴ Tr. at 1165, 1167.

⁶¹⁵ Tr. at 1166, 1205.

2014.⁶¹⁶ Mr. Simmons testified that he and Mr. Andrade had both worked at Intel until Mr. Simmons left in 1986, and that Mr. Andrade asked Mr. Wilkerson to set up a lunch meeting with Mr. Simmons.⁶¹⁷ Mr. Simmons testified that he told Mr. Wilkerson that Mr. Harkins would be the proper person to discuss the investment, but he could have a social lunch meeting with Mr. Andrade and Mr. Wilkerson, which was what occurred on or about December 23, 2013.⁶¹⁸ Mr. Simmons denied that at lunch he introduced Mr. Andrade to the opportunity to invest in Barcelona Advisors, that he described Mr. Harkins' success in real estate, or that he told Mr. Andrade that investing in Barcelona Advisors was a good investment based upon the track record of the individuals involved.⁶¹⁹

Mr. Simmons testified that in early 2014, Mr. Wilkerson was not yet ready to leave his current employment to join Barcelona Advisors, so Mr. Wilkerson asked Mr. Simmons to invite Mr. Andrade to the Barcelona Advisors' offices to meet Mr. Harkins and others at the office.⁶²⁰ Mr. Simmons testified that he sent an email to Mr. Andrade who responded by saying he was unable to come in this week, and that he was not going to be investing at this time.⁶²¹ Mr. Simmons testified that he wasn't sure why Mr. Andrade included the last part because Mr. Simmons did not ask him to invest.⁶²² In the email, Mr. Simmons specifically stated, "I'd like to schedule time with you to come into the office this week to discuss our current capital raise and have you meet more of our team."⁶²³ Mr. Simmons testified that he had no further communication with Mr. Andrade until early April when Mr. Wilkerson and Mr. Andrade arrived at the offices to have Mr. Harkins sign the note for Mr. Andrade's investment.⁶²⁴ Mr. Simmons testified that, to his knowledge, Mr. Andrade had not requested to meet with Mr. Harkins prior to his April 8 investment.⁶²⁵ Mr. Simmons testified that since Mr. Harkins was not present, Mr. Simmons telephoned him to ask if he would delegate the authority to sign the note to Mr. Simmons.⁶²⁶ Mr. Simmons testified that he was assured by Mr. Wilkerson that Mr. Andrade was

⁶¹⁶ Tr. at 1167, 1205.

⁶¹⁷ Tr. at 1168-1169, 1206-1207.

⁶¹⁸ Tr. at 1170, 1207-1208, 1211.

⁶¹⁹ Tr. at 1218.

⁶²⁰ Tr. at 1166, 1170-1171, 1208.

⁶²¹ Tr. at 1171, 1208-1210; Exh. S-171.

⁶²² Tr. at 1171, 1209.

⁶²³ Tr. at 1210; Exh. S-171.

⁶²⁴ Tr. at 1172, 1210-1211.

⁶²⁵ Tr. at 1211-1212.

⁶²⁶ Tr. at 1172-1173, 1211.

1 an accredited investor, which Mr. Simmons conveyed to Mr. Harkins.⁶²⁷ Mr. Simmons signed the
 2 subscription agreement for Mr. Andrade on April 8, 2014.⁶²⁸ Mr. Simmons testified that Mr. Andrade's
 3 visit was brief as he was leaving for a trip.⁶²⁹ Mr. Simmons testified that he was not involved in the
 4 additional \$5,000 loan made by Mr. Andrade.⁶³⁰ 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.⁶³¹

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?"⁶³² 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.⁶³³ 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.⁶³⁴ Mr. Simmons
 16 testified that he never discussed the investment opportunity in Barcelona Advisors with Mr.
 17 Andrade.⁶³⁵

18 Mr. Simmons testified that there were no regularly scheduled Executive Member meetings and
 19 he never voted on a major decision.⁶³⁶ 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

21 ⁶²⁷ Tr. at 1212.

22 ⁶²⁸ Tr. at 1213; Exh. S-36.

23 ⁶²⁹ 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.

⁶³⁰ Tr. at 1173, 1236.

⁶³¹ Tr. at 1222-1223.

⁶³² Tr. at 1220, 1236-1237; Exh. S-172.

⁶³³ Tr. at 1237.

⁶³⁴ Tr. at 1221-1222, 1237.

⁶³⁵ Tr. at 1236, 1246.

⁶³⁶ Tr. at 1174-1175.

1 their interests in the company.⁶³⁷ 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.⁶³⁸ Mr. Simmons testified that
 4 his interest in the company was always under 10 percent.⁶³⁹

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.⁶⁴⁰ 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.⁶⁴¹ Mr.
 9 Simmons testified he did not have a role in drafting the two letters.⁶⁴² 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.⁶⁴³ 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.⁶⁴⁴ Mr. Simmons
 13 testified that he, along with the other three Executive Members, signed an April 16, 2014, letter to Ms.
 14 Carolin.⁶⁴⁵ Mr. Simmons testified that he signed, as COO, an October 24, 2013, offer letter to Partick
 15 McDonough, as requested by Mr. Harkins.⁶⁴⁶

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.⁶⁴⁷ Mr. Simmons testified that he did not review offering
 20 documents for Barcelona Advisors.⁶⁴⁸ Mr. Simmons testified that he confirmed that legal counsel
 21
 22

23 ⁶³⁷ Tr. at 1175-1176.

24 ⁶³⁸ Tr. at 1176.

25 ⁶³⁹ Tr. at 1176.

26 ⁶⁴⁰ Tr. at 1177; Exhs. S-27, S-65, S-108.

27 ⁶⁴¹ Tr. at 1177-1178.

28 ⁶⁴² Tr. at 1178.

⁶⁴³ Tr. at 1180-1181; Exhs. S-65, S-108.

⁶⁴⁴ Tr. at 1196-1197; Exh. S-65.

⁶⁴⁵ Tr. at 1197-1198; Exh. S-26.

⁶⁴⁶ Tr. at 1198; Exh. S-177.

⁶⁴⁷ Tr. at 1179-1180.

⁶⁴⁸ Tr. at 1199-1200.

1 approved the final version of offering documents.⁶⁴⁹ 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.⁶⁵⁰

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.⁶⁵¹ 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.⁶⁵² 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.⁶⁵³ Mr. Simmons testified that he received approximately \$99,000 in compensation from
 12 Barcelona Advisors.⁶⁵⁴

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, 2014.⁶⁵⁵ 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 _____
 23 ⁶⁴⁹ 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.

24 ⁶⁵⁰ Tr. at 1201-1202.

25 ⁶⁵¹ 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
 fund representatives regarding institutional investments, were other examples of raising capital without direct involvement
 with individuals. Tr. at 1233.

26 ⁶⁵² Tr. at 1203-1204; Exh. S-176.

27 ⁶⁵³ Tr. at 1233-1234, 1243.

28 ⁶⁵⁴ Tr. at 1199; Exh. S-88.

⁶⁵⁵ Exhs. S-5 at ACC007213, S-57 at ACC000736.

1 and April 29, 2013 (“April 2013 PPM”).⁶⁵⁶ Investors receiving a PPM were given the most recent
 2 version at the time of their investment.⁶⁵⁷ Mr. Harkins was the primary drafter of the three PPMs.⁶⁵⁸
 3 The PPMs contained biographies of the Executive Members and the biography for Mr. Harkins
 4 mentioned his role with AVC.⁶⁵⁹ 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.⁶⁶⁰ The 12-6-12 Offering consisted of promissory notes and membership
 7 interests in Barcelona Advisors with a total offering of \$1,000,000.⁶⁶¹ The purpose of the 12-6-12
 8 Offering was to raise working capital for the company.⁶⁶²

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, 2015.⁶⁶³ 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.⁶⁶⁴ 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.⁶⁶⁵

19 ⁶⁵⁶ Exhs. S-5, S-57. A copy of the October 2012 PPM was not submitted in evidence.

20 ⁶⁵⁷ Exh. S-32 at 61.

21 ⁶⁵⁸ Exhs. S-32 at 35-36, 72, S-57.

22 ⁶⁵⁹ 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
 29 225 limited service hotels, over 550 Apartment Communities and the assembly of over \$5 Billion dollars
 30 of public and private equity and debt capital. ... Mr. Harkins remains President of AVC, which exists in
 31 a state of inactivity, and continues to examine possible uses of AVC’s loss carry forward tax asset.

32 Exhs. S-5 at ACC007229, S-57 at ACC000751.

33 ⁶⁶⁰ Exhs. S-5 at ACC007213, S-57 at ACC000736.

34 ⁶⁶¹ Exhs. S-5 at ACC007203, S-57 at ACC000724.

35 ⁶⁶² Tr. at 925, 927-928.

36 ⁶⁶³ Exh. S-57 at ACC005719.

37 ⁶⁶⁴ Tr. at 808-809.

38 ⁶⁶⁵ 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.⁶⁶⁶ 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.⁶⁶⁷

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.⁶⁶⁸
 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.⁶⁶⁹

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.⁶⁷⁰ 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.⁶⁷¹ Mr. Harkins was the primary drafter of the Barcelona Land Company
 16 PPM.⁶⁷² The Barcelona Land Company PPM was never completed past a draft stage and no offers in
 17 Barcelona Land Company were made.⁶⁷³

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.⁶⁷⁴ 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."⁶⁷⁵ The June 2014 Offer Letter offered
 23

24 ⁶⁶⁶ Exh. S-58 at ACC005720.

⁶⁶⁷ Tr. at 809.

⁶⁶⁸ Exhs. S-32 at 114-115, S-65, S-66.

⁶⁶⁹ Tr. at 740-741, 1180-1181; Exhs. S-65, S-66.

⁶⁷⁰ Tr. at 882; Exhs. S-32 at 95, S-59

⁶⁷¹ Exh. S-59 at ACC005853-ACC005854.

⁶⁷² Exh. S-32 at 35-36.

⁶⁷³ Tr. at 882, 901.

⁶⁷⁴ Exhs. S-32 at 96, S-60.

⁶⁷⁵ Exh. S-60.

1 promissory notes with 10% annual interest, a 3% bonus and a 90 day maturity date.⁶⁷⁶ 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.”⁶⁷⁷

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, 2014.⁶⁷⁸ The purpose of the 8-8 Offering was to raise working capital
 8 for the company.⁶⁷⁹

9 By June 1, 2013, no one at Barcelona Advisors appeared to have more prospective investors
 10 for the 12-6-12 Offering.⁶⁸⁰ Mr. Harkins proposed a new offering pursuant to A.A.C. R14-4-140 that
 11 could be advertised.⁶⁸¹ 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.⁶⁸²

14 Barcelona Advisors advertised the 8-8 Offering in a series of newspaper advertisements from
 15 July 17, 2013, to September 4, 2013.⁶⁸³ 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.⁶⁸⁴ No sales of notes were made under the 8-8 Offering.⁶⁸⁵

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.⁶⁸⁶

20 . . .

21 . . .

22 . . .

23 ⁶⁷⁶ Exh. S-60.

24 ⁶⁷⁷ Exh. S-60.

25 ⁶⁷⁸ Tr. at 806, 930; Exh. S-25.

26 ⁶⁷⁹ Tr. at 928-930.

27 ⁶⁸⁰ Tr. at 806-807.

28 ⁶⁸¹ Tr. at 807, 929.

⁶⁸² Tr. at 807, 929-930.

⁶⁸³ Tr. at 807; Exh. S-25 at ACC006214-ACC006235.

⁶⁸⁴ Tr. at 807-808.

⁶⁸⁵ Tr. at 807-808.

⁶⁸⁶ 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, 2012.⁶⁸⁷
 4 Mr. Harkins met Ms. Bair through a mutual insurance agent.⁶⁸⁸ 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.⁶⁸⁹ Prior to meeting Ms. Bair, Mr. Harkins knew nothing of Ms. Bair's personal
 7 finances or whether she was an accredited investor.⁶⁹⁰ 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.⁶⁹¹ Mr. Harkins signed the subscription agreement and
 10 note as Manager for Barcelona Advisors.⁶⁹² Ms. Bair received \$4,099 on this investment.⁶⁹³

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, 2013.⁶⁹⁴ Mr. Eaves learned about the 12-6-12 Offering in December 2012, from his
 14 investment advisor of twelve years, Mr. Kerrigan.⁶⁹⁵ 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.⁶⁹⁶ 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, 2013.⁶⁹⁷ In late February 2013, Mr. Eaves received the February 2013 PPM from Mr. Kerrigan.⁶⁹⁸
 21 Mr. Eaves also received a subscription agreement from Mr. Kerrigan.⁶⁹⁹ On the subscription

22 ⁶⁸⁷ Exhs. S-6, S-31b, S-37, S-165.

23 ⁶⁸⁸ Tr. at 844.

24 ⁶⁸⁹ Tr. at 844; Exh. S-32 at 61, 71, 74, 79, 95.

25 ⁶⁹⁰ Exh. S-32 at 74-75.

26 ⁶⁹¹ Exh. S-6.

27 ⁶⁹² Exhs. S-6, S-32 at 58, S-37.

28 ⁶⁹³ Exh. S-31b.

⁶⁹⁴ Tr. at 189-190; Exhs. S-31b, S-33, S-38.

⁶⁹⁵ Tr. at 190-191; Exh. S-98 at 36, 59.

⁶⁹⁶ Tr. at 195-196; Exh. S-170.

⁶⁹⁷ Tr. at 196-197.

⁶⁹⁸ Tr. at 192-195, 1064-1065; Exh. S-5.

⁶⁹⁹ Tr. at 200, 1017-1018; Exh. S-33.

1 agreement, Mr. Eaves indicated that he qualified as an accredited investor on multiple bases.⁷⁰⁰ Mr.
 2 Harkins signed the subscription agreement and note as Manager for Barcelona Advisors.⁷⁰¹ Mr. Eaves
 3 considered the Barcelona Advisors opportunity to be an investment.⁷⁰² 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.⁷⁰³ The Eaves received \$38,158 on this investment.⁷⁰⁴

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.⁷⁰⁵ Ms. Burleson is Mr. Harkins' significant other and she knew about Barcelona
 9 Advisors from him since the company's beginning.⁷⁰⁶ Ms. Burleson learned about the investment
 10 opportunity with Barcelona Advisors from her financial advisor, Mr. Kerrigan.⁷⁰⁷

11 One of Ms. Burleson's \$50,000 investments was in the 12-6-12 Offering.⁷⁰⁸ Ms. Burleson
 12 received subscription paperwork from Mr. Kerrigan, and a PPM from Mr. Harkins.⁷⁰⁹ On her
 13 subscription paperwork, Ms. Burleson wrote that she qualified as an accredited investor based on
 14 "relationship with sponsor."⁷¹⁰ 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.⁷¹¹ Mr.
 16 Harkins signed the subscription agreement and note for Barcelona Advisors.⁷¹²

17 Ms. Burleson's second \$50,000 investment carried the same interest and bonus terms as the 12-
 18 6-12 Offering note.⁷¹³ 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

20 ⁷⁰⁰ Exh. S-33.

21 ⁷⁰¹ Exhs. S-32 at 58, S-33, S-38.

22 ⁷⁰² Tr. at 190.

23 ⁷⁰³ Tr. at 199-200.

24 ⁷⁰⁴ Exh. S-31b.

25 ⁷⁰⁵ Tr. at 633; Exhs. S-8, S-31b, S-39, S-184.

26 ⁷⁰⁶ Tr. at 844; Exh. S-32 at 70, 79.

27 ⁷⁰⁷ Tr. at 989, 1007-1008, 1020. Division investigator Dulance Morin provided hearsay testimony that Ms. Burleson told
 28 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.

29 ⁷⁰⁸ Exhs. S-8, S-39.

30 ⁷⁰⁹ Tr. at 1021.

31 ⁷¹⁰ Exh. S-8 at ACC00089.

32 ⁷¹¹ Tr. at 991-992.

33 ⁷¹² Exhs. S-8, S-32 at 58, S-39.

34 ⁷¹³ Exh. S-184.

1 maturity date on December 31, 2013, or at the end of any quarter in 2014.⁷¹⁴ Mr. Harkins drafted this
 2 note with Ms. Burleson's input to meet her financial needs.⁷¹⁵ Mr. Harkins signed the note as President
 3 for Barcelona Advisors.⁷¹⁶ Ms. Burleson received \$13,130 on her two investments.⁷¹⁷

4 Richard Woods (Investment 5)

5 On July 2, 2013, Arizona resident Richard Woods invested \$100,000 in the 12-6-12 Offering.⁷¹⁸
 6 Mr. Woods learned of the investment opportunity from his investment advisor for nearly thirty years,
 7 Mr. Kerrigan.⁷¹⁹ Mr. Kerrigan provided Mr. Woods with a subscription agreement.⁷²⁰ Mr. Woods was
 8 an accredited investor at the time of his investment.⁷²¹ Mr. Harkins signed the subscription agreement
 9 and note for Barcelona Advisors.⁷²² Mr. Woods received \$12,097 on his investment.⁷²³

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.⁷²⁴
 12 Ms. Carolin's boyfriend at the time, Mr. Kerrigan, recommended the investment to her.⁷²⁵ Mr. Harkins
 13 signed the subscription agreement and note for Barcelona Advisors.⁷²⁶

14 On July 30, 2013, Kathleen Carolin invested another \$25,000 in the 12-6-12 Offering.⁷²⁷ 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.⁷²⁸ Mr. Harkins signed the subscription
 17 agreement and note for Barcelona Advisors.⁷²⁹

18 At the time Ms. Carolin invested, she had a net worth less than \$1,000,000 and an annual income
 19 below \$200,000.⁷³⁰ Ms. Carolin had been dating Mr. Kerrigan and he had some knowledge of her

20 ⁷¹⁴ Tr. at 988, 1008; Exh. S-184.

21 ⁷¹⁵ Tr. at 1008-1009.

22 ⁷¹⁶ Exhs. S-32 at 58, S-184.

23 ⁷¹⁷ Exh. S-31b.

24 ⁷¹⁸ Tr. at 1095; Exhs. S-9, S-31b, S-41.

25 ⁷¹⁹ Tr. at 660, 1022.

26 ⁷²⁰ Tr. at 661-662, 1023.

27 ⁷²¹ Tr. at 672, 1023; Exh. S-9.

28 ⁷²² Exhs. S-9, S-32 at 58, S-41.

⁷²³ Exh. S-31b.

⁷²⁴ Exhs. S-10, S-31b, S-40.

⁷²⁵ Tr. at 426.

⁷²⁶ Exhs. S-10, S-32 at 58, S-40.

⁷²⁷ Exhs. S-31b, S-34, S-43.

⁷²⁸ Tr. at 439.

⁷²⁹ Exhs. S-34, S-43.

⁷³⁰ Tr. at 431-432.

1 finances.⁷³¹ 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.⁷³² Ms. Carolin is a certified public
 3 accountant and has worked for businesses.⁷³³ 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.⁷³⁴

6 Ms. Carolin received a copy of the subscription agreement for her first investment from Mr.
 7 Harkins.⁷³⁵ Ms. Carolin did not fully read the subscription agreement because she trusted the
 8 recommendation from Mr. Kerrigan.⁷³⁶ 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.⁷³⁷ 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.⁷³⁸ Ms. Carolin believed she was allowed to invest
 13 without being qualified as an accredited investor because she was a friend.⁷³⁹

14 Ms. Carolin considered both transactions to be investments that she made to earn money for
 15 retirement.⁷⁴⁰ Ms. Carolin made her two investments from a distribution from her 401(k) plan through
 16 Carolin Group, LLC.⁷⁴¹ Ms. Carolin received \$5,793 on her two investments.⁷⁴² 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.⁷⁴³

19 ...

21 ⁷³¹ 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
 23 October 8, 2015, Mr. Kerrigan testified that he believed Ms. Carolin’s income was over \$300,000 because “I think she told
 24 me one time.” Exh. S-98 at 50.

25 ⁷³² Tr. at 445.

26 ⁷³³ Tr. at 453, 462.

27 ⁷³⁴ Tr. at 444-445; Exh. S-98 at 49.

28 ⁷³⁵ Tr. at 431.

⁷³⁶ Tr. at 469-470.

⁷³⁷ Tr. at 433; Exh. S-10 at ACC000881.

⁷³⁸ Tr. at 432-433, 450-451, 458-459, 466, 473; Exhs. S-10 at ACC000881, S-34 at ACC000871.

⁷³⁹ Tr. at 472-473.

⁷⁴⁰ Tr. at 426, 439.

⁷⁴¹ Tr. at 465.

⁷⁴² Tr. at 439-442; Exhs. S-31b, S-150 at ACC001557-ACC001558, S-160, S-164.

⁷⁴³ Tr. at 448.

Rodney and Melissa Eaves – Second Investment (Investment 7)

On July 18, 2013, the Eaves made a second investment in Barcelona Advisors of \$250,000.⁷⁴⁴ The note for this second investment contained the same interest, bonuses, and December 31, 2014 maturity date, as the 12-6-12 offering notes.⁷⁴⁵ The July 18, 2013 Eaves investment included purchase rights to 75 units of Class A member units at a total purchase price of \$0.75, while the March 11, 2013, Eaves investment in the 12-6-12 Offering included Class B member units.⁷⁴⁶ Class A member interests carried a stronger per share ownership of the company and are voting shares, while Class B member interests have preferred distribution but no voting rights.⁷⁴⁷ Mr. Kerrigan provided Mr. Eaves with a Loan and Investment document that Mr. Eaves completed to make his second investment.⁷⁴⁸ Mr. Harkins signed the Loan and Investment agreement and note as President for Barcelona Advisors.⁷⁴⁹ In making his second investment, Mr. Eaves continued to rely upon information contained in the February 2013 PPM, although he had also been exposed to further information about the company since his first investment.⁷⁵⁰ The Eaves received no payments from this investment.⁷⁵¹

William Jordan (Investment 9)

Arizona resident William Jordan, through Cheyenne Kassie, LLC, invested \$50,000 in the 12-6-12 Offering on October 2, 2013.⁷⁵² Mr. Jordan considered the transaction to be an investment.⁷⁵³ Mr. Jordan learned about the investment from his investment advisor, Mr. Kerrigan.⁷⁵⁴ In a meeting at Mr. Kerrigan's office in Arizona, Mr. Kerrigan discussed the investment with Mr. Jordan, gave Mr. Jordan a subscription agreement and the April 2013 PPM, and took Mr. Jordan's investment check.⁷⁵⁵ The subscription agreement indicates that Mr. Jordan qualified as an accredited investor as he had a net worth exceeding \$1,000,000, exclusive of the value of his personal residence, which he also told

⁷⁴⁴ Exhs. S-7, S-31b, S-42.

⁷⁴⁵ Tr. at 203-204; Exhs. S-7, S-42.

⁷⁴⁶ Tr. at 203-204, 341, 805, 845; Exhs. S-5, S-7, S-33.

⁷⁴⁷ Tr. at 805, 844-845.

⁷⁴⁸ Tr. at 206.

⁷⁴⁹ Exhs. S-7, S-42.

⁷⁵⁰ Tr. at 205-206, 870; Exh. S-5.

⁷⁵¹ Exh. S-31b.

⁷⁵² Tr. at 158, 165; Exhs. S-11, S-31b, S-45, S-158.

⁷⁵³ Tr. at 159.

⁷⁵⁴ Tr. at 159.

⁷⁵⁵ Tr. at 160-165, 170, 1025-1026; Exhs. S-57, S-158.

Mr. Kerrigan.⁷⁵⁶ Mr. Harkins signed the subscription agreement and note as President for Barcelona Advisors.⁷⁵⁷ Mr. Jordan has received payments totaling \$4,552 on the investment.⁷⁵⁸

Ridick Ramirez (Investment 10)

Arizona resident Ridick Ramirez, through RJR Group, LLC, invested \$100,000 in the 12-6-12 Offering on October 22, 2013.⁷⁵⁹ Mr. Kerrigan told his client, Mr. Ramirez, about the investment and provided him with a subscription agreement and the April 2013 PPM.⁷⁶⁰ The subscription agreement indicates that Mr. Ramirez qualified as an accredited investor as he had a net worth exceeding \$1,000,000, exclusive of the value of his personal residence.⁷⁶¹ Mr. Harkins signed the subscription agreement and note for Barcelona Advisors.⁷⁶² Mr. Ramirez has received payments totaling \$8,439 on his investment.⁷⁶³

Nancy Chaimson (Investment 11)

Arizona resident Nancy Chaimson, through the Nancy Chaimson Revocable Trust, invested \$50,000 in the 12-6-12 Offering on November 25, 2013.⁷⁶⁴ Ms. Chaimson was Mr. Kerrigan's friend whom he told about the investment and gave a subscription agreement.⁷⁶⁵ The subscription agreement indicates that Ms. Chaimson qualified as an accredited investor as she had a net worth exceeding \$1,000,000, exclusive of the value of her personal residence.⁷⁶⁶ Mr. Harkins signed the subscription agreement and note as President for Barcelona Advisors.⁷⁶⁷ Ms. Chaimson has received payments totaling \$608 on her investment.⁷⁶⁸

Rodney and Melissa Eaves – Additional Investments (Investments 12, 15, 17, and 18)

On December 30, 2013, Mr. and Mrs. Eaves made a third investment in Barcelona Advisors.⁷⁶⁹

⁷⁵⁶ Tr. at 1026; Exh. S-11.

⁷⁵⁷ Exhs. S-11, S-45.

⁷⁵⁸ Tr. at 171-172; Exhs. S-31b, S-150 at ACC001561, S-163.

⁷⁵⁹ Exhs. S-12, S-31b, S-46.

⁷⁶⁰ Tr. at 1026-1029; Exhs. S-32 at 61, S-98 at 57-58.

⁷⁶¹ Exh. S-12.

⁷⁶² Exhs. S-12, S-32 at 58, S-46.

⁷⁶³ Exh. S-31b.

⁷⁶⁴ Exhs. S-13, S-31b, S-47.

⁷⁶⁵ Tr. at 1029-1030; Exh. S-98 at 29-30, 56.

⁷⁶⁶ Exh. S-13.

⁷⁶⁷ Exhs. S-13, S-47.

⁷⁶⁸ Exh. S-31b.

⁷⁶⁹ 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, 2014.⁷⁷⁰ Mr. and Mrs. Eaves also
 3 received options to purchase 250,000 Class A membership units.⁷⁷¹ The promissory note was signed
 4 by Mr. Harkins for Barcelona Advisors.⁷⁷² 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.⁷⁷³ Mr. Eaves made his third investment to protect his prior investments.⁷⁷⁴ The Eaves have
 7 received no payments on their third investment.⁷⁷⁵

8 On February 28, 2014, Mr. and Mrs. Eaves made a fourth investment in Barcelona Advisors.⁷⁷⁶
 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, 2014.⁷⁷⁷ Mr. and Mrs. Eaves also received
 11 options to purchase 250,000 Class A membership units.⁷⁷⁸ The promissory note was signed by Mr.
 12 Harkins for Barcelona Advisors.⁷⁷⁹ 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.⁷⁸⁰ The Eaves have received no payments on their fourth investment.⁷⁸¹

15 On May 12, 2014, Mr. Eaves became an independent contractor for Barcelona Advisors,
 16 researching potential real estate properties for the company.⁷⁸²

17 On July 14, 2014, Mr. Eaves made a fifth investment in Barcelona Advisors.⁷⁸³ 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, 2014.⁷⁸⁴ The promissory note was signed by Mr. Harkins for
 20

21 ⁷⁷⁰ Exh. S-53.

22 ⁷⁷¹ Exh. S-53.

23 ⁷⁷² Exhs. S-32 at 58, S-53.

24 ⁷⁷³ Tr. at 282, 345.

25 ⁷⁷⁴ Tr. at 282-283.

26 ⁷⁷⁵ Exh. S-31b.

27 ⁷⁷⁶ Exhs. S-31b, S-54.

28 ⁷⁷⁷ Exh. S-54.

⁷⁷⁸ Exh. S-54.

⁷⁷⁹ Exh. S-54.

⁷⁸⁰ Tr. at 287-288, 346-347.

⁷⁸¹ Exh. S-31b.

⁷⁸² Tr. at 310-311, 365-366; Exh. S-30 at ACC006358.

⁷⁸³ Exhs. S-31b, S-55.

⁷⁸⁴ Exh. S-55.

1 Barcelona Advisors.⁷⁸⁵ 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.⁷⁸⁶ Mr. Eaves has received no payments on his fifth
 4 investment.⁷⁸⁷

5 On July 31, 2014, Mr. Eaves made a sixth investment in Barcelona Advisors.⁷⁸⁸ 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, 2014.⁷⁸⁹ The promissory note was signed by Mr. Harkins for
 8 Barcelona Advisors.⁷⁹⁰ 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.⁷⁹¹ Mr. Eaves has received no payments
 11 on his sixth investment.⁷⁹²

12 On August 8, 2014, Mr. Eaves became an Executive Member of Barcelona Advisors, replacing
 13 Mr. Orr.⁷⁹³ Mr. Eaves had no management responsibilities prior to becoming an Executive Member.⁷⁹⁴
 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.⁷⁹⁵ 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.⁷⁹⁶

20 Pam Stewart (Investment 13)

21 Arizona resident Pam Stewart, through JP Stewart Enterprises, LLC, invested \$100,000 in the
 22

23 ⁷⁸⁵ Exhs. S-32 at 58, S-55.

⁷⁸⁶ Tr. at 289-291.

24 ⁷⁸⁷ Exh. S-31b.

⁷⁸⁸ Exhs. S-31b, S-56.

25 ⁷⁸⁹ Exh. S-56.

⁷⁹⁰ Exh. S-56.

26 ⁷⁹¹ Tr. at 293-294.

⁷⁹² Exh. S-31b.

27 ⁷⁹³ Tr. at 311, 326, 715; Exh. S-30 at ACC006360.

⁷⁹⁴ Tr. at 311.

28 ⁷⁹⁵ Tr. at 297-298, 870.

⁷⁹⁶ Tr. at 309-310.

1 10-5-10 Offering on April 3, 2014.⁷⁹⁷ Ms. Stewart considered the transaction to be an investment.⁷⁹⁸
 2 In February 2014, Ms. Stewart learned about the investment from Mr. Kerrigan, who had been her
 3 broker for over sixteen years.⁷⁹⁹ Mr. Kerrigan knew that Ms. Stewart had a low risk tolerance for
 4 investments and he recommended Barcelona Advisors as a low-risk investment.⁸⁰⁰ 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.⁸⁰¹ 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.⁸⁰² 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.⁸⁰³ Mr. Harkins signed the subscription agreement and note for Barcelona Advisors.⁸⁰⁴ Ms.
 11 Stewart has received no payments on her investment.⁸⁰⁵ 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.⁸⁰⁶ 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, 2013.⁸⁰⁷

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 2014.⁸⁰⁸ 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.⁸⁰⁹ The lunch meeting with Mr. Andrade, Mr. Wilkerson and Mr.

22 ⁷⁹⁷ Tr. at 221-222; Exhs. S-31b, S-35, S-48, S-148.

23 ⁷⁹⁸ Tr. at 222.

24 ⁷⁹⁹ Tr. at 222-224, 1032.

25 ⁸⁰⁰ Tr. at 223-225.

26 ⁸⁰¹ Tr. at 223, 225-227, 268-269, 1033-1034.

27 ⁸⁰² Tr. at 245; Exh. S-35 at ACC000993.

28 ⁸⁰³ Exh. S-35.

⁸⁰⁴ Exhs. S-32 at 58, S-35, S-48.

⁸⁰⁵ Tr. at 228; Exh. S-31b.

⁸⁰⁶ Tr. at 222, 233.

⁸⁰⁷ Exhs. S-26, S-27, S-32 at 91-92, S-65, S-98 at 138.

⁸⁰⁸ Exhs. S-31b, S-36, S-49, S-50, S-148.

⁸⁰⁹ Tr. at 376-379, 420.

1 Simmons took place on December 23, 2013, in Scottsdale Arizona.⁸¹⁰ 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.⁸¹¹ 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.⁸¹² 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.⁸¹³ At the lunch meeting, Mr. Simmons asked Mr. Andrade to invest
 9 and discussed having a follow up meeting in 2014.⁸¹⁴

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."⁸¹⁵ 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.⁸¹⁶

15 At or about the time of the lunch meeting, Mr. Andrade received a January 2014 PPM.⁸¹⁷ Based
 16 on the high rate of interest, Mr. Andrade decided to invest in Barcelona Advisors in April 2014.⁸¹⁸ 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.⁸¹⁹

19 The subscription agreement was signed by Mr. Simmons as COO for Barcelona Advisors.⁸²⁰
 20 Prior to signing, Mr. Simmons called Mr. Harkins, who was away from the office, for authorization to
 21 sign the subscription agreement.⁸²¹ Mr. Harkins told Mr. Simmons that he could sign the subscription
 22

23 ⁸¹⁰ Tr. at 378, 405-406.

24 ⁸¹¹ Tr. at 379.

25 ⁸¹² Tr. at 380.

26 ⁸¹³ Tr. at 379-382.

27 ⁸¹⁴ Tr. at 387.

28 ⁸¹⁵ Tr. at 382-383; Exh. S-171.

⁸¹⁶ Tr. at 387; Exh. S-171.

⁸¹⁷ Tr. at 384, 410, 413-414, 416.

⁸¹⁸ Tr. at 376, 388.

⁸¹⁹ Exh. S-77.

⁸²⁰ Exh. S-77.

⁸²¹ Tr. at 874, 1172-1173, 1211; Exh. S-76 at 46-48.

1 agreement if Mr. Andrade was a qualified investor.⁸²² Mr. Simmons did not need permission from Mr.
 2 Harkins to sign as he was already an authorized signatory of Barcelona Advisors.⁸²³ Mr. Harkins signed
 3 the note as President for Barcelona Advisors.⁸²⁴ Mr. Andrade has received no payments on his
 4 investment.⁸²⁵ 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.⁸²⁶ 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, 2013.⁸²⁷

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.⁸²⁸ On or about June
 11 16, 2014, Mr. Andrade met with Mr. Harkins at Barcelona Advisors' office.⁸²⁹ 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.⁸³⁰ 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, 2014.⁸³¹ Mr. Harkins signed the promissory note
 16 as President for Barcelona Advisors.⁸³² 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.⁸³³ Mr. Andrade has received no payments on this
 19 investment.⁸³⁴

20 Before leaving the meeting with Mr. Harkins, Mr. Andrade received a copy of the Barcelona
 21

22 ⁸²² Tr. at 874, 1173.

⁸²³ Tr. at 874, 913.

23 ⁸²⁴ Exh. S-49.

⁸²⁵ Tr. at 397; Exh. S-31b.

24 ⁸²⁶ Tr. at 401.

⁸²⁷ Exhs. S-26, S-27, S-32 at 91-92, S-65, S-98 at 138.

25 ⁸²⁸ Tr. at 389.

⁸²⁹ 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.

26 ⁸³⁰ Tr. at 390.

27 ⁸³¹ Tr. at 391, 393-396; Exhs. S-51, S-169.

⁸³² Exh. S-51.

28 ⁸³³ Tr. at 376, 396.

⁸³⁴ Tr. at 397; Exh. S-31b.

Land Company PPM.⁸³⁵ Mr. Andrade received the Barcelona Land Company PPM from Mr. Harkins in response to questions he had about the future business plans of the company.⁸³⁶ Mr. Andrade considered his receipt of the Barcelona Land Company PPM to be in response to his questions and not an investment offering.⁸³⁷

V. Legal Argument

A. Filings by the Parties

At the conclusion of the hearing, a schedule for the filing of post-hearing briefs was established whereby the Division would file an initial brief by July 8, 2016, the Respondents would file a response by August 8, 2016, and the Division would file a reply by August 23, 2014. By Procedural Order, Mr. Harkins was granted an extension to file his post-hearing brief by August 22, 2016, with a corresponding extension deadline of September 6, 2016, for the Division to file a reply to Mr. Harkins' post-hearing brief.

The Division timely filed its Post-Hearing Brief on July 8, 2016, then filed an Amended Post-Hearing Brief on July 11, 2016. The Division's Amended Post-Hearing Brief stated that it had been amended to reflect that Mr. Kerrigan, Mr. Simmons, and Mr. Orr were not control persons for Barcelona Advisors at the time of the first investment in the company.⁸³⁸

The Post-Hearing Briefs of Mr. Simmons and Mr. Orr were filed on August 9, 2016. In his Post-Hearing Brief, Mr. Orr makes no objection to the Division's filing of an amended brief and he stipulates to the procedural history as set forth in the Securities Division's Amended Post-Hearing Brief.⁸³⁹ Mr. Simmons, in his Post-Hearing Brief, demands that the Securities Division's Amended Post-Hearing Brief "be stricken from the record" as it was filed without authorization from the Hearing Division and without prior notice given to the Respondents.⁸⁴⁰

Mr. Kerrigan filed his Post-Hearing Brief on August 11, 2016. Mr. Kerrigan's Post-Hearing Brief referenced the Securities Division's Amended Post-Hearing Brief, not the original brief filed by

⁸³⁵ Tr. at 392, 411, 418, 882, 976-977, 1258; Exh. S-59.

⁸³⁶ Tr. at 392, 418, 882-883, 976-977, 1258.

⁸³⁷ Tr. at 418.

⁸³⁸ Securities Division's Amended Post-Hearing Brief at 1.

⁸³⁹ Respondent Bruce Orr's Post-Hearing Brief at 1.

⁸⁴⁰ Post-Hearing Brief of Respondent George T. Simmons at 2-3.

1 the Division.⁸⁴¹ 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.⁸⁴² 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.⁸⁴³

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."⁸⁴⁴ 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.⁸⁴⁵ 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.⁸⁴⁶

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

26 ⁸⁴¹ Post-Hearing Brief of Respondent Robert J. Kerrigan at 2.

⁸⁴² Division's Reply to Post-Hearing Briefs of Respondents George T. Simmons and Bruce L. Orr at 5-6.

27 ⁸⁴³ *Id.* at 6.

⁸⁴⁴ Post-Hearing Brief of Respondent Richard C. Harkins at 3.

28 ⁸⁴⁵ *See* Post-Hearing Brief of Respondent Richard C. Harkins at 3, 25, 35, 83, 100.

⁸⁴⁶ 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.⁸⁴⁷ 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.⁸⁴⁸ The Division did not specifically state
16 how it wished to further amend the Amended T.O. & Notice.⁸⁴⁹ 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.⁸⁵⁰ 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.⁸⁵¹

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

26 ⁸⁴⁷ Tr. at 697.

27 ⁸⁴⁸ Tr. at 697.

28 ⁸⁴⁹ Tr. at 697.

⁸⁵⁰ Tr. at 700-701.

⁸⁵¹ 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.⁸⁵² 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."⁸⁵³ 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.⁸⁵⁴ Mr. Harkins, in his Post-Hearing
 22

23 ⁸⁵² Though amended effective January 1, 2017, as of the date of the hearing, Rule 15(b) of the Arizona Rules of Civil
 Procedure provided:

24 When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all
 25 respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them
 26 to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment,
 27 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 subverted 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.

28 ⁸⁵³ Respondent's, Bruce Orr, Post-hearing Brief at 15.

⁸⁵⁴ *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."⁸⁵⁵ Mr. Harkins concludes
 3 that the motion is "a none event [sic]."⁸⁵⁶ 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."⁸⁵⁷ 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."⁸⁵⁸

25 The Division contends that Mr. Simmons gave implied consent to try the issues of his offers to
 26

27 ⁸⁵⁵ Amended Post-Hearing Brief of Respondent Richard C. Harkins at 84.

28 ⁸⁵⁶ *Id.*

⁸⁵⁷ Post-Hearing Brief of Respondent George T. Simmons at 23.

⁸⁵⁸ 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*,⁸⁵⁹ which applied the “very similar”
 3 Federal Rule of Civil Procedure 15(b).⁸⁶⁰ 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.”⁸⁶¹ 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.”⁸⁶² 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.”⁸⁶³ 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 \$125,000,⁸⁶⁴ 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.⁸⁶⁵ 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.⁸⁶⁶ The Division also
 20 notes that Mr. Simmons denied making the statements to Mr. Eaves and Mr. Andrade on direct
 21 examination,⁸⁶⁷ and again, after the Division’s cross-examination on these statements,⁸⁶⁸ on redirect
 22

23 ⁸⁵⁹ 653 F.2d 1220 (8th Cir. 1981).

24 ⁸⁶⁰ Securities Division’s Reply to Post-Hearing Briefs of Respondents George T. Simmons and Bruce L. Orr at 3, FN 3.

25 ⁸⁶¹ Securities Division’s Reply to Post-Hearing Briefs of Respondents George T. Simmons and Bruce L. Orr at 2, *citing*
Herrera, 653 F.2d at 1223-1224.

26 ⁸⁶² Tr. at 21 (emphasis added).

27 ⁸⁶³ Tr. at 23-24.

28 ⁸⁶⁴ Tr. at 288.

⁸⁶⁵ Tr. at 380-381, 391, 397-399.

⁸⁶⁶ Tr. at 346-347, 404-411.

⁸⁶⁷ Tr. at 1164, 1170, 1171, 1173.

⁸⁶⁸ Tr. at 1204, 1207-1208, 1218, 1219, 1246-1247, 1248-1250.

1 and further redirect examination.⁸⁶⁹

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."⁸⁷⁰
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.⁸⁷¹ 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.⁸⁷² 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.⁸⁷³ 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.⁸⁷⁴ 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
25

26 ⁸⁶⁹ Tr. at 1235-1236, 1251.

27 ⁸⁷⁰ *U.S. v. Shanbaum*, 10 F.3d 305, 313 (5th Cir. 1994).

28 ⁸⁷¹ Tr. at 1164, 1170, 1171, 1173, 1204, 1207-1208, 1218, 1219, 1235-1236, 1246-1247, 1248-1251, 1253.

⁸⁷² *Slavitt v. Kauhi*, 384 F.2d 530, 531-532 (9th Cir. 1967).

⁸⁷³ *Slavitt*, 384 F.2d at 532-534.

⁸⁷⁴ 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.⁸⁷⁵ 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,⁸⁷⁶ in Mr. Orr's opening statement,⁸⁷⁷ in Mr. Simmons'
12 testimony on redirect,⁸⁷⁸ and in Mr. Orr's closing statement.⁸⁷⁹ 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.⁸⁸⁰

24 ⁸⁷⁵ Tr. at 1268.

25 ⁸⁷⁶ Tr. at 26, 28.

26 ⁸⁷⁷ Tr. at 29.

27 ⁸⁷⁸ Tr. at 1242-1243.

28 ⁸⁷⁹ Tr. at 1269.

⁸⁸⁰ 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*)."⁸⁸⁰ 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."⁸⁸¹ Motions are to conform insofar as practicable with the
5 Arizona Rules of Civil Procedure.⁸⁸² 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.⁸⁸³ 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.⁸⁸⁴
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.⁸⁸⁵ 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.⁸⁸⁶ 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.⁸⁸⁷ 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.⁸⁸⁸ 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.⁸⁸⁹ If the amendment would cause prejudice or surprise, it may be properly refused.⁸⁹⁰

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
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.

24 ⁸⁸¹ A.A.C. R14-3-106(E).

⁸⁸² A.A.C. R.14-3-106(K).

⁸⁸³ A.A.C. R.14-3-101(A).

⁸⁸⁴ *Dietz v. Waller*, 141 Ariz. 107, 112, 685 P.2d 744, 749 (1984).

⁸⁸⁵ *Evans*, 107 Ariz. at 381, 489 P.2d at 18.

⁸⁸⁶ *Hill v. Chubb Life American Ins. Co.*, 182 Ariz. 158, 161, 894 P.2d 701, 704 (1995).

⁸⁸⁷ *In re Estate of McCauley*, 101 Ariz. 8, 18, 415 P.2d 431, 441 (1966).

⁸⁸⁸ *Magma Copper Co. v. Industrial Comm'n of Arizona*, 139 Ariz. 38, 47 (1983).

⁸⁸⁹ *McCauley*, 101 Ariz. at 18, 415 P.2d at 431.

⁸⁹⁰ See *Bujanda v. Montgomery Ward & Co. Inc.*, 125 Ariz. 314, 316, 609 P.2d 584, 586 (App. 1980); *Eng v. Stein*, 123
28 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."⁸⁹¹

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.⁸⁹² 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 memorandum⁸⁹³ and his \$50,000 investment on April
 20 16, 2014,⁸⁹⁴ 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.⁸⁹⁵

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

26 ⁸⁹¹ Amended T.O. and Notice at ¶ 45.

27 ⁸⁹² Amended T.O. and Notice at ¶ 53.

28 ⁸⁹³ Tr. at 387.

⁸⁹⁴ Exh. S-31b.

⁸⁹⁵ Amended T.O. and Notice at ¶¶ 54, 58.

1 Advisors to at least one investor who invested at least \$5,000.⁸⁹⁶ 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.⁸⁹⁷

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. § 44-1999.⁸⁹⁸ 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

27 ⁸⁹⁶ Amended T.O. and Notice at ¶¶ 86-87.

28 ⁸⁹⁷ Exh. S-31b.

⁸⁹⁸ 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.⁸⁹⁹ 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
28 ⁸⁹⁹ 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.⁹⁰⁰

16 Following cross-examination, the Administrative Law Judge offered Mr. Orr the opportunity
17 to provide additional testimony.⁹⁰¹ 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."⁹⁰²

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.

27 ⁹⁰⁰ Tr. at 749-750.

28 ⁹⁰¹ Tr. at 756.

⁹⁰² 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.”⁹⁰³ 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.⁹⁰⁴ 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.⁹⁰⁵ 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”⁹⁰⁶ 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

25 ⁹⁰³ Securities Division’s Amended Post-Hearing Brief at 48.

26 ⁹⁰⁴ 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.

27 ⁹⁰⁵ “If the note is exchanged to facilitate the purchase and sale of a minor asset or consumer good, to correct for the seller’s
 cash-flow difficulties, or to advance some other commercial or consumer purpose, on the other hand, the note is less sensibly
 28 described as a ‘security.’” *Reves*, 494 U.S. at 66, 110 S. Ct. at 952.

⁹⁰⁶ *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 ⁹⁰⁷ carry no attachments of units, rights or options, and may therefore
 6 be securities. Mr. Harkins argues that the other three Stand-Alone Transactions ⁹⁰⁸ 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."⁹⁰⁹ 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."⁹¹⁰

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

26 ⁹⁰⁷ 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.

⁹⁰⁸ Mr. Eaves' second, third and fourth investments.

⁹⁰⁹ *MacCollum*, 185 Ariz. at 187, 913 P.2d at 1105.

28 ⁹¹⁰ 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 that 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.⁹¹¹ 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,⁹¹²
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.⁹¹³ 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.⁹¹⁴ 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”⁹¹⁵ 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
26 ⁹¹¹ *State v. Tober*, 173 Ariz. 211, 213, 841 P.2d 206, 209 (1992).

⁹¹² *MacCollum*, 185 Ariz. at 187, 913 P.2d at 1105.

⁹¹³ *Reves*, 494 U.S. at 65, 110 S. Ct. at 951.

⁹¹⁴ *Id.* Since both inquiries involve application of the same four-factor test, they “essentially collapse into a single inquiry.”
S.E.C. v. Wallenbrock, 313 F.3d 532, 537 (9th Cir. 2002).

⁹¹⁵ *Reves*, 494 U.S. at 65, 110 S. Ct. at 951 (citations omitted).

1 factor, such as the existence of another regulatory scheme, would render application of the Securities
 2 Act unnecessary.⁹¹⁶ We may also consider the notes in light of the economic realities of the
 3 transaction.⁹¹⁷

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.”⁹¹⁸ 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.”⁹¹⁹

10 Notes were sold under the 12-6-12 Offering to raise working capital for Barcelona Advisors.⁹²⁰
 11 Notes sold under the 10-5-10 Offering were also designed to raise working capital for the company.⁹²¹
 12 Ms. Burleson made her stand-alone investment on or about the same day as her 12-6-12 investment.⁹²²
 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.⁹²³ 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.⁹²⁴ 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.⁹²⁵ Mr. Eaves’ third and fourth
 22 investments were made after Barcelona Advisors requested additional funds from Mr. Eaves to cover
 23

24 ⁹¹⁶ *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.

⁹¹⁷ *Wallenbrock*, 313 F.3d at 538.

25 ⁹¹⁸ *Reves*, 494 U.S. at 66, 110 S. Ct. at 951-952.

⁹¹⁹ *Reves*, 494 U.S. at 66, 110 S. Ct. at 952.

26 ⁹²⁰ Tr. at 925, 927-928; Exhs. S-5 at ACC007205, S-57 at ACC000726.

⁹²¹ Exhs. S-26, S-27, S-58 at ACC005713, S-65, S-66, S-79, S-108.

27 ⁹²² Tr. at 987-988.

⁹²³ Tr. at 988.

28 ⁹²⁴ Exh. S-31b.

⁹²⁵ Tr. at 203.

1 gaps in capital that the company expected to receive.⁹²⁶ Mr. Eaves' fifth and sixth investments were
 2 made after Mr. Harkins' requested funds to cover the company's outstanding bills.⁹²⁷ Mr. Eaves'
 3 motivation in making his third, fourth, fifth and sixth investments was to protect his first two
 4 investments.⁹²⁸ 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.⁹²⁹

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.⁹³⁰ 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.⁹³¹ 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.⁹³² 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

25 ⁹²⁶ Tr. at 282, 287-288, 345-347.

26 ⁹²⁷ Tr. at 289, 291, 293-294.

27 ⁹²⁸ Tr. at 282-283, 287-288, 305-306.

28 ⁹²⁹ Tr. at 396; Exh. S-60.

⁹³⁰ Tr. at 768-769, 793, 795; Exhs. S-5 at ACC007212, S-32 at 27-28, 84.

⁹³¹ *Reves*, 494 U.S. at 68, 110 S. Ct. at 953.

⁹³² Tr. at 988.

1 to be securities.⁹³³

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.⁹³⁴ Further, the PPMs expressly refer to the notes as
5 securities.⁹³⁵ 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.”⁹³⁶ 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.⁹³⁷
13 Further, Mr. Eaves and Mr. Andrade both considered all of their respective notes to be investments.⁹³⁸
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.⁹³⁹
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

25 ⁹³³ *Stoiber v. S.E.C.*, 161 F.3d 745, 751 (D.C. Cir. 1998).

26 ⁹³⁴ Exhs. S-5 at ACC007253, S-57 at ACC000773, S-58 at ACC005771.

27 ⁹³⁵ Exhs. S-5 at ACC007207, S-57 at ACC000729, S-58 at ACC005715.

28 ⁹³⁶ Exhs. S-38, S-39, S-42, S-49, S-50, S-51, S-53, S-54, S-55, S-56, S-184.

⁹³⁷ Exhs. S-7, S-42.

⁹³⁸ Tr. at 190, 376.

⁹³⁹ *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*⁹⁴⁰ 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.”⁹⁴¹ 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
28 ⁹⁴⁰ *S.E.C. v. W.J. Howey Co.*, 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244 (1946).

⁹⁴¹ 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.⁹⁴² 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.”⁹⁴³

8 Investments in the 12-6-12 Offering included class B member units.⁹⁴⁴ 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.⁹⁴⁵ 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.’”⁹⁴⁶ 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.⁹⁴⁷ 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.⁹⁴⁸ 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.⁹⁴⁹ 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 . . .

24 ⁹⁴² A.R.S. § 44-1801(26).

25 ⁹⁴³ *Rose*, 128 Ariz. at 211, 624 P.2d at 889.

26 ⁹⁴⁴ Exhs. S-5, S-57.

27 ⁹⁴⁵ Tr. at 159, 190, 426; Exhs. S-5 at ACC007253, S-57 at ACC000773.

28 ⁹⁴⁶ *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).

⁹⁴⁷ Tr. at 925, 927-928.

⁹⁴⁸ Exhs. S-5 at ACC007213, S-57 at ACC000736.

⁹⁴⁹ Exh. S-3b.

b) Right to Purchase LLC Units

Arizona is a notice pleading state, therefore extensive fact pleading is not required.⁹⁵⁰ The purpose of the notice pleading standard “is to ‘give the opponent fair notice of the nature and basis of the claim and indicate generally the type of litigation involved.’”⁹⁵¹ Under the Administrative Procedure Act, notice in a contested case⁹⁵² requires “[a] short and plain statement of the matters asserted.”⁹⁵³

Mr. Eaves’ second investment included purchase rights to 75 units of Class A member units at a total purchase price of \$0.75.⁹⁵⁴ Mr. Eaves’ third and fourth investments each included options to purchase 250,000 Class A member units.⁹⁵⁵ The Amended T.O. and Notice stated that Mr. and Mrs. Eaves received rights to purchase investment contracts in the form of limited liability company membership interests on some of their investments in Barcelona Advisors.⁹⁵⁶ The Amended T.O. and Notice further stated that Mr. and Mrs. Eaves’ third and fourth investments included “rights to purchase membership interests in Barcelona Advisors at an unspecified price.”⁹⁵⁷ The Amended T.O. and Notice does not mention that the second investment of Mr. and Mrs. Eaves included an option to purchase Member Units, but rather includes that investment in the 12-6-12 Offering.⁹⁵⁸ The Amended T.O. and Notice asserts violations of A.R.S. § 44-1841 for the offer and sale of “securities in the form of promissory notes and investment contracts” but does not specifically mention the rights to purchase membership interests.⁹⁵⁹

The three investments where Mr. Eaves received purchase rights or options were identified in the Amended T.O. and Notice. Accordingly, we find that the Amended T.O. and Notice provided

⁹⁵⁰ *Rosenberg v. Rosenberg*, 123 Ariz. 589, 592-93, 601 P.2d 589, 592-93 (1979).

⁹⁵¹ *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).

⁹⁵² A.R.S. § 41-1001(5) provides:

“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.

⁹⁵³ A.R.S. § 41-1061(B)(4).

⁹⁵⁴ Exh. S-7.

⁹⁵⁵ Exhs. S-53, S-54.

⁹⁵⁶ Amended T.O. and Notice at 8.

⁹⁵⁷ Amended T.O. and Notice at 9.

⁹⁵⁸ Amended T.O. and Notice at 8.

⁹⁵⁹ Amended T.O. and Notice at 16.

adequate notice that the issue of the right to purchase membership units was subject to the administrative hearing. While the Amended T.O. and Notice failed to specifically state that options to purchase LLC Units were among the alleged violations of A.R.S. § 44-1841, we find the Division's motion to conform corrects this oversight. Contrary to the arguments of Mr. Harkins, we find that this issue was fully litigated at the hearing, with the admission of documentary evidence of the transactions, testimony from Mr. Eaves and the opportunity of the Respondents to present evidence and testimony in rebuttal. Mr. Harkins states no manner in which he would be prejudiced by such an amendment. Accordingly, the issue of purchase rights and options in the LLC Units is properly before the Commission.

Under A.R.S. § 44-1801(26), a security includes "any ... investment contract ... or right to subscribe to or purchase, any of the foregoing." "[T]he definition of a security 'embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits.'"⁹⁶⁰ How LLC ownership interests may be considered under the perfection rules of the Uniform Commercial Code is irrelevant to our analysis, which is governed by the Act. Having determined that the Barcelona Advisors LLC Units are securities, by definition, we find that any rights to purchase Barcelona Advisors LLC Units are also securities.

3. Exemptions to Registration Requirements

The 12-6-12 Offering and 10-5-10 Offering PPMs stated that the investments being sold have not been registered in reliance upon exemptions for transactions not involving a public offering.⁹⁶¹ Advertisements for the 8-8 Offering stated that the offering was subject to the provisions of A.A.C. R14-4-140, the accredited investor exemption.⁹⁶² The Division contends that the Respondents have failed to meet their burden to prove that any exemption to the Act's registration requirements applies to them or their securities. We first consider whether the Barcelona Advisors' offers and transactions should be integrated, then determine whether any exemptions from registration requirements should

⁹⁶⁰ *Nutek Info. Sys., Inc. v. Arizona Corp. Comm'n*, 194 Ariz. 104, 108, 977 P.2d 826, 830 (App. 1998) quoting *Howey* 328 U.S. at 299, 66 S.Ct. 1100.

⁹⁶¹ Exhs. S-5 at ACC007207, ACC007239, S-57 at ACC000729, ACC000760, S-58 at ACC005715, ACC005753.

⁹⁶² 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.⁹⁶³ 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."⁹⁶⁴ Mr. Harkins contends that the differences between the features

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26 ⁹⁶³ See 17 C.F.R. §230.502(a); R14-4-126(C)(1).

27 ⁹⁶⁴ 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. Burleson'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.⁹⁶⁵
4 The doctrine of integration prevents issuers of securities from avoiding registration requirements by
5 breaking offerings into small pieces.⁹⁶⁶ 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.⁹⁶⁷ The intent of the 8-8 Offering
17 was to generate capital when sales of the 12-6-12 Offering stalled.⁹⁶⁸ 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

26
27 ⁹⁶⁵ *S.E.C. v. Cavanagh*, 445 F.3d 105, 112 (2d Cir. 2006).

⁹⁶⁶ *Donohoe v. Consol. Operating & Prod. Corp.*, 982 F.2d 1130, 1140 (7th Cir. 1992).

⁹⁶⁷ We reached this conclusion in considering the first factor of the *Reves* test, *supra*.

28 ⁹⁶⁸ 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.⁹⁶⁹ Ms. Burleson's stand-alone transaction occurred
 3 on or about the same day as her investment in the 12-6-12 Offering.⁹⁷⁰ 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.⁹⁷¹ 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.⁹⁷² 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.⁹⁷³ Mr. Andrade made his second investment two months after he invested in the 10-5-10
 11 Offering.⁹⁷⁴ Mr. and Mrs. Eaves made their fifth and sixth investments a little over a month after Mr.
 12 Andrade's second investment.⁹⁷⁵ 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.⁹⁷⁶ The 8-8 Offering advertisements promised interest on cash investments.⁹⁷⁷ 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.⁹⁷⁸ 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

24 ⁹⁶⁹ Exh. S-31b.

25 ⁹⁷⁰ Tr. at 987-988.

26 ⁹⁷¹ Exhs. S-7, S-10, S-31b, S-34, S-40, S-42, S-43.

27 ⁹⁷² Tr. at 805, 807-808, 929-930; Exh. S-25 at ACC006214-ACC006235.

28 ⁹⁷³ Exhs. S-13, S-31b, S-35, S-47, S-48, S-53, S-54, S-148.

⁹⁷⁴ Exhs. S-31b, S-36, S-49, S-50, S-51, S-148, S-169.

⁹⁷⁵ Exhs. S-31b, S-51, S-55, S-56, S-169.

⁹⁷⁶ Exh. S-31b.

⁹⁷⁷ Exh. S-25.

⁹⁷⁸ 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.⁹⁷⁹

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-

27
28 ⁹⁷⁹ 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.”⁹⁸⁰ 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. R14-4-140.⁹⁸¹ 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.⁹⁸² 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.⁹⁸³ 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.⁹⁸⁴ 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
25

26 ⁹⁸⁰ *Murphy*, 626 F.2d at 645.

27 ⁹⁸¹ A.A.C. R14-4-140(A), (B).

28 ⁹⁸² A.A.C. R14-4-140(D).

⁹⁸³ 17 C.F.R. § 230.501(a), A.A.C. R14-4-126(B)(1), A.A.C. R14-4-140(A)(1).

⁹⁸⁴ See 17 C.F.R. § 230.501(a).

1 or from Arizona.⁹⁸⁵

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.⁹⁸⁶ 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.⁹⁸⁷ 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,⁹⁸⁸ 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.⁹⁸⁹ This approach is consistent with the expressed intent
15 of the legislature with regard to judicial interpretation of the Act.⁹⁹⁰ 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."⁹⁹¹ The record establishes that there were offers made to persons who did not invest in
19 Barcelona Advisors.⁹⁹² 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
24

25 ⁹⁸⁵ A.A.C. R14-4-140(L)

26 ⁹⁸⁶ Tr. at 431-432.

27 ⁹⁸⁷ Tr. at 433, 449-450.

28 ⁹⁸⁸ Tr. at 979-980.

⁹⁸⁹ *Sell v. Gama*, 231 Ariz. 323, 327, 295 P.3d 421, 425 (2013).

⁹⁹⁰ *Id.*

⁹⁹¹ *W. Fed. Corp. v. Erickson*, 739 F.2d 1439, 1442 (9th Cir. 1984).

⁹⁹² 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.”⁹⁹³
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.⁹⁹⁴ 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.⁹⁹⁵

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.

27 ⁹⁹³ *State v. Baumann*, 125 Ariz. 404, 411, 610 P.2d 38, 45 (1980).

28 ⁹⁹⁴ Tr. at 842; Exhs. S-5 at ACC007207, S-57 at ACC000729, S-58 at ACC005715.

⁹⁹⁵ 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.⁹⁹⁶

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,⁹⁹⁷ LLC Unit
 12 subscription agreements,⁹⁹⁸ and LLC Unit purchase rights agreements.⁹⁹⁹ Mr. Harkins provided Ms.
 13 Bair with the October 2012 PPM for the purpose of obtaining an investment.¹⁰⁰⁰ Mr. Harkins asked
 14 Mr. Eaves to make his fifth and sixth investments.¹⁰⁰¹ Mr. Harkins told Ms. Burleson that an investment
 15 with Barcelona Advisors would be good as long as the economy remained stable.¹⁰⁰² Mr. Harkins
 16 drafted the note for Ms. Burleson's second investment to meet her financial needs.¹⁰⁰³ Ms. Carolin
 17 received the subscription agreement for her first investment from Mr. Harkins.¹⁰⁰⁴ Mr. Harkins sent a
 18 June 11, 2014, letter to all Barcelona Advisors' note holders.¹⁰⁰⁵ 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

22 ⁹⁹⁶ See 17 C.F.R. §§ 230.168, 230.169.

23 ⁹⁹⁷ 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.

25 ⁹⁹⁸ 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.

28 ⁹⁹⁹ Mr. Harkins executed Barcelona Advisors LLC Unit purchase rights agreements in three investments of Mr. Eaves.
 Exhs. S-7, S-53, S-54

¹⁰⁰⁰ Tr. at 844.

¹⁰⁰¹ Tr. at 289-291, 293-294.

¹⁰⁰² Tr. at 634; Exh. S-32 at 79-80.

¹⁰⁰³ Tr. at 1008-1009.

¹⁰⁰⁴ Tr. at 431.

¹⁰⁰⁵ Exhs. S-32 at 96, S-60.

order to meet this need, we would appreciate your participation in funding this requirement by making a short-term loan to us of any portion of the \$150,000 we are seeking.

- ✓ We will repay you as soon as the next round of funding ... occurs which we anticipate to be within the next two weeks. The Note will carry a 90 day due date but may be paid sooner based on the inflow of capital to us from the above referenced sources.
- ✓ We will pay you interest on your loan at an annual rate of 10% which will be paid at the time we return your principal.
- ✓ Additionally, we will pay a bonus of 3% of your loan amount.
- ✓ Finally, we will grant you fully paid Class A Units of ownership is [*sic*] USA Barcelona Realty Advisors based on ½ Class A Unit per dollar of your loan amount.¹⁰⁰⁶

We find Mr. Harkins' arguments unpersuasive. An issuer's employees and officers may be exempt from the requirements of A.R.S. § 44-1842 if an exemption has been found to apply to the security.¹⁰⁰⁷ However, the Respondents failed to establish the applicability of any exemption. The evidence of record establishes that Mr. Harkins' efforts towards some of the investors constituted offers. The June 11, 2014, letter sent to all Barcelona Advisors' investors did more than provide information about the company, it specifically requested funds up to \$150,000 from the investors and provided specific terms of notes as to interest rates and repayment of principal as well as the provision of membership units.

We find that Mr. Harkins, by executing Barcelona Advisors' notes, LLC Unit subscription agreements, and LLC Unit purchase rights, made 30 sales of unregistered securities, in violation of A.R.S. §§ 44-1841 and 44-1842. Mr. Harkins further made offers to Ms. Bair, Mr. Eaves,¹⁰⁰⁸ Ms. Burleson,¹⁰⁰⁹ and Ms. Carolin.¹⁰¹⁰ Mr. Harkins offered the June 2014 Offering to all ten Barcelona

¹⁰⁰⁶ Exh. S-60.

¹⁰⁰⁷ See A.A.C. R14-4-140(B).

¹⁰⁰⁸ As to Mr. Eaves' fifth and sixth investments.

¹⁰⁰⁹ As to both of Ms. Burleson's investments.

¹⁰¹⁰ 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.¹⁰¹¹

13 The evidence of record established that Mr. Kerrigan recommended investments in Barcelona
14 Advisors to several persons: Ms. Burleson,¹⁰¹² Mr. Eaves,¹⁰¹³ Mr. Woods,¹⁰¹⁴ Ms. Carolin,¹⁰¹⁵ Mr.
15 Jordan,¹⁰¹⁶ Mr. Ramirez,¹⁰¹⁷ Ms. Chaimson,¹⁰¹⁸ and Ms. Stewart.¹⁰¹⁹ 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.¹⁰²⁰

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. § 44-1841.¹⁰²¹

21 . . .

22
23 ¹⁰¹¹ Exh. S-98 at 63-64.

24 ¹⁰¹² Tr. at 633, 988; Exh. S-98 at 169-170.

25 ¹⁰¹³ Tr. at 190-191; Exh. S-98 at 36, 59.

26 ¹⁰¹⁴ Tr. at 660-662; 1023.

27 ¹⁰¹⁵ Tr. at 426-427; Exh. S-98 at 29-30.

28 ¹⁰¹⁶ Tr. at 159.

¹⁰¹⁷ Tr. at 1026-1029; Exh. S-98 at 57-58, 169-170.

¹⁰¹⁸ Tr. at 1029-1030; Exh. S-98 at 29-30, 56.

¹⁰¹⁹ Tr. at 222-225, 1032.

¹⁰²⁰ Tr. at 206, 282.

¹⁰²¹ 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.¹⁰²² 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.¹⁰²³
26 Mr. Simmons' testimony is contradicted by company documents and the testimony of Mr. Harkins,

27 _____
28 ¹⁰²² Tr. at 1172-1173.

¹⁰²³ 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.¹⁰²⁴ 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.¹⁰²⁵ 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.¹⁰²⁶ 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.¹⁰²⁷ 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.¹⁰²⁸ Mr. Eaves contradicted Mr. Simmons by testifying that Mr.
 14 Simmons called him to solicit his fourth investment.¹⁰²⁹

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.¹⁰³⁰ 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.¹⁰³¹ 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."¹⁰³² The Division also contends that Mr. Andrade's reply email

24 ¹⁰²⁴ Tr. at 89-90, 736-737, 1203-1204; Exh. S-32 at 35-36, S-176, S-177.

25 ¹⁰²⁵ Tr. at 1200.

26 ¹⁰²⁶ Tr. at 1180; Exh. S-76 at 13.

27 ¹⁰²⁷ Tr. at 318-320.

28 ¹⁰²⁸ Tr. at 92, 139; Exh. S-136 at 16-17, 31.

¹⁰²⁹ Tr. at 286-290, 346-347.

¹⁰³⁰ Tr. at 1167-1169.

¹⁰³¹ Tr. at 377, 420, 1170, 1205, 1207.

¹⁰³² 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.¹⁰³³

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.¹⁰³⁴ At the hearing, Mr. Simmons testified
5 that he was confused about the order of the meetings took place.¹⁰³⁵ However, as the Division notes,
6 Mr. Simmons did not mention two meetings at his EUO, he simply omitted the December lunch
7 meeting.¹⁰³⁶ 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.”¹⁰³⁷

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.¹⁰³⁸ 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.¹⁰³⁹ 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 2013.¹⁰⁴⁰
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.¹⁰⁴¹ 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.¹⁰⁴²

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.¹⁰⁴³ However, Mr. Simmons

23 ¹⁰³³ Tr. at 387; Exh. S-171.

24 ¹⁰³⁴ Exh. S-76 at 47-48.

25 ¹⁰³⁵ Tr. at 1217-1218.

26 ¹⁰³⁶ Exh. S-76 at 47-48.

27 ¹⁰³⁷ Post-Hearing Brief of Respondent George T. Simmons at 20.

28 ¹⁰³⁸ Tr. at 1173.

¹⁰³⁹ Tr. at 391, 1258.

¹⁰⁴⁰ Tr. at 1139-1140.

¹⁰⁴¹ Tr. at 643; Exhs. S-3b, S-5 at ACC007229-ACC007230, S-24, S-57 at ACC000751-ACC000752, S-170.

¹⁰⁴² Post-Hearing Brief of Respondent George T. Simmons at 18-19.

¹⁰⁴³ 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.¹⁰⁴⁴

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.¹⁰⁴⁵ 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.”¹⁰⁴⁶

7 Mr. Simmons argues that, as he testified, he never requested that Mr. Eaves make any
8 investments in Barcelona Advisors.¹⁰⁴⁷ 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.¹⁰⁴⁸ 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.¹⁰⁴⁹

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.¹⁰⁵⁰ 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.¹⁰⁵¹ 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 ¹⁰⁴⁴ Tr. at 1180-1181; Exhs. S-65, S-108.

¹⁰⁴⁵ Tr. at 1143.

26 ¹⁰⁴⁶ Tr. at 1141-1142, 1178-1179.

¹⁰⁴⁷ Tr. at 1164.

27 ¹⁰⁴⁸ Tr. at 1170.

¹⁰⁴⁹ Tr. at 1173.

28 ¹⁰⁵⁰ Tr. at 196-197, 330.

¹⁰⁵¹ Tr. at 714, 720, 1138.

1 Harkins, Mr. Orr, Mrs. Eaves, and Mr. Simmons where investments were solicited.¹⁰⁵² 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.¹⁰⁵³ 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.¹⁰⁵⁴ 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.¹⁰⁵⁵

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.¹⁰⁵⁶

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.¹⁰⁵⁷ 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.¹⁰⁵⁸ 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."¹⁰⁵⁹

23 ¹⁰⁵² Post-Hearing Brief of Respondent George T. Simmons at 12. Mr. Simmons makes no citation to the record where this
 24 testimony was allegedly made by Mr. Eaves. Mr. Orr, in his Post-Hearing Brief, notes that these two meetings were
 25 referenced in the Amended T.O. and Notice. Respondent's, Bruce Orr, Post-Hearing Brief at 14.

¹⁰⁵³ Tr. at 718, 1164-1165.

¹⁰⁵⁴ Tr. at 325.

¹⁰⁵⁵ Division's Reply to the Post-Hearing Briefs of Respondents George T. Simmons and Bruce L. Orr at 12.

¹⁰⁵⁶ Tr. at 1172-1173, 1210-1211.

¹⁰⁵⁷ Post-Hearing Brief of Respondent George T. Simmons at 12. Mr. Harkins also asserts that Division witnesses were
 27 "coached." Amended Post-Hearing Brief of Respondent Richard C. Harkins at 10, 21-22, 62.

¹⁰⁵⁸ Tr. at 669-670.

¹⁰⁵⁹ 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.”¹⁰⁶⁰

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.”¹⁰⁶¹ Both Mr. Andrade and Ms. Carolin testified that while they had been
6 asked questions before, they were not told how to answer them.¹⁰⁶² Mr. Andrade testified under cross-
7 examination that his answers were truthful and not rehearsed.¹⁰⁶³ Ms. Stewart testified that she believed
8 she was at the hearing to “speak the truth as best I know it.”¹⁰⁶⁴

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.¹⁰⁶⁵ 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 ¹⁰⁶⁰ Post-Hearing Brief of Respondent George T. Simmons at 25.

27 ¹⁰⁶¹ Division’s Reply to the Post-Hearing Briefs of Respondents George T. Simmons and Bruce L. Orr at 15-16.

28 ¹⁰⁶² Tr. at 416, 447-448.

¹⁰⁶³ Tr. at 403, 414-415.

¹⁰⁶⁴ Tr. at 265.

¹⁰⁶⁵ Tr. at 386.

as to certain details,¹⁰⁶⁶ on the whole we find their testimony credible. Conversely, the testimony of Mr. Simmons contains many inconsistencies that render it suspect. Mr. Simmons argues that he was not involved with the company before mid-July 2013, and claims no knowledge of documents to the contrary. While Mr. Simmons contends he did not receive PPMs and other documents, he was identified as an Executive Member in a memo from Mr. Harkins, dated March 26, 2013, where he was one of the recipients.¹⁰⁶⁷ Mr. Simmons provides no reasonable explanation as to how he could not have read a letter that was sent to investors, yet summarized that letter to Mr. Orr before signing on Mr. Orr's behalf. Mr. Simmons contends that his lunch meeting had nothing to do with Mr. Andrade's investment. However, in his EUO, Mr. Simmons testified that Mr. Andrade came into Mr. Andrade's office where they chatted and caught up over what they had done since they both worked at Intel.¹⁰⁶⁸ This is the same substance that Mr. Simmons claims to have been their discussion at the December lunch meeting.¹⁰⁶⁹

We find the testimony of Mr. Eaves and Mr. Andrade more credible than that of Mr. Simmons. We find that Mr. Simmons made offers to Mr. Eaves, as to his fourth investment, and to Mr. Andrade, as to both of his investments. While we have dismissed the direct allegations against Mr. Simmons, Barcelona Advisors is responsible for the three offers and one sale attributed to Mr. Simmons.

4. Bruce Orr

The Division contends that Mr. Orr offered securities to four individuals over drinks. The Division asserts that because Mr. Orr filed an expense report for \$85 for drinks, Mr. Orr believed the money "was spent for [Barcelona Advisors'] benefit, and the benefit was clearly to build goodwill with the prospective investors to increase the likelihood they would invest."¹⁰⁷⁰ The Division also contends that Mr. Orr "directed the prospective investors to speak to McDonough" who was trained to present the company's securities and could close the sale.¹⁰⁷¹

Mr. Orr disputes the Division's characterization of the meeting. Mr. Orr contends that he did

¹⁰⁶⁶ E.g., Mr. Eaves' testimony about the attendees at the Talking Stick Resort meeting and Mr. Andrade's testimony about the date of his second investment, discussed *infra*.

¹⁰⁶⁷ Exh. S-24.

¹⁰⁶⁸ Exh. S-76 at 48-49.

¹⁰⁶⁹ Tr. at 1170.

¹⁰⁷⁰ Securities Division's Amended Post-Hearing Brief at 52.

¹⁰⁷¹ 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.”¹⁰⁷² Mr.
 3 Orr further argues that he did not carry an offering memorandum, and he could not make an offer
 4 without one.¹⁰⁷³ 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.”¹⁰⁷⁴

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.”¹⁰⁷⁵ 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.”¹⁰⁷⁶

12 The Division bears the burden of proof to establish that an offer of sale occurred.¹⁰⁷⁷ The
 13 evidence of record establishes only that Mr. Orr told the four potential investors what Barcelona
 14 Advisors was.¹⁰⁷⁸ 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 ¹⁰⁷² Respondent’s, Bruce Orr, Post-Hearing Brief at 8.

25 ¹⁰⁷³ Respondent’s, Bruce Orr, Post-Hearing Brief at 9.

¹⁰⁷⁴ Respondent’s, Bruce Orr, Post-Hearing Brief at 9.

26 ¹⁰⁷⁵ A.R.S. § 44-1801(15)

¹⁰⁷⁶ *Eastern Vanguard Forex, Ltd. v. Arizona Corp. Comm’n*, 206 Ariz. 399, 410, 79 P.3d 86, 97 (App. 2003) citing 1951
 27 Ariz. Sess. Laws, ch. 18, § 20.

¹⁰⁷⁷ See A.A.C. R14-3-109(G).

28 ¹⁰⁷⁸ 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.¹⁰⁷⁹

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, 2014.¹⁰⁸⁰ However, both Mr. Andrade and Mr. Harkins testified that Mr. Andrade gave Mr. Harkins
22 a \$5,000 check at their meeting.¹⁰⁸¹ The check was dated June 16, 2014.¹⁰⁸² The note Mr. Andrade
23 received was also dated June 16, 2014.¹⁰⁸³ 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 ¹⁰⁷⁹ Exhs. S-3b, S-5 at ACC007229-ACC007230.

27 ¹⁰⁸⁰ Tr. at 389, 411.

28 ¹⁰⁸¹ Tr. at 391, 418, 882, 976-977, 1258.

¹⁰⁸² Tr. at 395; Exh. S-169.

¹⁰⁸³ Exh. S-51.

today” on June 16, 2014.¹⁰⁸⁴ We find the weight of the evidence establishes that the meeting between Mr. Andrade and Mr. Harkins occurred on June 16, 2014, the same day Mr. Andrade made his \$5,000 investment.

Mr. Andrade received the Barcelona Land Company PPM at the June 16, 2014 meeting with Mr. Harkins. Mr. Andrade considered the Barcelona Land Company PPM was given to him by Mr. Harkins in response to Mr. Andrade’s request for information, and not as part of an investment offering.¹⁰⁸⁵ The record does not establish that Mr. Andrade even received the Barcelona Land Company PPM prior to completing his investment that same day. The Division has failed to meet its burden of proof to establish that Barcelona Land Company made an offer of securities to Mr. Andrade. Accordingly, this allegation is dismissed.

E. Fraud Violations

The Division alleges multiple violations of A.R.S. § 44-1991(A), the antifraud provisions of the Act, against Mr. Harkins, Mr. Kerrigan, Mr. Simmons, Barcelona Advisors, and Barcelona Land Company. Mr. Harkins contends that the Division has failed to prove fraud, which must be established by five elements: 1) a false statement of a material fact, 2) knowledge on the part of the defendant that the statement is untrue, 3) intent on the part of the defendant to deceive the alleged victim, 4) justifiable reliance by the alleged victim on the statement, and 5) injury to the alleged victim as a result.

Nine elements must be proven under common law fraud: 1) a representation; 2) its falsity; 3) its materiality; 4) the speaker's knowledge of its falsity or ignorance of its truth; 5) the speaker's intent that it be acted upon by the recipient in the manner reasonably contemplated; 6) the hearer's ignorance of its falsity; 7) the listener's reliance on its truth; 8) the right to rely on it; and 9) his consequent and proximate injury.¹⁰⁸⁶ However, the nine elements of common law fraud are not essential to establishing statutory securities fraud.¹⁰⁸⁷ A.R.S. § 44-1991(A) provides:

It is a fraudulent practice and unlawful for a person, in connection with
a transaction or transactions within or from this state involving an offer

¹⁰⁸⁴ Exhs. S-30 at ACC006358-ACC006359, S-32 at 122-124.

¹⁰⁸⁵ Tr. at 418.

¹⁰⁸⁶ *Wells Fargo Credit Corp. v. Smith*, 166 Ariz. 489, 494, 803 P.2d 900, 905 (App. 1990).

¹⁰⁸⁷ *Aaron v. Fromkin*, 196 Ariz. 224, 227, 994 P.2d 1039, 1042 (App. 2000).

to sell or buy securities, or a sale or purchase of securities, including securities exempted under section 44-1843 or 44-1843.01 and including transactions exempted under section 44-1844, 44-1845 or 44-1850, directly or indirectly to do any of the following:

1. Employ any device, scheme or artifice to defraud.
2. Make any untrue statement of material fact, or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.
3. Engage in any transaction, practice or course of business which operates or would operate as a fraud or deceit.

An issuer of securities has an affirmative duty not to mislead potential investors.¹⁰⁸⁸ Under A.R.S. § 44-1991(A)(2), a material fact is one that “would have assumed actual significance in the deliberations of the reasonable buyer.”¹⁰⁸⁹ Materiality will also be found when there is a “substantial likelihood that the disclosure of the omitted fact would have been viewed by the reasonable investor as having significantly altered the ‘total mix’ of information made available.”¹⁰⁹⁰

1. AVC Failure

The Division contends that Mr. Harkins, Mr. Kerrigan, Barcelona Advisors, and Barcelona Land Company made statements to investors regarding Mr. Harkins’ real estate experience in general, or his experience with AVC in particular, while omitting to state the failure of the AVC real estate venture. The Division contends that the omission was misleading because Mr. Harkins’ real estate experience was described to create confidence in the investment and the failure of the AVC venture would have undermined that confidence. The Division contends that this information would have been material to a reasonable investor, as evidenced by many investors stating the information would have been significant to their decision to invest.¹⁰⁹¹

¹⁰⁸⁸ *Trimble v. Am. Sav. Life Ins. Co.*, 152 Ariz. 548, 553, 733 P.2d 1131, 1136 (App. 1986).

¹⁰⁸⁹ *Aaron*, 196 Ariz. at 227, 994 P.2d at 1042.

¹⁰⁹⁰ *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).

¹⁰⁹¹ *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.”¹⁰⁹² 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.¹⁰⁹³ 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.¹⁰⁹⁴

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.¹⁰⁹⁵ The statements were made to
17 the 12-6-12 PPM recipients: Ms. Bair, Mr. Eaves, Mr. Woods, Mr. Jordan, and Mr. Ramirez.¹⁰⁹⁶ Mr.
18 Harkins, Barcelona Advisors, and Barcelona Land Company made the same statement to Mr. Andrade
19 in the Barcelona Land Company PPM.¹⁰⁹⁷ 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.¹⁰⁹⁸ 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.”¹⁰⁹⁹ Mr. Simmons and Mr. Harkins
24

25 ¹⁰⁹² Amended Post Hearing Brief of Respondent Richard C. Harkins at 71.

26 ¹⁰⁹³ Tr. at 783; Exh. S-32 at 16, 44-46.

27 ¹⁰⁹⁴ Exhs. S-15, S-16, S-17, S-18, S-21, S-32 at 44-45, 47-48, S-61.

28 ¹⁰⁹⁵ Exhs. S-5 at ACC007229, S-32 at 59-61, S-57 at ACC000751.

¹⁰⁹⁶ Tr. at 161-163, 192-195, 667-668, 844, 1028-1029, 1064-1065.

¹⁰⁹⁷ Exh. S-59 at ACC005876.

¹⁰⁹⁸ Tr. at 161-163, 1028-1029.

¹⁰⁹⁹ Tr. at 269; Exh. S-174 at 15.

1 both told Mr. Andrade about Mr. Harkins' business success.¹¹⁰⁰ 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.¹¹⁰¹ Mr. Eaves was not informed about the failure of AVC prior to making his first four
 4 investments.¹¹⁰²

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,¹¹⁰³ and Mr. Eaves¹¹⁰⁴ 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.¹¹⁰⁵ 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 ¹¹⁰⁰ Tr. at 380, 390.

¹¹⁰¹ Tr. at 173, 229, 397, 664, 1222.

26 ¹¹⁰² Tr. at 303-305.

¹¹⁰³ As to both investments of Mr. Andrade.

27 ¹¹⁰⁴ As to the first four investments of Mr. Eaves.

28 ¹¹⁰⁵ 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.¹¹⁰⁶

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.¹¹⁰⁷ 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.¹¹⁰⁸ With Barcelona Advisors,
 13 Mr. Meka functioned as an office manager, with duties including keeping files and storing and printing
 14 the PPMs.¹¹⁰⁹ 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.¹¹¹⁰

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.¹¹¹¹ These statements were conveyed
 19 to Mr. Eaves, Mr. Woods, Mr. Jordan and Mr. Ramirez, who each received a PPM.¹¹¹² 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.¹¹¹³ Mr. Kerrigan and Barcelona Advisors gave Ms. Stewart advertising
 22 materials stating that Mr. Harkins was the President of Barcelona Advisors.¹¹¹⁴ Mr. Simmons told Mr.

23
 24 ¹¹⁰⁶ Tr. at 173-174, 229-230, 398, 664-665.

25 ¹¹⁰⁷ Tr. at 860-861.

26 ¹¹⁰⁸ Exhs. S-20a at 11, S-20b.

27 ¹¹⁰⁹ Tr. at 94, 350-351, 860-861, 1254-1255; Exh. H-11.

28 ¹¹¹⁰ Tr. at 861-862; Exhs. H-11, S-76 at 101-102.

¹¹¹¹ Exhs. S-5 at ACC007214, ACC007229, S-57 at ACC000737, ACC000751.

¹¹¹² Tr. at 161-163, 192-195, 667-668, 1028-1029, 1064-1065.

¹¹¹³ Tr. at 161-163, 1028-1029.

¹¹¹⁴ Tr. at 269; S-174 at 15.

1 Andrade that Mr. Harkins managed Barcelona Advisors.¹¹¹⁵

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.¹¹¹⁶ Mr. Eaves was not informed about Mr. Meka's conviction before
5 making his first five investments.¹¹¹⁷

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. Eaves¹¹¹⁸ 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.¹¹¹⁹

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 ¹¹¹⁵ Tr. at 380.

27 ¹¹¹⁶ Tr. at 173-174, 229-230, 398, 664-665, 1223; Exh. S-32 at 81.

28 ¹¹¹⁷ Tr. at 306-307.

¹¹¹⁸ As to the first five investments of Mr. Eaves.

¹¹¹⁹ 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.¹¹²⁰

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.¹¹²¹ After Mr. Kerrigan failed to make the final payment, due on June 30, 2009, his ex-wife drew
 14 on the line of credit.¹¹²² 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 \$88,392.58.¹¹²³ Mr. Kerrigan reached a settlement agreement with the bank for \$23,500.¹¹²⁴

17 In 2010, Mr. Kerrigan owed approximately \$80,000-\$90,000 in taxes.¹¹²⁵ On July 16, 2014,
 18 the Internal Revenue Service filed a lien for \$22,909.36 for 2010 taxes still owed by Mr. Kerrigan.¹¹²⁶

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.¹¹²⁷ This same information was stated by Mr. Harkins and Barcelona
 24

25 ¹¹²⁰ Tr. at 174, 180-181, 185-186, 307-308, 446, 665.

26 ¹¹²¹ Exhs. S-98 at 157-159, S-120.

27 ¹¹²² Exh. S-121 at 2.

28 ¹¹²³ Exhs. K-2, S-122, S-123.

¹¹²⁴ Exh. K-2.

¹¹²⁵ Exh. S-98 at 102.

¹¹²⁶ Exhs. S-98 at 101-102, S-100.

¹¹²⁷ 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.¹¹²⁸ 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.¹¹²⁹
 3 Barcelona Advisors' advertising material given to Ms. Stewart by Mr. Kerrigan and the company
 4 contained the same statement.¹¹³⁰ 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.¹¹³¹

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. Eaves¹¹³² 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.¹¹³³ 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 ¹¹²⁸ Tr. at 384, 416; Exh. S-58 at ACC005744.

27 ¹¹²⁹ Tr. at 161-163, 1028-1029.

28 ¹¹³⁰ Tr. at 269; Exh. S-174 at 15.

¹¹³¹ Tr. at 174, 307-308, 446, 665.

¹¹³² As to all six investments of Mr. Eaves.

¹¹³³ 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.¹¹³⁴

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.¹¹³⁵

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.¹¹³⁶

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."¹¹³⁷

24 The January 2014 PPM for the 10-5-10 Offering stated the following business purpose of
 25 Barcelona Advisors:

26 ¹¹³⁴ Tr. at 398-399.

27 ¹¹³⁵ Amended Post-Hearing Brief of Respondent Richard C. Harkins at 76.

28 ¹¹³⁶ Exhs. S-5 at ACC007217 (parentheticals removed, underscore added), S-57 at ACC000740 (parentheticals removed, boldface removed, underscore added).

¹¹³⁷ 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.¹¹³⁸

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.”¹¹³⁹ 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.¹¹⁴⁰

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.”¹¹⁴¹

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 ¹¹³⁸ Exh. S-58 at ACC005720 (underscore added).

¹¹³⁹ Exh. S-58 at ACC005730 (underscore added).

¹¹⁴⁰ Tr. at 793, 795, 808.

¹¹⁴¹ Tr. at 384, 416; Exh. S-58 at ACC005727.

January 2014 PPM made statements designed to raise confidence in investors over the company's business plan and ability to raise capital. The company's change of business plan due to the failure to generate anticipated capital is information that would have undermined the intent of these statements. The Respondents had an affirmative duty to disclose this information. We find the omission of the information about Barcelona Advisors' change in business plan as a result of failing to raise anticipated capital constituted the omission of a material fact, and therefore constituted a violation of A.R.S. § 44-1991(A). We find that Mr. Harkins and Barcelona Advisers violated A.R.S. § 44-1991(A) by omitting to tell Mr. Andrade about the change of Barcelona Advisors' business plan as a result of the failure to raise necessary capital.¹¹⁴²

5. Robert Kerrigan Investments

In February 2013, Mr. Kerrigan made two \$30,000 investments in Barcelona Advisors for which he received two notes with maturity dates of June 30, 2013.¹¹⁴³ Barcelona Advisors never repaid the principal on these two notes.¹¹⁴⁴

Mr. Kerrigan invested another \$70,000 in Barcelona Advisors for which Barcelona Advisors issued a promissory note on October 1, 2013.¹¹⁴⁵ Under the terms of the note, principal and unpaid interest would be paid from proceeds Barcelona Advisors received from new investors in the 12-6-12 Offering.¹¹⁴⁶ Barcelona Advisors made no payments on this note.¹¹⁴⁷

a) Failure to Pay Robert Kerrigan Notes

The Division contends that Mr. Harkins and Barcelona Advisors stated to investors, in the Barcelona Advisors notes, that the company would repay the investors' principal by a specific maturity date. The Division contends that the failure to inform those investors who invested after June 30, 2013, about the failure to repay Mr. Kerrigan's \$30,000 promissory notes was an omission that was misleading because it would call into question Barcelona Advisors' ability to repay investors. The Division contends that Mr. Kerrigan is also responsible for the omission because he discussed and

¹¹⁴² As to both investments of Mr. Andrade.

¹¹⁴³ Exhs. S-133, S-134.

¹¹⁴⁴ Exh. S-98 at 182-184, S-133, S-134.

¹¹⁴⁵ Exhs S-98 at 184-185, S-135.

¹¹⁴⁶ Exh. S-135.

¹¹⁴⁷ 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.¹¹⁴⁸

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, 2013.¹¹⁴⁹ 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.¹¹⁵⁰ 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.¹¹⁵¹ 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.¹¹⁵²

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.¹¹⁵³

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.¹¹⁵⁴ Mr.

25 ¹¹⁴⁸ Tr. at 176, 230-231, 308, 399, 447, 665.

26 ¹¹⁴⁹ 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.

¹¹⁵⁰ Tr. at 176, 230-231, 308, 399, 447, 665; Exh. S-98 at 56-58, 169-170, 185.

27 ¹¹⁵¹ Tr. at 159, 222, 426-427, 660, 1022, 1026-1030, 1032, 1104; Exh. S-98 at 57-58.

¹¹⁵² Tr. at 391, 1223.

28 ¹¹⁵³ Tr. at 937-938.

¹¹⁵⁴ 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.¹¹⁵⁵ Later, Mr. Harkins
3 stated that he wanted to add a few things to the record at the EUO.¹¹⁵⁶ 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.¹¹⁵⁷ Mr. Harkins testified that he discovered this provision in the operating agreement
6 during the lunch break on the day of the EUO.¹¹⁵⁸

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
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27 ¹¹⁵⁵ Exh. S-32 at 82-83.

¹¹⁵⁶ Exh. S-32 at 136.

¹¹⁵⁷ Exh. S-32 at 139.

¹¹⁵⁸ 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,¹¹⁵⁹ Mr. Woods, Ms. Carolin,¹¹⁶⁰ Mr. Jordan, Mr. Andrade,¹¹⁶¹ 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,¹¹⁶² 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
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27 ¹¹⁵⁹ As to the last five investments of Mr. Eaves.

¹¹⁶⁰ As to both investments of Ms. Carolin.

¹¹⁶¹ As to both investments of Mr. Andrade.

28 ¹¹⁶² 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.¹¹⁶³

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.¹¹⁶⁴

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.¹¹⁶⁵ 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.¹¹⁶⁶ 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.¹¹⁶⁷

25 The Company's written agreement to repay Mr. Kerrigan's \$70,000 note with proceeds of the

26 ¹¹⁶³ Tr. at 176-177.

27 ¹¹⁶⁴ Exh. S-57 at ACC000758.

28 ¹¹⁶⁵ Tr. at 162, 1028.

¹¹⁶⁶ Tr. at 176-177.

¹¹⁶⁷ 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.¹¹⁶⁸

26 Mr. Harkins contends that the delay in paying the 12-6-12 investors was agreed to by those
27

28 ¹¹⁶⁸ 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.¹¹⁶⁹ 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.¹¹⁷⁰ 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, 2013.¹¹⁷¹ 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.¹¹⁷²

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. Andrade¹¹⁷³ 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 ¹¹⁶⁹ Exhs. S-48, S-49, S-51.

27 ¹¹⁷⁰ Tr. at 232, 400, 1223.

28 ¹¹⁷¹ Tr. at 232; Exh. S-98 at 60.

¹¹⁷² Tr. at 391, 400, 1223.

¹¹⁷³ 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.¹¹⁷⁴

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:¹¹⁷⁵

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.¹¹⁷⁶

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.¹¹⁷⁷

24 Mr. Harkins states that early investors were paid interest from the funds of subsequent investors

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26 ¹¹⁷⁴ Tr. at 400-401.

27 ¹¹⁷⁵ We note that the wording appearing in the Amended Post-hearing Brief of Respondent Richard C. Harkins is slightly
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.

28 ¹¹⁷⁶ Exh. S-58 at ACC005713.

¹¹⁷⁷ 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.¹¹⁷⁸

11 Mr. Andrade was not told that his investment would be used to pay interest to earlier
12 investors.¹¹⁷⁹ 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.¹¹⁸⁰

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.¹¹⁸¹ 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.¹¹⁸²

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25 ¹¹⁷⁸ Exh. S-58 at ACC005751.

¹¹⁷⁹ Tr. at 400-401.

26 ¹¹⁸⁰ Tr. at 875; Amended Notice at 11.

27 ¹¹⁸¹ 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.

28 ¹¹⁸² 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.¹¹⁸³ 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.¹¹⁸⁴ 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.¹¹⁸⁵ 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

¹¹⁸³ Tr. at 222, 224, 245.

28 ¹¹⁸⁴ Exhs. S-35 at ACC000993, S-58 at ACC0005713.

¹¹⁸⁵ 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, 2012.¹¹⁸⁶

9 The Division contends that Mr. Harkins has been the President of Barcelona Advisors since
10 October 2012.¹¹⁸⁷ 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.¹¹⁸⁸ 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").¹¹⁸⁹ Mr.
16 Harkins has not contested these assertions from the Division.¹¹⁹⁰

17 The Division notes that Mr. Simmons was the Executive Vice President and Chief Operating
18 Officer of Barcelona Advisors.¹¹⁹¹ 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.¹¹⁹²

22 The Division contends that from at least February 1, 2013, to at least August 8, 2014, Mr.

24

¹¹⁸⁶ Exhs. S-5 at ACC7203, 7229-7230, S-31b.

25 ¹¹⁸⁷ Exh. S-57 at ACC000737. This position was previously called the Manager. See Exh. S-5 at ACC007214.

26 ¹¹⁸⁸ 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 ¹¹⁸⁹ Tr. at 931-932; Exhs. S-5 at ACC007261, S-57 at ACC000782.

27 ¹¹⁹⁰ Amended Post-Hearing Brief of Respondent Richard C. Harkins at 36, See also Securities Division's Amended Post-
Hearing Brief at 4.

28 ¹¹⁹¹ Tr. at 1186.

¹¹⁹² Exh. S-57 at ACC000790-791.

1 Harkins, Mr. Kerrigan, Mr. Simmons, and Mr. Orr were Executive Members of Barcelona Advisors.¹¹⁹³
 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.¹¹⁹⁴ 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.'"¹¹⁹⁵ 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.¹¹⁹⁶ 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.¹¹⁹⁷ 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.¹¹⁹⁸

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.¹¹⁹⁹ The
 20 filing further stated that Mr. Harkins and Mr. Simmons each owned a 20% or greater interest in
 21 Barcelona Advisors.¹²⁰⁰ Mr. Harkins testified that the corporate filing was accurate.¹²⁰¹

22 The Division contends that Mr. Harkins, Mr. Simmons, Mr. Kerrigan and Mr. Orr, as Executive
 23

24 ¹¹⁹³ Exhs. S-5 at ACC007203, ACC007229, S-30 at ACC006360.

¹¹⁹⁴ Exhs. S-5 at ACC007268-ACC007269, S-57 at ACC000791-ACC000792.

¹¹⁹⁵ Exh. S-57 at ACC000789.

¹¹⁹⁶ Exhs. S-5 at ACC007266, S-57 at ACC000787-790.

¹¹⁹⁷ Exhs. S-5 at ACC007214-ACC007215, ACC007268-ACC007269, S-57 at ACC000737-ACC000738, ACC000791-ACC000792.

¹¹⁹⁸ Tr. at 103; Exh. S-176.

¹¹⁹⁹ Exh. S-3b.

¹²⁰⁰ Exh. S-3b.

¹²⁰¹ 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.¹²⁰²

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.¹²⁰³ 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.¹²⁰⁴ The Division contends that Mr. Simmons also took the lead in working on arrangements
14 or relationships with important third parties.¹²⁰⁵ 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.¹²⁰⁶

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

25 ¹²⁰² Tr. at 1174-1175; Exh. S-136 at 23-25.

26 ¹²⁰³ 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.

¹²⁰⁴ Tr. at 125, 372, 374, 721, 1193-1196, 1198; Exhs. S-36, H-6 at 5, 8, 12.

¹²⁰⁵ Tr. at 1186-1187.

¹²⁰⁶ Tr. at 1141-1142, 1178-1179, 1183-1184.

1 told investors about the company.¹²⁰⁷ 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,¹²⁰⁸ which was supported by the testimony of Mr. Simmons, Mr. Orr, and Mr.
10 Eaves.¹²⁰⁹ 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.¹²¹⁰ 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%.¹²¹¹ 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.¹²¹²

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.¹²¹³ 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 ¹²⁰⁷ Tr. at 743, 972, 1201-1203; Exh. S-98 at 47-49.

26 ¹²⁰⁸ Tr. at 835-838, 902, 904-905, 909.

27 ¹²⁰⁹ Tr. at 313, 721-722, 762, 1145-1146, 1233-1234, 1243.

28 ¹²¹⁰ Tr. at 836, 900.

¹²¹¹ Tr. at 1140, 1147-1148, 1176.

¹²¹² Tr. at 1151, 1172-1173, 1186.

¹²¹³ Exhs. S-5 at ACC007268, S-57 at ACC000791.

1 have approved the Manager's request.¹²¹⁴ 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.¹²¹⁵

6 Mr. Orr contends that he became an Executive Member in July 2013.¹²¹⁶ 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.¹²¹⁷

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.¹²¹⁸ 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."¹²¹⁹ 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 ¹²¹⁴ Exhs. S-5 at ACC007269, S-57 at ACC000792.

26 ¹²¹⁵ Exhs. S-3b, S-5 at ACC000739.

27 ¹²¹⁶ Tr. at 709.

28 ¹²¹⁷ Tr. at 719, 732-733, 1175; Exh. S-136 at 22.

¹²¹⁸ A.R.S. § 44-1801(16).

¹²¹⁹ *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.”¹²²⁰ 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.”¹²²¹ 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.¹²²² Accordingly, we find the Executive Members should have known their legal power under
 26 the operating agreements and under the Articles of Amendment.

27 ¹²²⁰ *Id.*

28 ¹²²¹ *Id.* at 413, 79 P.3d at 100.

¹²²² 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.¹²²³ 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.”¹²²⁴

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 ¹²²³ *E. Vanguard Forex*, 206 Ariz. at 414, 79 P.3d at 101.

¹²²⁴ *Id.*

to at least August 2014. The Division contends that Mr. Hawkins and Mr. Simmons are liable as control persons for Barcelona Land Company's anti-fraud violations.

We have dismissed, *supra*, the anti-fraud violations alleged against Barcelona Land Company. Accordingly, we dismiss the alleged anti-fraud violations against Mr. Harkins and Mr. Simmons arising from their alleged status as control persons over Barcelona Land Company.

G. Marital Community Liability

The Division contends that the marital communities of the Simmonses and the Orrs are liable for any restitution and administrative penalties ordered. In their Post-Hearing Brief, Mr. Simmons and the Simmons marital community contend that no liability should attach to the marital community as the Division has not established the alleged violations against Mr. Simmons. Mr. Orr, in his Post-Hearing Brief, raises no contention regarding the Orr marital community.

The Commission has the authority to join a spouse in an action to determine the liability of the marital community.¹²²⁵ With limited exceptions, all property acquired by either the husband or the wife during marriage is the community property of both husband and wife.¹²²⁶ The Arizona Supreme

¹²²⁵ A.R.S. § 44-2031. Jurisdiction and venue of offenses and actions; joinder of spouse

A. The superior court in this state shall have jurisdiction over violations of this chapter, the rules and orders of the commission under this chapter and all actions brought to enforce any liability or duty created under this chapter, except actions or proceedings brought under section 44-2032, paragraph 2, 3 or 4 or appeals filed under article 12 of this chapter, over which the superior court in Maricopa county shall have exclusive jurisdiction.

B. Any action authorized by this chapter may be brought in the county in which the defendant is found, is an inhabitant or transacts business, or in the county where the transaction took place, and in such cases, process may be served in any other county in which the defendant is an inhabitant or in which the defendant is found.

C. The commission may join the spouse in any action authorized by this chapter to determine the liability of the marital community.

A.R.S. § 44-2031(C) was amended effective July 24, 2014, pursuant to Laws 2014, Ch. 87 § 1, to include the following sentence: This subsection does not authorize the commission to join any individual who is divorced from the defendant at the time an action authorized by this chapter is filed.

¹²²⁶ 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.”¹²²⁷

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.”¹²²⁸ Either spouse may
6 contract debts and otherwise act for the benefit of the community except as prohibited under A.R.S. §
7 25-214.¹²²⁹ “[A] debt is incurred at the time of the actions that give rise to the debt.”¹²³⁰ “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.”¹²³¹ “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.”¹²³²

13 Mr. Simmons has been married to Janet B. Simmons since August 1963.¹²³³ Mr. Orr has been

14 ¹²²⁷ *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 ¹²²⁸ **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 ¹²²⁹ **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
29 agreement of the property owner to the contrary.

30 B. The community property is liable for the premarital separate debts or other liabilities of a spouse, incurred after
31 September 1, 1973 but only to the extent of the value of that spouse's contribution to the community property which would
32 have been such spouse's separate property if single.

33 C. The community property is liable for a spouse's debts incurred outside of this state during the marriage which would
34 have been community debts if incurred in this state.

35 D. Except as prohibited in section 25-214, either spouse may contract debts and otherwise act for the benefit of the
36 community. In an action on such a debt or obligation the spouses shall be sued jointly and the debt or obligation shall be
37 satisfied: first, from the community property, and second, from the separate property of the spouse contracting the debt or
38 obligation.

¹²³⁰ *Arab Monetary Fund v. Hashim*, 219 Ariz. 108, 111, 193 P.3d 802, 805 (Ct. App. 2008).

¹²³¹ A.R.S. § 25-215(D).

¹²³² *Hrudka v. Hrudka*, 186 Ariz. 84, 91-92, 919 P.2d 179, 186-87 (Ct. App. 1995).

¹²³³ Exh. S-76 at 18.

1 married to Susan S. Orr since September 1984.¹²³⁴ 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.¹²³⁵

10 The Division alleges that Mr. Kerrigan engaged in unethical and dishonest practices in the
 11 securities industry in violation of A.R.S. § 44-1962¹²³⁶ and A.A.C. R14-4-130.¹²³⁷ 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 ¹²³⁴ Exh. S-136 at 13-14.

¹²³⁵ Exh. S-2a; Tr. at 1013, 1082.

¹²³⁶ A.R.S. § 44-1962 provides, in pertinent part:

15 A. After a hearing or notice and opportunity for a hearing as provided by article 11 of this chapter, the commission may
 16 enter an order suspending for a period of not to exceed one year, denying or revoking the registration of a salesman if the
 commission finds that:

* * *

17 2. The salesman has violated this chapter or any rule or order of the commission under this chapter.

* * *

18 8. The salesman is subject to an order of an administrative tribunal, an SRO or the SEC denying, suspending or revoking
 19 membership or registration as a broker or dealer in securities or an investment adviser or investment adviser representative
 for at least six months.

* * *

20 10. The salesman has engaged in dishonest or unethical practices in the securities industry.

* * *

21 B. In addition to denying, revoking or suspending the registration, if the commission finds that a salesman has engaged in
 22 an act, practice or transaction described in subsection A, paragraph 10 or 11, the commission may do one or more of the
 following:

1. Assess administrative penalties.

23 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.

24 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.

¹²³⁷ A.A.C. R14-4-130 provides, in pertinent part:

25 A. For purposes of A.R.S. §§ 44-1961(A)(13) and 44-1962(10), dishonest or unethical practices in the securities industry
 26 shall include but not be limited to the following:

* * *

27 14. Employing, in connection with the purchase or sale of a security, a manipulative or deceptive device or contrivance.

* * *

28 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.

he committed in connection with the offers and sales of Barcelona Advisors securities. The Division contends that Mr. Kerrigan violated A.R.S. § 44-1962(A)(8) by being subject to an order of an SRO¹²³⁸ denying, suspending or revoking his membership for at least six months. The Division contends that Mr. Kerrigan violated A.R.S. § 44-1962(A)(10) by engaging in dishonest or unethical practices in the securities industry by employing a manipulative or deceptive device or contrivance in connection with the sale of a security, namely, by telling Ms. Burleson that money would be “rolling in” from an investment with Barcelona Advisors. The Division also contends that Mr. Kerrigan violated A.R.S. § 44-1962(A)(10) by engaging in dishonest or unethical practices in the securities industry by effecting securities transactions which were not recorded on the records of the dealer with whom Mr. Kerrigan was registered at the time of the transaction.

In his Post-Hearing Brief, Mr. Kerrigan contends that he has “done nothing wrong” and has “abided to the letter of the law.”¹²³⁹ Mr. Kerrigan argues that he strongly believed in the investment with Barcelona Advisors and states that he invested over \$200,000 of his personal funds. Mr. Kerrigan argues that the Division’s contention regarding the SRO is incorrect as FINRA never sought information that he refused, and he submitted a letter terminating his security license with FINRA because he was retiring.

We have considered the fraud violations alleged against Mr. Kerrigan, *supra*, and have found him responsible for numerous violations of A.R.S. § 44-1991 for misrepresenting the level of risk of the 10-5-10 Offering and for omissions related to the failure of AVC, the felony conviction of Paul Meka, Mr. Kerrigan’s debts, Mr. Kerrigan’s investments in Barcelona Advisors, and the failure to timely pay interest to 12-6-12 Offering investors. These violations of the anti-fraud provisions of the Act constitute a violation of A.R.S. § 44-1962(A)(2).

The evidence of record established that Mr. Kerrigan signed a Letter of Acceptance, Waiver and Consent (“AWC”) for alleged FINRA rule violations on April 27, 2016.¹²⁴⁰ The AWC found that Mr. Kerrigan violated FINRA rules by refusing to provide requested documents and information.¹²⁴¹

¹²³⁸ Under A.R.S. §44-1801(27), a self-regulatory organization or SRO is defined as any national securities or commodities exchange, registered association or registered clearing agency.

¹²³⁹ Post-Hearing Brief of Respondent Robert J. Kerrigan at 4.

¹²⁴⁰ Tr. at 1118-1119; Exh. S-175.

¹²⁴¹ 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.¹²⁴² 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.¹²⁴³ Mr. Kerrigan
 9 testified in his EUO that he did not use the phrase “rolling in” with Ms. Burleson.¹²⁴⁴ 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.¹²⁴⁵ However, we note that Mr. Kerrigan testified openly at his EUO about information he gave
 14 to investors regarding Barcelona Advisors.¹²⁴⁶ 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.¹²⁴⁷ 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.¹²⁴⁸ Mr. Kerrigan’s sales of Barcelona Advisors securities were not recorded on

25 ¹²⁴² Tr. at 1118-1119; Exh. S-175.

26 ¹²⁴³ Tr. at 633.

27 ¹²⁴⁴ Exh. S-98 at 63-64.

28 ¹²⁴⁵ Tr. at 1039-1040; Exh. S-98 at 39-40, 151-152.

¹²⁴⁶ Exh. S-98 at 29-31, 52-64.

¹²⁴⁷ Exhs. S-2b, S-98 at 12-13, 65-66, 70.

¹²⁴⁸ Exhs. S-98 at 57-60, 97-98, S-99 at ACC006211.

the books and records of FFEC.¹²⁴⁹ The evidence of record establishes that Mr. Kerrigan effected Barcelona Advisors' securities transactions without recording them with his dealer. As such Mr. Kerrigan violated A.R.S. § 44-1962(A)(10) by engaging in dishonest or unethical practices in the securities industry, pursuant to A.A.C. R14-4-300(A)(17).

I. Remedies

The Division contends that the Respondents should be ordered to pay restitution and administrative penalties for violations of the Arizona Securities Act. The Division also recommends the revocation of Mr. Kerrigan's registration as a securities salesman. The Respondents have made requests for sanctions and reimbursement.

1. Restitution

The Division asserts that Barcelona Advisors raised a total of \$1,405,000 from investors in violation of the Act, with \$86,876 repaid to investors. The Division requests that Mr. Harkins and Barcelona Advisors be ordered to jointly and severally pay restitution in the amount of \$1,318,124. The Division requests that Mr. Simmons, Mr. Kerrigan and Mr. Orr be ordered to pay, jointly and severally with Mr. Harkins and Barcelona Advisors, restitution in the amount of \$1,302,223, representing all investments except for that of Ms. Bair, who invested before Mr. Simmons, Mr. Kerrigan and Mr. Orr became control persons of Barcelona Advisors. The Division further requests that Barcelona Land Company be ordered to pay, jointly and severally with Mr. Harkins, Mr. Simmons, Mr. Kerrigan, Mr. Orr and Barcelona Advisors, restitution in the amount of \$5,000, representing the second investment of Mr. Andrade. The Division requests that pre-judgment interest be assessed on all restitution ordered. While the individual Respondents argue against their liability, none have challenged the restitution amounts asserted by the Division.

The Commission has the authority to order restitution pursuant to A.R.S. §§ 44-1962 and 44-2032.¹²⁵⁰ Of the eighteen investments for which the Division seeks restitution, we have found at least

¹²⁴⁹ Tr. at 1083; Exh. S-98 at 65, 71.

¹²⁵⁰ A.R.S. § 44-2032 provides, in pertinent part:

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:

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

one fraud violation committed by Barcelona Advisors in all but three investments: the investment of Ms. Bair and the two investments of Ms. Burleson. As such, all control persons are liable to the same extent as Barcelona Advisors for the other fifteen investments. We have found Mr. Harkins and Barcelona Advisors committed registration violations in the offer and sale of Ms. Bair's investment. We have found registration violations committed by Mr. Harkins, Mr. Kerrigan and Barcelona Advisors in the offer and sale of Ms. Burleson's two investments. We have found Barcelona Land Company to have committed no violations, and therefore, we assess no restitution against it.

Based upon our findings of violations and liability, we adjust the Division's recommended restitution to the following amounts, each to be assessed jointly and severally, and to apply to respective marital communities: \$1,318,124 against Barcelona Advisors, \$1,318,124 against Mr. Harkins, \$1,302,223 against Mr. Kerrigan, \$1,215,353 against Mr. Simmons, and \$1,215,353 against Mr. Orr.

2. Administrative Penalties

The Division recommends an order of administrative penalties against the Respondents in the following amounts: \$130,000 against Barcelona Advisors, \$130,000 against Mr. Harkins, \$120,000 against Mr. Kerrigan, \$80,000 against Mr. Simmons, \$60,000 against Mr. Orr, and \$15,000 against Barcelona Land Company. The Division does not specifically state its reasoning for the recommended penalty amounts.

Under A.R.S. §§ 44-2036(A) and 44-1962(B), the Commission has authority to assess an administrative penalty of no more than \$5,000 for each violation committed.¹²⁵¹ We find the recommended administrative penalties appropriate as to Barcelona Advisors, Mr. Harkins, and Mr. Kerrigan. As we have dismissed the allegations of direct liability against Mr. Simmons and Mr. Orr, we find that lesser administrative penalties are appropriate as to these Respondents. Since all allegations against Barcelona Land Company have been dismissed, we assess no administrative penalty against it.

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....

¹²⁵¹ A.R.S. § 44-2036 provides, in pertinent part:

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."¹²⁵² 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."¹²⁵³
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."¹²⁵⁴ 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 ¹²⁵² Post-Hearing Brief of Respondent Richard J. Kerrigan at 4.

28 ¹²⁵³ Respondent's, Bruce Orr, Post-Hearing Brief at 19.

¹²⁵⁴ Amended Post-Hearing Brief of Respondent Richard C. Harkins at 109.

persons of Barcelona Advisors. The Division has prevailed on significant issues raised against Mr. Harkins, Mr. Simmons, and Mr. Orr, justifying nearly all of the restitution amounts the Division sought against these Respondents. Accordingly, we find no basis to grant the relief requested by Mr. Harkins, Mr. Simmons and Mr. Orr.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that

FINDINGS OF FACT

1. Since October 2012, Richard C. Harkins has been a resident of the State of Arizona.¹²⁵⁵ Since November 28, 2012, Mr. Harkins has been an unmarried man.¹²⁵⁶ Mr. Harkins has not been registered by the Commission as a securities salesman or dealer.¹²⁵⁷

2. From at least October 2012, until August 2015, Robert J. Kerrigan was an unmarried man, a resident of the state of Arizona, registered by the Commission as a securities salesman with CRD no. 268516, and registered in Arizona with First Financial Equity Corporation, as a securities dealer with CRD no. 16507.¹²⁵⁸

3. Since October 2012, George T. Simmons has been a married man and a resident of the state of Arizona.¹²⁵⁹ Mr. Simmons has not been registered by the Commission as a securities salesman or dealer.¹²⁶⁰ Mr. Simmons usually goes by the name Tom Simmons.¹²⁶¹

4. Since October 2012, Janet B. Simmons has been the spouse of George T. Simmons.¹²⁶²

5. Since October 2012, Bruce L. Orr has been a married man and a resident of the state of California.¹²⁶³ Mr. Orr has not been registered by the Commission as a securities salesman or dealer.¹²⁶⁴

¹²⁵⁵ Amended T.O. and Notice at ¶ 2; Answer of Respondent Richard C. Harkins to Amended T.O. and Notice at ¶ 2.

¹²⁵⁶ *Id.*

¹²⁵⁷ Exh. S-1a.

¹²⁵⁸ 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.

¹²⁵⁹ Amended T.O. and Notice at ¶ 4; Answer of Respondent George T. Simmons to Amended T.O. and Notice at ¶ 4.

¹²⁶⁰ *Id.*

¹²⁶¹ Tr. at 1130-1131.

¹²⁶² Exh. S-76 at 18.

¹²⁶³ Exh. S-136 at 6, 13-14.

¹²⁶⁴ Exh. S-136 at 13.

6. Since October 2012, Susan S. Orr has been the spouse of Bruce L. Orr.¹²⁶⁵

7. Barcelona Advisors is a limited liability company that was organized under the laws of the state of Arizona in November 2010 under the name of Barcelona Administration Company, LLC, before amending its name on April 12, 2013.¹²⁶⁶ Barcelona Advisors' office was in Scottsdale, Arizona.¹²⁶⁷ Barcelona Advisors has not been registered by the Commission as a securities salesman or dealer.¹²⁶⁸ Barcelona Advisors' securities have not been registered by the Commission.¹²⁶⁹

8. Since October 2012, Mr. Harkins has been the President or Manager of Barcelona Advisors.¹²⁷⁰ In that role, pursuant to the company's operating agreements, Mr. Harkins has had complete authority and exclusive control to conduct any business on behalf of the company in the sole and absolute discretion of the President except for an enumerated list of Major Decisions which require approval of a majority of four Executive Members.¹²⁷¹

9. Mr. Simmons was Executive Vice President and Chief Operating Officer of Barcelona Advisors.¹²⁷²

10. From at least February 1, 2013, to at least August 8, 2014, Mr. Harkins, Mr. Kerrigan, Mr. Simmons, and Mr. Orr were Executive Members of Barcelona Advisors.¹²⁷³ Under the terms of Barcelona Advisors' operating agreements, a majority of the Executive Members must approve Barcelona Advisors' Major Decisions, including decisions to incur liability for borrowed money, issue any note, or admit new company members.¹²⁷⁴

11. Pursuant to Barcelona Advisors' April 12, 2013 Articles of Amendment filed with the Commission, the management of Barcelona Advisors was vested in its managers, identified as Mr. Harkins, Mr. Kerrigan, Mr. Simmons and Mr. Orr. Mr. Harkins and Mr. Simmons were each named

¹²⁶⁵ Tr. at 768; Exh. S-136 at 13-14.

¹²⁶⁶ Exhs. S-3a, S-3b.

¹²⁶⁷ Tr. at 389, 764.

¹²⁶⁸ Exh. S-1b.

¹²⁶⁹ Tr. at 842; Exhs. S-5 at ACC007207, S-57 at ACC000729, S-58 at ACC005715.

¹²⁷⁰ Exhs. S-5 at ACC007214, S-57 at ACC000737.

¹²⁷¹ Exhs. S-5 at ACC007214-ACC007215, ACC007268-ACC007269, S-57 at ACC000737-ACC000738, ACC000790-ACC000792.

¹²⁷² Tr. at 1186.

¹²⁷³ Exhs. S-5 at ACC007203, ACC007229, S-30 at ACC006360.

¹²⁷⁴ Exhs. S-5 at ACC007268-ACC007269, S-57 at ACC000791-ACC000792.

1 as holding 20% or greater interest in Barcelona Advisors.¹²⁷⁵

2 12. Barcelona Land Company is a limited liability company that was organized under the
3 laws of the state of Arizona in January 2014.¹²⁷⁶ Barcelona Land Company has not been registered by
4 the Commission as a securities salesman or dealer.¹²⁷⁷

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.¹²⁷⁸ 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, 2013.¹²⁷⁹ The 12-6-12 Offering
10 generated nine investments from eight different investors.¹²⁸⁰

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.¹²⁸¹ Barcelona Advisors prepared a
13 private placement offering memorandum for investors describing the 10-5-10 Offering, dated January
14 1, 2014.¹²⁸² The 10-5-10 Offering generated two investments from two different investors.¹²⁸³

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.¹²⁸⁴

19 16. From July 17, 2013 to September 4, 2013, Barcelona Advisors made newspaper
20 advertisements of an 8-8 Offering of promissory notes.¹²⁸⁵ No sales of notes were made under the 8-8

22 ¹²⁷⁵ Exh. S-3b.

23 ¹²⁷⁶ Exh. S-4.

24 ¹²⁷⁷ Amended T.O. and Notice at ¶ 7; Answer of Respondent Richard C. Harkins to Amended T.O. and Notice at ¶ 7.

25 ¹²⁷⁸ 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.

26 ¹²⁷⁹ Exhs. S-5, S-57.

27 ¹²⁸⁰ 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.

28 ¹²⁸¹ Tr. at 378.

¹²⁸² Exhs. S-32 at 86, S-58.

¹²⁸³ Tr. at 221-222; Exhs. S-31b, S-35, S-36, S-48, S-49, S-50, S-148.

¹²⁸⁴ Exhs. S-32 at 114-115, S-65, S-66.

¹²⁸⁵ Tr. at 807; Exh. S-25 at ACC006214-ACC006235.

1 Offering.¹²⁸⁶

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.¹²⁸⁷ These investments were made
4 under different terms than the 12-6-12 Offering and the 10-5-10 Offering.¹²⁸⁸ Investors received
5 promissory notes on these investments, sometimes with LLC Units or rights to purchase LLC Units.¹²⁸⁹

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.¹²⁹⁰ Mr. Harkins also
8 made sixteen offers for the sale of unregistered securities.¹²⁹¹

9 19. Mr. Kerrigan made twelve offers for sale of unregistered securities.¹²⁹²

10 20. Barcelona Advisors omitted to inform some Barcelona Advisors investors that: 1) Mr.
11 Harkins' prior real estate venture, AVC, had failed;¹²⁹³ 2) Mr. Harkins was assisted by Paul Meka, who
12 had a felony conviction in connection with an investment fraud scheme;¹²⁹⁴ 3) Mr. Kerrigan owed
13 unpaid taxes and had been sued regarding a bank loan;¹²⁹⁵ 4) Barcelona Advisors had moved to a "Plan
14 B" business plan after failing to raise necessary capital to fund its original business model;¹²⁹⁶ 5)
15 Barcelona Advisors failed to repay promissory notes to Mr. Kerrigan;¹²⁹⁷ 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;¹²⁹⁸ 7) Barcelona Advisors failed to make timely payments to 12-6-12 investors;¹²⁹⁹ and
18 8) 10-5-10 Offering proceeds would be used to pay interest to prior 12-6-12 Offering investors.¹³⁰⁰

19 21. Mr. Kerrigan twice told one investor that her investment in the 10-5-10 Offering was a

20 ¹²⁸⁶ Tr. at 807-808.

21 ¹²⁸⁷ Exhs. S-7, S-31b, S-42, S-51, S-53, S-54, S-55, S-56, S-169, S-184.

22 ¹²⁸⁸ *Id.*

23 ¹²⁸⁹ *Id.*

24 ¹²⁹⁰ 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.

25 ¹²⁹¹ Tr. at 289-291, 293-294, 431, 634, 844, 1008-1009; Exhs. S-32 at 79-80, 96, S-60.

26 ¹²⁹² 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,
27 169-170.

28 ¹²⁹³ Tr. at 173, 229, 303-305, 397, 664, 1222.

¹²⁹⁴ Tr. at 173-174, 229-230, 306-307, 398, 664-665, 1223; Exh. S-32 at 81.

¹²⁹⁵ Tr. at 174, 307-308, 446, 665.

¹²⁹⁶ Tr. at 398.

¹²⁹⁷ 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-
170, 185.

¹²⁹⁸ Tr. at 176-177, 1104.

¹²⁹⁹ Tr. at 232, 400, 1223.

¹³⁰⁰ Tr. at 400-401.

low-risk investment, even though the PPM and subscription agreements stated that the investment is speculative and involves a high degree of risk.¹³⁰¹

22. Barcelona Land Company prepared a private placement offering memorandum dated May 5, 2014 for a \$10,000,000 offering of membership units.¹³⁰² No offers in Barcelona Land Company were made.¹³⁰³

23. The eighteen investments in Barcelona Advisors raised a total of \$1,405,000 for the company.¹³⁰⁴ A total of \$86,876 was repaid to investors, leaving a balance of \$1,318,124 unpaid from the original investments.¹³⁰⁵

24. These findings of fact are based upon the Discussion above, and those findings are incorporated herein.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction of this matter pursuant to Article XV of the Arizona Constitution and A.R.S. § 44-1801, *et. seq.*

2. The findings contained in the Discussion above are incorporated herein.

3. Within or from Arizona, Respondents USA Barcelona Realty Advisors, LLC, Richard C. Harkins and Robert J. Kerrigan offered and sold securities, within the meaning of A.R.S. § 44-1801.

4. The Respondents failed to meet their burden of proof pursuant to A.R.S. § 44-2033 to establish that the securities offered and sold herein were exempt from regulation under the Act.

5. Respondents USA Barcelona Realty Advisors, LLC, and Richard C. Harkins violated A.R.S. § 44-1841 by offering and selling securities that were neither registered nor exempt from registration.

6. Respondent Robert J. Kerrigan violated A.R.S. § 44-1841 by offering securities that were neither registered nor exempt from registration.

7. Respondents USA Barcelona Realty Advisors, LLC, and Richard C. Harkins violated A.R.S. § 44-1842 by offering and selling securities while not being registered as dealers or salesmen.

¹³⁰¹ Tr. at 222, 224, 245; Exhs. S-35 at ACC000993, S-58 at ACC0005713.

¹³⁰² Tr. at 882; Exhs. S-32 at 95; S-59.

¹³⁰³ Tr. at 882, 901.

¹³⁰⁴ Exh. S-31b.

¹³⁰⁵ *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 ...

IT IS FURTHER ORDERED that pursuant to A.R.S. § 44-1974, upon application the Commission may grant a rehearing of this Order. The application must be received by the Commission at its offices within twenty (20) calendar days after entry of this Order. Unless otherwise ordered, filing an application for rehearing does not stay this Order. If the Commission does not grant a rehearing within twenty (20) calendar days after filing the application, the application is considered to be denied. No additional notice will be given of such denial.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

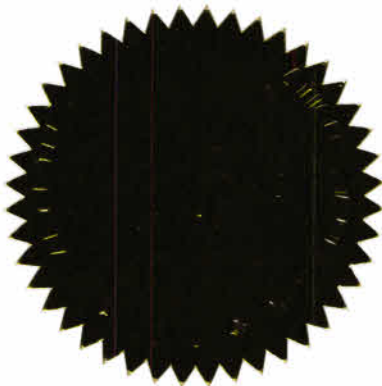
Pro. Forese
CHAIRMAN FORESE

[Signature]
COMMISSIONER DUNN

[Signature]
COMMISSIONER TOBIN

[Signature]
COMMISSIONER OLSON

[Signature]
COMMISSIONER BURNS



IN WITNESS WHEREOF, I, TED VOGT, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 3rd day of January 2018.

[Signature]

TED VOGT
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____
MP:aw(rt)

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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