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BEFORE THE ARIZONA CORPORATION COMMISSION

In the matter of Sync Title Agency, LLC, An Arizona Entity, Rosicella Joplin and Sean Joplin, Respondent and Spouse, and Christopher Olson, a single man.	DOCKET S21131A-20-0345 **SYNC TITLE AGENCY'S ANSWERING BRIEF**

COMES NOW Respondent SYNC TITLE AGENCY, LLC ("Sync") and hereby files its Answering Brief relating to the Administrative Hearing that occurred on May 24-25, 2021 before the Arizona Corporation Commission.

Given the claims, arguments and defenses that were presented during the aforementioned hearing, it is Respondent Sync's position that the arguments and interests of Respondents Sync, Joplin and Olson are unified, and that this brief can effectively serve as an Answering Brief for all respondents. To this end, Sync affirmatively files this brief in defense of all respondents. Of course, Joplin and Olson may file additional, independent answering briefs, if they choose to do so.

For the purpose of convenience and comparison, this brief has been compiled in a format that roughly tracks the format of the Opening Brief submitted by the Securities Division.

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I. INTRODUCTION AND HISTORY

The procedural history recited by the Securities Division in its Answering Brief is a fair recitation of the procedural history of this case and is accordingly adopted and incorporated herein by respondent Sync.

II. JURISDICTIONAL STATEMENT

Sync does not dispute that the Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

III. SUMMARY OF BRIEF

Respondents Rosi Joplin and Chris Olson were close friends of Megan and Marcus Williams, and by December of 2018, they had engaged in many business transactions with each other. The Williams mentioned to Rosi and Chris that they had been looking to get involved other real estate related investments, and in direct response to the Williams query, Chris informed the Williams that he and Rosi were starting a title insurance agency (Sync) as a companion business to their existing real estate brokerages and mortgage loan business. This was part of what Olson repeatedly called his "Slam dunk formula", which simply refers to offering consumers the major professional services they would need at each significant point of the home buying process; namely, selection and purchase (real estate brokerage), financing (mortgage loans), and closing (title services).

Rosi and Chris had not offered this Sync to any other people other than the Williams. Prior to presenting the Sync opportunity to the Williams, the Williams already had a close personal relationship with both Joplin and Olson and had met many times in personal social contexts, as well as in business contexts that had nothing to do with Sync or title agencies or investments in such entities. After presenting the Williams with pertinent and necessary information about the plans for Sync, the Williams agreed to purchase a 20% interest in Sync, to be paid to Rosi and Chris. The purchase contract did not require, infer, or even hint that these funds would be anything other than personal funds for Rosi and Chris in exchange for 20% of Sync. The Williams paid only half of the amount required by the contract, and then

breached the contract by refusing to pay the remaining amounts when due, despite having no contractual authority or provision allowing them to withhold such funds.

Rosi and Chris, meanwhile, diligently began setting up Sync Title Agency, LLC so that it could open for business, and they timely submitted their application for licensure to the Arizona Department of Insurance and Financial Institutions ("DIFI") in February of 2019. Regrettably, upon reviewing Sync's application and issuing a notice of deficiencies, the DIFI grossly misinformed Sync in April of 2019 that Sync was going to need to provide proof of having at least 100k in account funds in order to obtain licensure. This was an egregious and material error (completely and shockingly omitted from the Division's Answering Brief) that would not be discovered until the hearing in May of 2021, and DIFI never notified Sync or its principals that there was actually no such "100k requirement", nor did DIFI ever notify Sync that such requirement was mistakenly issued due to a DIFI system error.

Notwithstanding the inaccuracy of the DIFI "100k requirement", its effect was patently destructive. When Rosi and Chris informed the Williams of this unexpected "100k requirement", the situation with the Williams immediately became hostile, and the Williams began to demand their original $50,000 deposit back, and they refused to pay the contractually-required additional $50,000 when Rosi and Chris demanded that they abide by the contract. In June of 2020, the Williams cut off all communication with Sync, Joplin and Olson, and eventually lodged some form of complaint with the Securities Division, conveniently alleging all manner of wild and inconsistent statements on the part of Olson and Joplin in order to try and allege actionable violations under A.R.S. §44-1991(A)(2), despite the fact that such statements were never uttered.

Given the foregoing, the respondents did (and continue to) fulfill their contractual obligations under the Purchase Contract, and none of the respondents committed any violation of the Securities Act, and most certainly did not commit Securities Fraud or any other type of fraud. The Sync offering to the Williams was exempt pursuant to A.R.S. §44-1844(A)(1), as it did not involve a public offering.

IV. STATEMENT OF THE CASE AND FACTS

The following statement is a narrative of many of the pertinent facts in the case, with citations to the record of testimony and record of exhibits.[1] For the sake of thoroughness, and irrespective of whether any particular claim, fact, or exhibit is mentioned in this Answering Brief, Sync hereby incorporates by this reference the entire record of testimony, as well as the exhibits presented, and the legal arguments made at the hearing, as if re-alleged, re-argued, and fully set forth herein.

A. Joplin, Olson and the Real Estate Related Businesses.

Respondent Chris Olson is a real estate broker and owner of the brokerage TopRealty, LLC.[2] Respondent Rosi Joplin is also a real estate broker and the owner of Joplin Realty, LLC.[3] In addition to their separate real estate brokerages, Olson and Joplin also formed and operate Lime Mortgage, LLC, an ongoing successful mortgage loan business.[4]

Thus, as of 2018, Joplin and Olson felt they had a good foothold in the real estate industry as they could offer professional services for homebuyers from the very beginning of the process up through the financing part of the process. To complete what Olson refers to as his slam dunk formula and linear integration model of business, Olson and Joplin decided to form Sync Title Agency, LLC for provide professional title and closing services to homebuyers. With the addition of Sync to the business line-up, Olson and Joplin would be able to offer professional services to homebuyers from inception through closing.[5]

B. The Williams Meet Joplin and Olson.

In August of 2018, Joplin and Megan Williams were already "facebook friends" and Megan sent a message to Joplin asking her to represent her on a real estate transaction.[6] They

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[1] To maintain consistency with the Division's Opening Brief, references to the Hearing Transcript shall be indicated by "T." References to the admitted Exhibits shall be indicated by "S-" or "R-."
[2] T.102:24, S-13.
[3] T.103:7-9, S-15.
[4] T.139:6-8,
[5] T.138:13-139:3
[6] T.24:4-7, T:139-18-21.

viewed the home-in-question, and after that particular transaction, the four parties (Olson, Joplin, and the Williams) began a close and rather busy personal and business relationship with each other.[7]

C. The Two Couples Begin and Enjoy a Close Personal Relationship.

From the date they met in August 2018, the parties quickly become close personal friends, a fact noted by all of the parties during their testimony at the hearing.[8] The nature of their relationship transcended mere business contact, and they began to do all manner of personal things together, such as meals, visiting each other's friends and families, babysitting, having personal conversations, and so forth.[9]

D. The Two Couples Begin a Close Business Relationship.

In tandem with the growth of the personal relationship, the parties developed a trusting business relationship as well. The Williams would ask Rosi to aid in their many real estate investments, often viewing homes with her and having her serve as the licensed representative on a transaction.[10] In the period of August through November of 2018, The Williams would utilize Rosi to make about ten offers on real property,[11] and they discussed and researched many others together.[12] Olson would tagalong on some of the viewings of homes, and also provided the Williams with business information about real property for sale.[13]

E. Marcus and Megan Williams Tell Joplin and Olson That They Want to Get Involved in Other Investments, and Olson Tells Them about Sync.

Megan eventually learned that Olson and Joplin had started Lime Mortgage. She expressed regret that she was not able to invest in Lime at tits inception, and asked if Joplin

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[7] T.139:18-141:2.
[8] T.146:25-147:15; T.140:21-141:2; T.266:4-10; T.146:14-22
[9] Id.
[10] T.139:18-140:20.
[11] T.140:8-14
[12] See generally, R-1 through R-6.
[13] R-5, Bates Stamped 64-66; T.266:4-10.

and Olson would allow her to invest money in Lime.[14] From time to time the Williams would express interest in other forms of investment, and eventually Megan mentioned to Olson that the Williams looked into hard money lending investment, but could not proceed because they lacked accredited status.[15] In direct response to this, on December 10, 2018 Olson mentioned that he and Joplin had a title company startup business, and asked the Williams if they would be interested in hearing more about it.[16] This would be the first time that Sync was ever mentioned to the Williams, and at that time the parties had already been close friends for four months.

F. The Parties Discuss the Sync Opportunity, and Begin Freely Negotiating Its Terms and Exchanging Any and All Information Requested.

The Williams immediately expressed interest in Sync.[17] At the outset, none of the parties really had any preconceived notions about what the scope or size of the investment would be.[18] This is further proven by the fact that on January 3, 2019, Marcus asks Olson if he and Joplin have had a chance to "come up with a number yet."[19] All of these details (the dollar amount of the investment, the membership percentage, the critical terms of partnership) were all worked out in the course of several meetings between the four friends. At these meetings, Olson and Joplin described Sync, its proposed business, and disclosed information about the startup company.[20] There were no intermediaries, business brokers, or other institutions that got involved in any of these negotiations. Once the material terms were agreed in principle, Olson began to put together a draft Purchase Agreement.[21]

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[14] T.141:3-9.
[15] T.359:19-360:2.
[16] T:267:12-268:1.
[17] T:269:3-7.
[18] T.363:14-25.
[19] R-2, Bates Stamped 25-26.
[20] T:277:12-280:6.
[21] T.216:21-23.

G. Respondents Present the Williams with a Draft of the Purchase Agreement, and the Document is Reviewed by the Williams' Own Attorney.

Olson prepared a draft and transmitted it to the Williams no later than January 16, 2019.[22] The Williams met with their own independently selected counsel to review the agreement.[23] The documents underwent revisions, and the parties continued to negotiate. On numerous occasions, Olson asks the Williams by text if they have any additional questions. Eventually, a final draft is given to the Williams, and on the day of closing, the Williams request changes to the agreement.[24]

H. Respondents Actually Make All Changes Requested by the Williams.

Notwithstanding the Williams Request to make significant changes to the Purchase Agreement on the day of closing, Olson and Joplin nonetheless make the requested changes, and the financial terms are changed from a single $100,000.00 payment, to installment payments of one $50,000.00 payment, followed by two later $25,000.00 payments. Olson and Joplin incorporated these requested changes without objection[25].

I. The Parties Execute the Agreement and Make Very Express Representations to Each Other in the Purchase Agreement.

Despite having every opportunity to recommend and make whatever changes they saw fit, and despite having an independently selected attorney review the Purchase Agreement, the Williams request no further changes to the Agreement, and the agreement was executed on January 31, 2019.[26] In the three substantive pages of the agreement, the Williams very unambiguously certified that they understood that they had the opportunity to access any and all of the information they needed to analyze the investment, and they further acknowledged the investment could fail, there was no guaranteed performance, the security was being

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[22] R-4, Bates Stamped 60.
[23] T.280:11-22; R-4, Bates Stamped 60-62.
[24] T.324:18-T.325:25.
[25] T.325:8-326:21; S-3, Bates Stamped 1376.
[26] T.326:24-25; S-3, Bates Stamped 1376-1381.

offered pursuant to an exemption from registration, and that they had the necessary sophistication to analyze the investment.[27] The Williams knew of these provisions as the risks were personally discussed with them[28], and never objected to these certifications despite having every opportunity to do so.[29]

J. Olson and Joplin Receive their First Tranche of Funds.

The parties executed the contract on January 31, 2019, and the first tranche of funds due to Olson and Joplin pursuant to the contract were wired on February 1, 2021.[30]

K. Olson and Joplin Begin to Seek All Necessary Licensure for Sync

With all required due diligence, Olson and Joplin began to set up Sync Title Agency, LLC to do business. Office space was leased for Sync, and in Sync's name.[31] They obtained a surety bond.[32] They set up website accounts and phone accounts. They purchased software.[33] They interviewed a title agent and selected one for hiring (Donna Hinkle)[34]. And, of course, in February they paid the $1,500.00 application fee and submitted an escrow agent application to the Dept. of Insurance and Financial Institutions (DIFI).[35]

L. Olson and Joplin Timely Communicate with the Williams, and Make Reasonable, Good Faith Estimates Regarding the Licensure and Openign Process.

During the process for opening (and long after the purchase contract had been executed, so "inducement" to enter the contract cannot logically occur), Marcus Williams would ask Olson for regular updates about the opening process. Olson would respond to

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[27] S-3, Bates Stamped 1377-78.
[28] T:279:16-280:20.
[29] T.284:10-290:10.
[30] R-3, Bates Stamped 53.
[31] T.319:3-4, R-12, R-20.
[32] T:353:4-5.
[33] T. 319:5-6.
[34] T.319:12-320:18.
[35] T.327:4-10, S-3, Bates Stamped 1399.

these queries promptly, and with great detail[36]. As time wore on, a sense of frustration on the part of all parties can be detected with the slower rate of progress, but things remain cordial through April of 2018 as Olson and Joplin work through various difficulties in the licensure process, such as utilizing a different kind of portal for their escrow agent application[37].

M. *The DIFI Sends Sync a Horribly Inaccurate Notice of Deficiencies that Essentially (and Wrongfully) Stops Sync's License Application in its Tracks.*

On April 18, 2019 the DIFI sends Sync a Notice of deficiencies with respect to their application. One of the five application deficiencies states that Sync must submit Sync's "Audited Financial Statements. Ensure the net worth is 100k or more."[38] This stunned Olson and Joplin. Nowhere in the application or literature did it say that Sync would have to submit Audited Financial Statements indicating a net worth of 100k, but here was an official notice from DIFI informing them that this was a requirement for licensure. They regretfully inform the Williams of this requirement,[39] and the parties are uniformly stupefied as to what to do next, and Marcus expresses shock that DIFI would require a statement with that kind of net worth for a startup. Eventually Joplin and Olson inform the Williams that they will seek guidance on obtaining such a statement from a CPA. In any event, the sudden imposition of the "100k net worth" audited statement requirements stopped all progress towards opening Sync, as this requirement would obviously need to be resolved before moving forward with licensure.[40]

N. *The DIFI Never Corrects this Material and Devastating Error.*

Interestingly, at the May 24-25 hearing, the parties learned for the first time that the "100k net worth" requirement was actually not an actual requirement at all, but rather a bug or flaw in the response system of the DIFI. Mr. Fromholz of DIFI testified at the hearing, and

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[36] T.353:4-10; T.370:23-371:4; T:41:5-9; See generally R-2, Bates Stamped 31-39.
[37] T.353:16-25, S-10, Bates Stamped 1549.
[38] T.303:5-304:15; S-11, Bates Stamped 1751.
[39] T.304:16-18, R-2, Bates Stamped 37-39.
[40] Id.

stated in unequivocal terms that this "requirement" was incorrect and there was no 100k net worth requirement.[41] Rather than inform Sync at ANY juncture that this was an error, the DIFI never contacted Sync about this requirement again, leaving Sync (and the Williams) to very reasonably believe they were going to need to craft 100k net worth audited statements, whether for Sync or for themselves.[42] No evidence of any kind was presented to show that DIFI corrected this egregious error in any way, or at any time, until the hearing itself when Mr. Fromholz notified the parties during testimony that the 100k requirement was an error.[43]

O. *In Response to the Egregious DIFI Error, the Williams become Hostile to Sync and Blame Olson and Joplin.*

The rippling effects of the erroneous DIFI "100k requirement" are quickly seen in the relationship between the parties[44]. After first discussing the requirement on May 2, 2021 the communications between the parties consistently and quickly degrades into tension and opposition. Rather than working with Olson and Joplin on what they all believed was a requirement to provide audited 100k statements to DIFI, the Williams began showering Olson and Joplin with disingenuous texts demanding to know "when will Sync be open" (while knowing it could not open until the audited statement/100k net worth was satisfied). Eventually, and within a single months time from learning about the 100k net worth statement requirement, the situation had degraded to the point where the Williams were demanding a refund (without, of course, mentioning any such "promise" of a refund, as no such promise was actually made). Finally, in the second week of June, the parties seem to have broken off contact with each other altogether.

P. *Rather than Fulfill Their Contractual Obligations, the Williams Unlawfully Breach Their Contract and Cut Off all Communication with Sync.*

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[41] T.83:16-21, S-11, Bates Stamped 1751.
[42] T.306:2-4.
[43] Id.
[44] See generally, R-2, Bates Stamped 42-43; R-1, Bates Stamped 12-18.

Pursuant to the Purchase Contract signed by the Williams on January 31, 2019, two additional payments of 25k each were due and owing to Joplin. These payments were never made, and the Williams, without excuse or stated justification, accordingly breached their contract with Olson and Joplin.[45]

Q. *In Light of the Williams' Breach, Olson and Joplin Still Attempted to Find a Path Forward While the Williams Never Cured Their Breach of Contract.*

Notwithstanding the Williams' markedly obvious breach of the agreement and their total abandonment of Sync altogether, Joplin and Olson still continued in good faith to try and find a way to open Sync for business, whether as a solo entity or in a joint venture.[46] They explored numerous avenues and consulted and met with professionals to discuss their options, including suing the Williams for enforce the contract, and opening a joint venture with an established title company. Unfortunately, none of the paths presented to them made any sense, or were otherwise impossible (such as the joint venture).[47]

It was not until Mr. Fromholz testified on May 24, 2021 in the hearing before this forum that Olson and Joplin learned that they were free to continue to moving forward with Sync's licensure, as there was no "100k net worth" requirement after all. Since that date, Joplin and Olson have continued working towards opening Sync. Once it is open, a civil court can and should sort out the contractual issues between Olson, Joplin, and the Williams, and that is where this action should ultimately be heard, rather than this forum, since the lion's share of the Division's complaint actually involve Sync's actions and operations AFTER the Purchase Contract has been signed (licensure difficulties, post-contract disclosures, etc.), rather than statement and representations made in connection with the sale of the security prior to and during execution of the contract.

V. LEGAL ANALYSIS

[45] T.297:22-299:10.
[46] T.294:24-297:21.
[47] Id.

A. *Legal Standard for Application of Exemption*

There can be no serious doubt about whether the 20% Sync interest was a "security" as defined in the Securities Act, and none of the respondents have argued otherwise. Indeed, the Purchase Contract itself identifies the interest as a unregistered security sold pursuant to an exemption under Federal and State law.

That said, to be sold without registration, the sale of the security must be made pursuant to a recognized exemption from the Securities Act. Here, from the very inception of the sale, it is patently clear that Olson and Joplin were relying on the non-public offering exemption in A.R.S. §44-1844(A)(1), which dictates that the sale of a security is exempt if it does not involve a public offering.

To establish the exemption, the respondents need to show compliance with all statutory requirements. See State v. Baumann, 125 Ariz. 404, 610 P.2d 38 (Ariz. 1980). No Arizona appellate court has separately interpreted A.R.S. § 44-1844(A)(1), which is identical to 15 U.S.C. § 77d(a)(2). Consistent with the purpose of Arizona statutes governing sales of private securities, this forum and other adjudicative bodies follow settled federal securities law in interpreting Arizona securities statutes. See 1996 Ariz. Sess. Laws, ch. 197, § 11(C) (2d Reg. Sess.). The legislature specifically directed adjudicators to do just that, saying "in construing the provisions of title 44, chapter 12, Arizona Revised Statutes, the courts may use as a guide the interpretations given by the securities and exchange commission and the federal or other courts in construing substantially similar provisions in the federal securities laws of the United States." Id. See also Sell v. Gama, 231 Ariz. 323, 327, ¶ 18 (2013). Here, the cases construing the identical federal securities law are instructive. The leading recent Ninth Circuit case on the non-public offering held as follows:

> "[T]he applicability of [the exemption] should turn on whether the particular class of persons affected need the protection of the [Securities] Act. An offering to those who are shown to be able to fend for themselves is a transaction 'not involving any public offering. Stated another way, **a limited distribution to highly sophisticated investors, rather than a general distribution to the public, is not a**

> **public offering**." Sec. & Exch. Comm'n v. Platforms Wireless Int'l Corp., 617 F.3d 1072 (9th Cir. 2010) (internal citations and quotation marks omitted) (emphasis added).

"A court assessing the availability of a private offering exemption focuses upon the issuer and the offerees, paying particular attention to the relationship between the two. Cook v. Avien, Inc., 573 F.2d 685, 691 (1st Cir. 1978), cited approvingly by S.E.C. v. Murphy, 626 F.2d 633 (9th Cir. 1980). The Murphy case is a seminal case inasmuch as the Ninth Circuit crafted a formal four-prong test for the private offering, and described each of the four prongs in significant detail. A later Ninth Circuit case applying the Murphy test summarized the test as follows:

> "This [Murphy] test considers: (1) the number of offerees, (2) the sophistication of the offerees, (3) the size and the manner of the offering, and (4) the relationship of the offerees to the issuer. See Murphy, 626 F.2d at 644-45. The party claiming the exemption must show that it is met not only with respect to each purchaser, but also with respect to each offeree." Western Federal Corp. v. Erickson, 739 F.2d 1439 (9th Cir. 1984)

Prong One - Number of Offerees: The Ralston decision made it clear that there was no rigid limit to the number of offerees to whom an issuer could make a private offering. SEC v. Ralston Purina Co., 346 U.S. 119, 125 (1953). Nonetheless, while the number of offerees itself is not decisive, the more offerees, the more likelihood that the offering is public. Murphy, 626 F.2d 633 (9th Cir. 1980). In the famous Ralston case, the number of offerees was determined to be 400, which the Court found suggestive of a public offering.

Prong Two – Sophistication of Offerees: Without providing any rigid test, Murphy suggests that the evidence presented by respondents for this prong should rebut any evidence or inferences provided by the Division that indicate a lack of sophistication on the part of the offerees. Murphy, at 646.

As an initial matter, given that it is mentioned in the Division's Opening Brief[48], "accredited investor" is a rule-defined designation that a person or entity may receive if they a

[48] OB at 16.

certified to have (a) certain professional certifications or related degrees or finance licenses, (b) pleasantly sized mounds of cash or large net worth, or (c) a provable large salary. This is entirely distinct from the concept of a sophisticated investor in the context of a private offering. Accredited investor status is a straight-forward certification involving the voluntary inspection of a person's wealth or financial licensure, while the latter is a subjective case-specific inquiry into whether an investor can "fend for themselves" in the specific context of the offering in dispute. Murphy at 644. Thus, while an accredited investor might be considered to be sophisticated in many instances due to their proven resources, the lack of accreditation is wholly irrelevant to whether a particular investor is sophisticated.

Prong Three – Size and Manner of the Offering: "If an offering is small and is made directly to the offerees rather than through the facilities of public distribution such as investment bankers or the securities exchanges, a court is more likely to find that it is private." Murphy at 646 (internal quotation marks omitted), citing in part Hill York Corp. v. American International Franchises, Inc., 448 F.2d 680 (5th Cir. 1981). The Murphy case also heavily relies on Doran v. Petroleum Management Corp., 545 F.2d 893 (5th Cir. 1977), which holds that "an offering characterized by personal contact between the issuer and offerees free of public advertising or intermediaries such as investment bankers or securities exchanges" will aid a respondent with respect to this factor.

Prong Four – The Relationship between the Issuer and the Offerees. This prong is actually a two-part test. First, the finder of fact must determine whether the relationship between the issuer and offeree afforded them access to the type of information that registration discloses. *If such a relationship exists, this prong is satisfied and the analysis on this prong ends.* Murphy at 647. If no such relationship exists, then (and only then) it becomes incumbent upon the issuer to demonstrate that the issuer actually did affirmatively

disclose or affirmatively make available all of the information that registration would reveal. Id.

B. *Application of the Non-Public Offering Exemption to this Case.*

Application of all four Murphy factors leads to a result clearly and indisputably in favor of the respondents. The total number of offerees was one married couple. There were unproven allegations that the interest in Sync may have been "offered" to another couple as well, but highly detailed testimony revealed that this other couple was not offered a chance to invest in Sync; rather, they were friends and colleagues of Olson and they approached the principals of Sync seeking to become working partners (not investors) with Olson and Joplin in Sync, as the husband, Mac, was a title professional that previously owned his own title agency.[49] The Williams were the only offerees[50]. This clearly and very heavily dictates in favor of application of the exemption.

Regarding the second factor and the relative sophistication of the Williams, the facts show that this factor need not detain us long. Contrary to the rather insulting attempt on the part of the Division to minimize the intelligence, skill and sophistication of successful real estate investors,[51] both common sense and the parties' own testimony reveal that the Williams were savvy, sophisticated and technologically nimble investors. In the 90 days following the date the parties began their relationship in August 2018, the Williams carefully crafted at least seven and as many as ten very specific types of offers for residential properties across the state of Arizona utilizing Joplin as their representative for the offers.[52] The Williams would research the properties themselves, and then utilize their own proprietary formula to come up with the optimal offer for that specific property[53]. The formula would result in highly specific monetary amounts, such as $101,250. The Williams would not simply state an amount and

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[49] T.269:21-272:2.
[50] T.271:24-272:6.
[51] OB at 16-17.
[52] T.140:8-20.
[53] T.145:25-146:13.

ask Joplin to write up the offer based solely on the amount. Rather, the Williams would perform their own research and analysis on comparable properties,[54] and then dictate all of the material terms of the proposed offer in a rapid fire, knowing, and sophisticated fashion, and leave it to Joplin to do the busy work of inputting these terms into the pro forma offer sheet. As an example, this can be seen in Megan's dictate to Rosi to make an offer on a property in Tucson. "$101,250 cash, $10,000 Earnest Money, COE 10/26/18, Title Co – Your choice. No Home Warranty. Response Time 10/11@11am."[55] These are clearly not the communications of a neophyte. They are the commands of an investor that comfortably speaks in the codes and parlance of the industry and clearly knows what they are doing, and what they want to do. Indeed, the Williams' texts reflect this same style and sophistication throughout their relationship with the respondents.[56] The record also shows that Marcus was fully involved in these real estate investments, and he would "run things" when Megan was sick or working on other matters.

The Division claims that he fact the Williams abandoned 10k in earnest money on a particular transaction somehow stands as evidence that they are unsophisticated[57]. This is terribly unpersuasive and illogically conflates "sophistication" with "universally favorable results and outcomes." Indeed, when the text messages regarding the loss of 10k are examined, it is actually quite evident that the Williams handled the loss with impressive sophistication. First, the loss of the 10k had nothing whatsoever to do with the Williams' sophistication or lack thereof, as the loss was solely due to Marcus Williams losing his job coupled with the purchase of a new car (which compounded the financing problem once he lost his job), which in turn disqualified them from financing.[58] Joplin informed Williams that she had potential methods to recover the earnest money, such as a hard money loan, or

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[54] R-5, Bates Stamped 65-66; R-6, Bates Stamped 125.
[55] R-6, Bates Stamped 101.
[56] See generally, R-5, R-6.
[57] OB at 16-17.
[58] R-1, Bates Stamped 5-8.

perhaps assigning the contract to another buyer.[59] Megan promptly responded indicating that she knew of these potential routes to recovery, but that it was "no big deal" and "what's done is done" and "move on to the next thing." Megan also mentioned that both she and Marcus did indeed try to speak to the opposition about recovering their money, but that the opposition was intransigent and "awful" and were refusing to talk to them.[60] Thus, the calm, deliberate reaction of the Williams to losing their 10k due to unforeseen loss of a job was hardly indicative a lack of sophistication. They actually showed substantial sophistication by attempting to recover their funds, but thoughtfully determining it was not worth their time and effort to press the matter any further (and potentially still not recover the funds), especially given the intransigence of the opposition. They clearly felt could absorb the loss, anyway, as it was "no big deal" and it made more sense for them to "move on to the next thing."[61]

Regarding the third factor, the size and manner of the offering, it is *impossible* to conceive of a fact pattern that is more favorable to respondents than the undisputed facts in this case. The offer was made directly, in a text message between friends and discussed in face to face meeting between friends, without the aid of any advertising, marketing, intermediaries, websites or institutions[62]. Moreover, the offer was only made in the context of the Williams informing Olson that they were unable to participate in hard money lending investment, and then Olson quite naturally offered the Sync opportunity to them given that the Williams made it patently clear they were looking for passive investment opportunities. Thus, the offer was exclusively characterized by personal contact, from its inception through its negotiation, as well as its execution.[63] This factor is squarely in favor of respondents.

Prong Four – The Relationship between the Offerees and Issuer. The analysis of this prong can often be rife with pitfalls, because case law makes it clear that the relationship of

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[59] Id.
[60] Id.
[61] Id.
[62] T.263:11-264:19, R-5, Bates Stamped 66; T:277:12-280:6
[63] T:277:12-280:6

each offeror to each investor is germane to this analysis. Fortunately, given the glaringly obvious (and very consistent and busy) personal relationship that existed between all of the parties prior to even the most embryonic mention of Sync, as set forth in substantial detail in Sections IV(B)-(D) herein, the relationship here between all offerees and all issuers can only be classified as a trusting and close friendship with significant real estate business ties.

The parties met many times prior to the mention of Sync, sometimes to view houses, sometimes to talk about business, sometimes for social dinners, or meeting for a pool BBQ party, sometimes to meet each other's friends and families, and Mr. Williams even invited Mr. Olson to drive with him in a rented Lamborghini.[64] The hundreds upon hundreds of texts between all of the parties, all duly admitted as exhibits, indisputably stands as a rock-solid record of months close contact, friendship, and business ties completely separate from any mention of Sync.

Perhaps more importantly, the hundreds upon hundreds of texts between the parties prior to and during the negotiation of Sync Purchase Contract clearly indicates that the relationship was close and quite open in terms of informational flow, and that Olson and Joplin had no problem sharing or obtaining any information requested by the Williams.[65] Indeed, at the Williams request (and after the Williams had their attorney review the purchase contract), Olson and Joplin had no issue with implementing any and all changes to the Purchase Contract desired by the Williams.[66] In sum, this fourth and final Murphy factor tilts deeply in favor of the respondents. The relationship was personal, close, trusting, and obviously very open to information exchange. The relation was indisputably one in which

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[64] T.140:21-141:2; T:265:21-267:11; R-3, Bates Stamped 50.
[65] See generally, R-1 through R-5 for the nature, frequency, volume, and free-flow of information in the texts between the parties.
[66] T.324:17-325:18.

the Williams had access to whatever information they desired – and they often asked many question, and received timely answers to these questions.

In summary with respect to this section, the four Murphy factors are all applicable here, and all in favor of the respondents. Therefore, given the foregoing, the forum must find as a matter of law that the Sync Offering was a private offering within the meaning of A.R.S. §44-1841(A)(1), and as such, it is exempt from the relevant provisions of the Securities Act.

C. Legal Standard for the Securities Frauds Alleged by the Division.

The Division has alleged respondents have violated A.R.S. §44-1191(A)(2), which states that one may not, in connection with the sale of securities (including exempt securities), "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.

Distilled to essence, this statute has been held to mean that "a plaintiff must show that the statement or omission would have assumed actual significance in the deliberations of the reasonable buyer." Aaron v. Fromkin, 196 Ariz. 224, 994 P.2d 1039 (Ariz. App. 2000), citing Rose v. Dobras, 128 Ariz. 209, 214, 624 P.2d 887, 892 (1981).

In its Opening Brief, and at the hearing, the Division proposed four sets of alleged misleading statements or omissions by the respondents that violate the statute; namely, (1) respondents stated Sync would be open with a month of investment, (2) respondents guaranteed a refund if Sync did not open for business, (3) Sync induced the Williams to invest by guaranteeing that the venture could not fail ("it was a slam dunk"), and (4) respondents would use the money to obtain office space (which it did), software (which it did), and for a title officer (which was secured, but there was no need to pay her yet since Sync had not opened).

D. Applying the Legal Standard, it is Clear that No Securities Fraud Violations Occurred in this Case.

It is time for the elephant in the room, so conveniently ignored by the Division, to make its presence and import fully known - the Purchase Contract between the parties. Apparently, in the Division's view, any favorable provisions of the Purchase Contract can be invoked and enforced against Sync, but the endless plethora of critical protective provisions and representations that were duly negotiated within the contract can be completely disregarded if they reflect poorly on the Division's case. This, of course, is not how the law operates.

Respondents do not affirmatively allege that the otherwise widespread "parol evidence rule" is applicable to Securities litigation. Longstanding federal case law suggests that the parol evidence rule cannot be imported into Securities law as a rigid evidentiary bar that blocks all verbal evidence to contradict written evidence. Grainger v. State Sec. Life Ins. Co., 547 F.2d 303, 306-07 & n. 11 (5th Cir.1977); Doelle v. Ireco Chems., 391 F.2d 6, 9 (10th Cir.1968). However, there is no authority whatsoever that dictates, states, or even infers that the representations and statements made by the offerees (in this case, the Williams) in a Purchase Contract are to be casually disregarded, nor is there any authority that suggests that these representations do not carry great evidentiary weight, especially when the terms are clearly negotiated in a genuine exchange of negotiating positions amongst equal parties, as was clearly the case in the Sync negotiation.

Now consider the instant case. It is difficult to conceive of a case where the parties' Contract could have been more collaborative than this Sync Purchase Contract. The following facts are beyond dispute:

(1) The parties met several times to hammer out the terms of what would become the Purchase Contract prior to any draft of the contract even being created:[67]

(2) The Williams received multiple drafts of the contract, and were invited to review the same, and afforded the genuine opportunity to recommend and make changes to the Purchase Contract;[68]

(3) There is no "superior" party in this instance. The parties to the contracts were obviously friends.[69]

(4) The Williams had an opportunity to have independent counsel privately analyze and review the contract.[70]

(5) The Williams actually availed themselves of the opportunity to have an independent attorney review and discuss the proposed purchase contract with them.[71]

(6) The Williams actually recommended very substantial changes to the Purchase Contract, and these changes were actually made, without objection, by the respondents.[72]

(7) Neither the Williams nor their freely selected independent attorney inferred, insisted, or requested that ANY of the four "promises" allegedly made by the respondents should be put into the Purchase Contract. [73]

No evidence was presented to rebut these seven facts, and plenty of evidence was presented to essentially prove that the seven facts were true. It is accordingly indisputable that the parties Sync Purchase Contract was a duly and sincerely negotiated agreement,

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[67] T.363:14-25; T.156:19-157:12; T.378:4-379:15.
[68] T.281:4-10.
[69] T.364:9-13.
[70] T.280:11-22; R-4, Bates Stamped 60-62.
[71] Id.
[72] T.325:12-326:23.
[73] T.286:1-290.1.

drafted "from scratch", wherein each party could recommend or insist on changes, and changes were made as requested. It is similarly indisputable that the parties had all the time they wanted (literally weeks) to carefully review the draft agreements and make changes prior to execution, and to seek independent counsel for the agreement.

Now consider what the duly and fully negotiated Purchase Contract actually does state:[74]

(a) "Buyers [the Williams] understands that the Interest has not been registered under the Securities Act of 1933 (the "1933 Act") or the laws of any state, and the transactions contemplated hereby are being undertaken in reliance upon an exemption…"

(b) "Buyers have received and carefully reviewed all information necessary to enable Buyers to evaluate the investment in the Company. Buyers have been given the opportunity to ask questions of and to receive answers from the Company concerning its business and the Interest, and to obtain such additional written information necessary to verify the accuracy thereof."

(c) "Buyers understand that the Company is a new "startup" Title Company. Buyers are aware the purchase of the Interest is speculative and involves a degree of risk. Buyers are aware that there is no guarantee that Buyers will realize any gain from the acquisition of the Interest. Buyers further understand that Buyers could lose the entire amount of the investment."

(d) "Buyers have such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of the acquisition of the Interest."

This is not some 100-plus page contract of adhesion with sinister disclaimers buried in small print. This is a simple, direct, unambiguous directly negotiated

[74] R-15.

Purchase Contract with just *three* (3) substantive, easy to read pages. The Williams and the Division cannot disclaim these statements. Indeed, considering how sincere and close the negotiations were undertaken and conducted strictly through personal contact, and how the Williams did insist on other changes to the contract (but did not ask for any changes to these provisions), the above statements must be taken as the true and correct statements of the Williams as of January 31, 2019.

Similarly, we must also take note of what the Purchase Contract does NOT contain. It does not contain any provisions for a refund (it contains a provision stating everything can be lost). It does not contain any guaranteed business performance (again, it warns that nothing is guaranteed). It does not contain any target, let alone guaranteed, starting date for title operations. It does not contain any hint or inferences that the money will be used strictly (or even partially) for Sync operations, as the contract makes it clear that Olson and Joplin will be getting paid for selling a 20% share of Sync to the Williams.[75]

In other words, the Contract does not contain ANY of the four alleged promises that were supposedly made by the respondents, yet it contains numerous clear and unambiguous statements by the Williams that completely contradict their later representations. The Division is fond of alleging that Olson and Joplin are not credible, but after this current analysis, a reasonable finder of fact must conclude that it is the Williams that – perhaps in frustration or anger – are the ones of dubious veracity. The alleged promises simply do not make sense in light of the duly-negotiated, closely read Purchase Contract that was signed supposedly immediately after these promises were allegedly made. The far, far more plausible explanation for these "promises" is that they were not uttered at all, but are conveneintly crafted and self-serving (and curiously timed) allegations specifically designed

[75] R-15.

to try to evade the express representations that were so emphatically made in the Purchase contract.

If these four promises, which the Division and the Williams represent are so material to this case, were actually made, it begs the most obvious of questions. Why were they not included in the contract, despite the Williams having multiple opportunities to make the changes? Why were provisions that effectively stated the exact opposite of the alleged promises (performance, refunds) allowed to remain in the contract, considering that the Williams had no problem with requesting other changes they felt were important to them?

Considering the extreme importance of the alleged promises, it boggles the mind (and was never explained) why the Williams did not insist on incorporation of these shockingly beneficial promises, or, at the very least, for the deletion of the numerous provisions that are completely opposite of the alleged promises. The answer is clear, at least under the preponderance the evidence standard. Elementary logic requires the conclusion that **the reason the Purchase Contract contains the provisions it currently contains, and not the promises alleged by the Williams, is because the four alleged promises were never actually made.** And with respect to the friendly "welcome aboard" text issued by Olson that said they had a "slum dunk" going on, as argued elsewhere herein it is patently clear that the Williams never understood this to be some sort of guarantee of performance, otherwise, they clearly would have objected to the warning language in the draft Purchase Contract that they held in their hands at the same time the "slam dunk" welcome text was issued (and they signed the contract with those provisions just a few days later). Therefore, the Purchase Contract must be viewed as the true and accurate statements of the Williams as of January 31, 2021.

Even if we look towards the extrinsic body of evidence, the record strongly preponderates the notion that these promises were never made. If a refund was "guaranteed",

it logically follows that Marcus or Megan would have demanded that the respondents honor such a guarantee – no such demand was made. Even a cursory gleaning of the huge body of text message shoes that the Williams simply demanded a refund on general grounds that they felt things were not moving forward at the speed of their liking. They never hinted or inferred that they were entitled to a refund *because a refund was promised to them*. Clearly, if such a promise was made, the Williams would have invoked it at that time.

And finally, one of the alleged promises is actually a red herring. Despite the Purchase Contract's express language stating that the money would be going to Olson and Joplin, and that the purchase was for Olson and Joplin's benefit (and not Sync's), the Division alleges that the respondents promised that the Williams funds would be used to lease office space for Sync, buy software, and hire a title agent. While Olson and Joplin were both very adamant that no promise was made as to the specific use of funds, and that any funds generated from the Purchase contract would become their personal funds in consideration of selling 20% of Sync, the issue is a red herring because Office Space WAS secured. Software WAS purchased. And the services title agent Donna Hinkle WERE secured, and she would have been paid her salary if Sync would have been able to open their doors before the Williams breached their contract with Olson and Joplin.[76] In addition to these expenditures, it is beyond dispute that the respondents also purchased other Sync related items, including the required bond.[77] No allegations were made by the Williams that *all* of their funds supposedly had to be held in reserve or be exclusively used for Sync, rather, they alleged that the funds would be used to obtain certain items and services, and sure enough, those line items were purchased. Thus, there really is not any controversy with respect to this promise, even if the promise was made.

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[76] T.319:3-4, R-12, R-20; T:353:4-5; T. 319:5-6; T.319:12-320:18
[77] S-3, Bates Stamped 1314.

The "Slam Dunk" allegation is much ado about nothing. In one verifiable instance, Olson stated that he was excited to have the Williams onboard and that they felt they had a "slam dunk" going. Olson explained at the hearing that he did indeed use that term in the context of his slam dunk formula, which is a "linear integration" model of business that seeks to offer services to a customer from the beginning to the end of a real estate transaction.[78] Just like a basketball player takes a ball from one end of the court to the other and finishes the play with emphasis, Sync would serve as the emphatic finale of a customer's home purchase by providing closing services, while their other companies (real estate and mortgage loans) providing the other essential homebuying services. Megan Williams professed familiarity with this, as she too discussed how Olson went into detail about this exact linear integration model.[79] It was, and actually still is, a slam dunk, if Sync can open for business[80]. In any event, if the Williams had honestly construed this friendly "welcome aboard" text as some sort of representation or guarantee of performance, they (or their independently selected attorney) clearly would have demanded to strike the language in the Purchase Contract signed 20 days later which stated that the Williams understood that the entire investment could fail, and that there were no guarantees.

An important fact in this case has escaped scrutiny, or in the case of the Division, it has been conveniently ignored. On the first day of the hearing, DIFI Division Manager Fromholz testified that Sync was actually *erroneously* told that it would have to provide "Audited Financial Statements" that showed "100k of net worth" when in fact there is no such net worth requirement. **This was a stunning revelation**. It is patently clear from the record and testimony that "things came to a head" between the parties when they unexpectedly learned the shocking news that a startup company would have to show 100k in net worth, or perhaps

[78] T:342:25-344:4.
[79] Id., T.39:6-13.
[80] T.343:1-20.

show 100k net worth among its members, as Joplin seemed to believe.[81] Prior to learning about this (false) requirement from DIFI, Joplin and Olson believed they were on the very cusp of obtaining escrow agent licensure, a very key step towards opening, especially considering that so many of the other pieces were in place and ready (Office space, title agent, software, etc.). When the DIFI issued this requirement on April 18, 2021, a dark cloud descended on the relationship between the parties, and just a few weeks later that were at each others' throats, because it appeared as if there was no way forward.

This "doomed" appearance was not the Williams fault. However, it was not Joplin's and Olson's fault, either. The sudden cessation of progress is solely attributable to the DIFI issuing a false requirement (which they never corrected), and the requirement is such a steep obstacle that it clearly led the Williams to believe that there would never be a Title Company in the foreseeable future, which in turn led them to breach their contract (albeit wrongfully) and abandon any further dealings with Sync.

This DIFI error is accordingly of critical, and even dispositive importance. The entire gist of the Division's case is based individual events and allegations connected Sync's failure to open. However, as argued above, Sync's failure to open was not due to any misleading statements, negligence, fraud or other malsfeasance on the part of Joplin and Olson. It is due to the DIFI issuing a false requirement that seemed insurmountable to all parties involved, from April 18, 2019 until the day the requirement was disavowed by Mr. Fromholz at the hearing.

Therefore, in conclusion, the Division's case with respect to violations of A.R.S. §44-1991(A)(2) is terribly unpersuasive, offering nothing more than self-serving statements from investors that had the negotiating power, opportunity, means, legal support and motives to require that such promises be included in their Sync Purchase Contract. Rather than requiring

[81] R-1, Bates Stamped 10.

such provisions, they signed the Purchase Contract, which actually stated that they realized that the investment could fail. And finally, respondents once again point to the massive record to note how it is entirely bereft of any actual evidence of the alleged promises other than the self-serving statements of the Williams. Considering how these parties essentially texted about everything with each other – whether happy or angry – it must strike the finder of fact very curious that none of these promises show up in the body of texts, whether before or after the execution of the Sync contract, other than the single, informal "slam dunk" reference described above, which the Williams obviously did not take as any form of a guarantee given the simple, three page contract they signed a couple of days later in which the Williams expressly acknowledged the potential for total failure.

Therefore, the respondents did not 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. The charge of violating A.R.S. §44-1991(A) must fail.

VI. CREDIBILITY.

Prior to concluding, respondents insist on rebutting a portion of the opening brief that rather clumsily attacks the credibility of the respondents by accusing them of five distinct "lies." Respondents argue that three of the instances are mere and minor clerical oversights that were or would be easily corrected upon notice, and two are not lies or misrepresentations at all, but rather the Division's clumsy and embarrassing misreading of the statement in question. Even if viewed in the most charitable way favoring the Division, these five alleged statements pale in comparison and importance to the rather obvious untrue statements made by the Williams regarding the alleged "promises" discussed above that have no evidentiary support (but plenty of evidence suggesting the promises were not made).

How Sync Was Named. In this instance, the Division alleges that Joplin lied by supposedly Sync was named during a meeting with the Williams.[82] However, as the Court will undoubtedly notice upon reading the specific passage in testimony, Joplin isn't saying that at all.[83] During the meeting, Joplin recalls that Marcus and Chris were discussing matters, and Chris was describing the vision for the company, which involved "synchronizing" all parts of a real estate transaction from start to closing. And then, clearly as an aside, Joplin describes that is how Sync got its name – the vision of the company to be "synchronized" with other parts of real estate transactions.[84] Indeed, Rosi's testimony doesn't even infer that the meeting itself with the Williams was the genesis of the sync name, it is clear she is adding that naming anecdote as an aside, or digression. She even prefaces it with "by the way," an extremely common phrase in English that signals that the speaker is about to deliver such an aside. However, because she used the word "synchronization" in the previous sentence, it made perfect sense for her to add – as an aside – that the word synchronization was the genesis of the company name. The Division's reading of this passage in the manner advanced by the Division is, frankly, strange. There is no "lie" here.

Assistance in Getting Sync Open.[85] Once again, the Division resorts to hyper-rigid and unrealistic reading of testimony of a witness that speaks English as a second language with rapid-fire tempo. If one reads the entire block of testimony in context (T.210:5-212.13) it is readily apparent that Joplin is describing the scenario for which Lime (and Sync) have already existed for many months, and then Megan learns about Lime Mortgage and expressed to Rosi that she wishes she could be involved in Lime, or something like Lime. Rosi then tells her that they are not interested in taking on investors, as they had planned to finance sync with

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[82] OB at 11.
[83] T.157:4-20.
[84] Id.

[85] OB at 11:16-20.

revenues from their businesses in the first two junctures of the linear integration model (sales and mortgages). However, because they had become friends with Megan and Marcus and had developed trust with them, and because Megan had expressly shown interest in Lime or something like Lime, they discussed the matter between themselves, and then decided to offer the Sync opportunity to the Williams. In context, this is a harmless passage when read as a whole.

Olson "Lies" to Marcus Williams.[86] Here, the division alleges that Olson tried to mislead Williams into "keep the investors thinking that Sync would open sometime soon." In the particular text in question, Olson lists a lengthy list of tasks that have been done towards getting Sync open. Of those tasks, one is slightly incorrect, the title application was not submitted (but it had been started). However, to characterize this as a "lie" is rather laughable, just as it is laughable to allege that this "lie" was a necessary or concocted plot to mislead the Williams. **This text was issued on February 6, 2019, just six days after the contract had been signed.**[87] There is no tension, no pressure, whether real or imagined, that would make Olson think he needed to mislead the Williams at this juncture. The Williams are not pressuring the respondents in any way whatsoever, nor are they indicating any sense of distress, dismay or disappointment. Olson is just slightly incorrectly reporting the status of one item on what is a list of otherwise some very real and substantial progress made in just six days time. This text is accordingly harmless.

Joplin as a CPA. Even the respondents admit that the "optics" of this were not good, but there was a very rational, careful detailed explanation given in testimony as to how this error occurred. Joplin testified that while she was working for Cambridge Properties, the administrators wrote a description of her professional qualifications and placed it on their website. She did not review the write-up, nor did she instruct the Cambridge personnel to

[86] OB at 12.
[87] T.335:1-25.

state she was a CPA. When she left Cambridge, the "bio" followed her and imported into her own website. She testified this is an automated tasks that occurs without her import, typically this would be a feature designed for the convenience of real estate agents so that their bios and descriptions can be placed on numerous websites automatically, but in this case, it served to import an inaccurate bio. The moment Joplin discovered the error, she contacted the Association of Realtors and they removed the inaccurate bio for her from the automated feed. Again, while the optics of the situation are not ideal, she persuasively testified that she never told anyone that she was a CPA, and immediately took steps to remove the offending bio once she became aware of it.

Respondents "Lie" to the DIFI about Sync Membership.[88] Here, the Division makes a colossal leap from a simple, understandable clerical oversight and tries to insinuate that a dark lie has been fostered upon the State. The respondents filed their application with DIFI, and it did indeed indicate that there were two owner/members, Joplin and Olson, while omitting the Williams, whom were each 9.95% owners in Sync at the time the application was submitted. However, in testimony the respondents indicated that this was a mere and easily correctable oversight, they had filled out the bulk of the title application prior to even meeting the Williams (when additional partners were not even contemplated), but had not submitted the application yet as there were other items necessary to complete for the license package.[89] By the time those other items were complete, the Williams were on board as members of Sync, but the respondents simply forgot to amend the application to include the Williams. There was no possible or conceivable motive for, and nothing to gain by, respondents telling the DIFI that only Olson and Joplin were members, especially when the Williams possessed a valid, signed Purchase Contract AND a valid, signed Operating Agreement showing that they

[88] OB at 12.
[89] T.328:16.1-332:24

were members.[90] Further proving that this was a mere oversight is the fact that when DIFI informed the respondents that there was a need for Audited Statements showing 100k in net worth, Joplin promptly informed the Williams that she believed they were going to need to submit Audited Financial Statements as well. If the respondents were genuinely trying to conceal or disavow the Williams ownership in Sync, why would they inform the Williams that they may need to do Audited Financial Statements as members of Sync? This makes no sense, and supports the proposition that the DIFI filing was a mere and easily correctable oversight.

VI. CONCLUSIONS.

In light of the foregoing facts, authorities, testimony and exhibits, the Commission must reject the Division's Proposed Order and any request for a similar order, and dismiss this case on the grounds that:

(1) The Division failed to prove that any of the Respondents violated A.R.S. §§44-1841 and 1842 given the existence of an exemption to registration, and

(2) The Division failed to prove that any actionable violation of A.R.S. §44-1991(A) occurred in this case, and,

(3) The Respondents proved by a preponderance of the evidence that the Sync offering to the Williams was a non-public offering entitled to exemption pursuant to A.R.S. §44-1841(A)(1).

DATED This 13th day of August, 2021.

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[90] Id.

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COPY EMAILED to the Division's counsel via their e-service address on this 24th Day of March, 2021.

And

COPY FILED via the ACC PORTAL on this 13th Day of August, 2021.

By: /s/ MP ESCOLAR