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SEP 04 2012

Utah Department of Commerce  
Division of Securities

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August 31, 2012

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Utah Division of Securities  
160 East 300 South, 2<sup>nd</sup> Floor  
Box 146760  
Salt Lake City, Utah 84114-6760  
(801) 530-6600

Re: *In the Matter of Raul Arturo Torres-Bencomo* , Docket No. SD-12-0045

To Whom it May Concern,

Robb Jones hereby enters his appearance on behalf of the Respondent, Raul Arturo Torres-Bencomo, and requests that any correspondence be directed to the contact information provided above. Additionally, the Respondent requests a copy of any documentation or evidence relevant to this matter in the possession the Division of Securities or the Attorney General's office, and asks that they be delivered to the address above. Thank you for your time and consideration.

Sincerely,

  
Robb Jones

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Attorney for Respondent

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Utah Department of Commerce  
Division of Securities

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BEFORE THE DIVISION OF SECURTIES  
DEPARTMENT OF COMMERCE  
STATE OF UTAH

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<p>IN THE MATTER OF:  RAUL ARTURO TORRES-BENCOMO,  Respondent.</p>	<p><b>ANSWER AND SUPPLEMENTAL RESPONSE TO ORDER TO SHOW CAUSE</b></p>
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Docket NO. SD-12-0045

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Respondent, by and through his attorney Robb Jones, hereby answers the factual statements and allegations in the Order to Show Cause as follows:

1. Respondent admits the statement of jurisdiction contained in paragraph 1.
2. Respondent admits the factual contained in paragraph 2.
3. Respondent denies the allegations contained in paragraph 3.
4. Respondent denies the allegations contained in paragraph 4.
5. Respondent admits the allegations contained in paragraph 5.
6. Respondent lacks personal knowledge regarding the allegations contained in paragraph 6.
7. Respondent denies the allegations contained in paragraph 7.
8. Respondent admits the allegations contained in paragraph 8.

9. Respondent denies the allegations contained in paragraph 9.
10. Respondent admits the allegations contained in paragraph 10.
11. As to the enumerated allegations contained in paragraph 11, Respondent states as follows:
  - a. Respondent admits the allegations contained in sub-paragraph a.
  - b. Respondent denies the allegations contained in sub-paragraph b.
  - c. Respondent admits the allegations contained in sub-paragraph c.
  - d. Respondent denies the allegations contained in sub-paragraph d.
  - e. Respondent denies the allegations contained in sub-paragraph e.
  - f. Respondent denies that allegations contained in sub-paragraph f.
  - g. Respondent admits the allegations contained in sub-paragraph g.
  - h. Respondent admits the allegations contained in sub-paragraph h.
  - i. Respondent denies the allegations contained in sub-paragraph i.
12. Respondent denies the allegations contained in paragraph 12.
13. Respondent denies the allegations contained in paragraph 13.
14. Respondent admits the allegations contained in paragraph 14.
15. Respondent admits the allegations contained in paragraph 15.
16. Respondent admits the allegations contained in paragraph 16.
17. Respondent admits the allegations contained in paragraph 17.
18. Respondent denies the allegations contained in paragraph 18.
19. Respondent does not have personal knowledge as to the allegations contained in paragraph 19.
20. Respondent denies the allegations contained in paragraph 20.

21. Respondent denies the allegations contained in paragraph 21.
22. Respondent denies the allegations contained in paragraph 22.
23. Respondent denies the allegations contained in paragraph 23.
24. Respondent denies the allegations contained in paragraph 24.

### **SUPPLEMENTAL FACTS**

25. In 2010, Respondent leased a piece of property so that he could start a restaurant. The lease gave him an option to purchase the property after 1 year.

26. Respondent had decided to get into the restaurant business because his construction business slowed down with the general decline of the economy.

27. Respondent spent 5 months preparing the property prior to opening the restaurant. Such preparations included hiring a chef and staff, decorating the restaurant, and supplying the restaurant.

28. Respondent opened the restaurant in November 2010, and he was very optimistic that the restaurant would be successful. He named the restaurant Ay Chihuahua.

29. Despite Respondent's considerable efforts and monetary commitment to Ay Chihuahua, after approximately 3 to 4 months in operation Respondent realized that Ay was not surviving. He had big problems making the payroll. He had given the chef the authority to hire employees himself, and the chef had hired too many employees.

30. Therefore, Respondent fired the chef, hired a different one and decided to try and run the restaurant himself with the help of some close relatives.

31. Approximately two more months passed and the restaurant was barely surviving. Respondent began to realize that he did not have the skill and expertise himself to run a successful restaurant. Accordingly, Respondent decided to try and sell the restaurant.

32. Therefore, in approximately February or March, 2011 Respondent began to look for possible buyers of Ay Chihuahua.

33. By March 2011, Respondent had invested approximately \$250,000 to \$300,000 of his own money into Ay Chihuahua. Additionally, Respondent had accrued business credit card debts on behalf of Ay Chihuahua that he was personally paying down.

34. In order to sell Ay Chihuahua, Respondent put out ads in KSL and used a licensed real estate agent to list the property. At that point, Respondent and the owner of the property had discussed the possibility that Respondent could organize a sale of not only the restaurant, but also of the property if he could find a suitable buyer.

35. Respondent was trying to sell the restaurant and property together for approximately \$1.2 million. However, after a few months, Respondent realized that there were not many people who could qualify as a suitable buyer.

36. At some point in early 2011, in approximately February or March, Respondent was referred to Juan Manuel Ruiz for assistance with finding a buyer of Ay Chihuahua. Juan Manuel Ruiz was and still is the President of the Latin American Chamber of Commerce in Utah. Fellow community members informed Respondent that Ruiz' job was to help Latino businesses grow. Respondent also knew that Ruiz was a prominent member in the local Latino American community.

37. Ruiz came to Ay Chihuahua and evaluated it as a business. He informed Respondent that he could possibly help find a buyer, and that he would also try to send him some business. Ruiz sent some buyers over, but none of them were suitable.

38. Later, Ruiz stated that he might be willing to buy the restaurant, but he informed Respondent that he would need a good manager to help him run it.

39. A month after this discussion, a gentleman named Julio Serna came in to inquire about purchasing Ay Chihuahua. However, he only had \$40,000 available and Respondent told Serna that would not be enough. Serna responded by stating that he may have a friend named Cesar Gonzalez who would be interested in purchasing the restaurant as well.

40. Approximately an hour or two after Respondent's meeting with Serna, Cesar Gonzalez came into Ay Chihuahua as well. However, Cesar Gonzalez only had an additional \$15,000 to invest on top of Serna's \$40,000. Respondent informed them that this amount was well short of what they needed to purchase the restaurant. Respondent also informed them immediately that he was already approximately \$16,000 behind in back rent for the lease.

41. Respondent asked Serna and Gonzalez about their experience in the restaurant industry because of Ruiz' earlier indication that he could purchase Ay Chihuahua if he had a manager. Serna informed Respondent that he had 9 years of experience working in and managing a restaurant called Costa Vida.

42. Accordingly, Respondent wanted to set up a meeting where Serna, Gonzalez and Ruiz.

43. At some time in March, 2011 Respondent, Ruiz, Serna and Gonzalez met to discuss the purchase of Ay Chihuahua.

44. At that meeting, Ruiz told Respondent that they could work out a deal. Ruiz informed Respondent that he had knowledge about accounting and business transactions. Accordingly, Ruiz became orchestrator of the transaction and Respondent placed his trust in Ruiz that he would complete a logical transaction.

43. During the meeting between Respondent, Ruiz, Serna and Gonzalez, Respondent specifically informed all the other parties that Ay Chihuahua owed \$16,000 in back rent. Thus,

Respondent stated that once the back rent was paid, he would take responsibility for any other outstanding debts associated with Ay Chihuahua. Therefore, after the back rent was paid, Ay Chihuahua would be free of any back debts. Finally, Respondent never guaranteed that he would return any party's investment.

44. Additionally, Respondent's intent was always to sell the restaurant so that he would have no connection to it at all. His understanding was that Ruiz was going to buy most of the restaurant with Serna and Gonzalez investing in it as well and handling managing duties. Thus, Respondent just wanted to be able to pay down the back rent, and then move on from his association with Ay Chihuahua.

45. After Ruiz informed Respondent that they could work out a deal, Ruiz informed Respondent that they could undertake the transaction as a stock transfer. Respondent had no understanding of how a stock transfer worked, and did not understand how to transform the ownership of his restaurant into shares of stock. However, Respondent believed that Ruiz had business intellect and skill and thus deferred to his judgment about how to handle the transaction.

47. Ruiz then asked Respondent how much money he had invested in Ay Chihuahua. Respondent stated that he had invested approximately \$270,000. Ruiz then used this figure as a basis for determining the value of Ay Chihuahua, and created shares of stock based on that figure.

47. Ruiz then drew up the "Deposit on Purchase of Shares Agreement" which provided that Serna and Gonzalez would invest \$13,500 each, and accordingly receive 5% of the ownership of Ay Chihuahua.

48. However, in spite of the fact that Ruiz provided no monetary investment into Ay Chihuahua whatsoever, the agreement provided that Ruiz would obtain 35% of the ownership of Ay Chihuahua.

49. Additionally, even though Ruiz knew that Respondent's desire was to end his ownership of Ay Chihuahua, the agreement provided that Respondent would keep a 55% ownership interest.

50. Ruiz even listed himself as a "seller" on the agreement even though he had no ownership interest in Ay Chihuahua when he drew up the agreement.

51. Respondent read the agreement and although he did not understand exactly what it meant, he was mildly suspicious. Respondent asked Ruiz about why Ruiz listed himself as "seller" and gave himself a 35% ownership interest and Ruiz responded by stating that he would provide money later. Respondent was still confused, but he trusted Ruiz, so he signed the agreement. Ruiz gave Respondent the general understanding that eventually Ruiz would become the primary owner and Respondent would be relieved of any ownership.

52. Ruiz also drew up two agreements called "Contract for Purchase of Corporate Stock" which described two separate stock transfers between Respondent and Serna and Respondent and Gonzalez. Respondent did not understand these agreements either, but again trusted that Ruiz had set up a logical and legal transaction.

53. Immediately after the parties signed the agreements, they went to the bank the same day to facilitate the transaction. Serna and Gonzalez provided a check for \$27,000 total. The parties opened up a new business checking account for Ay Chihuahua. Respondent, Ruiz, Serna and Gonzalez were the four parties listed on the account, but Serna was the only one

whose signature was on the account. Accordingly, Serna was the only one who could withdraw funds from the account.

54. Respondent just wanted to ensure that the back rent would get paid down by the business account, and the parties assured him they would. From that point, Respondent's understanding was that the other parties would handle the restaurant. Accordingly, Respondent understood that the other parties would ensure that the employees would get paid.

55. A week after the meeting and bank visit, an Ay Chihuahua cook called Respondent and informed him that he had not gotten paid. Respondent became concerned and contacted Ruiz, who told him that he would ensure that the cook got paid.

56. Approximately 4 days later, Respondent learned that the cook had still not gotten paid. Additionally, Respondent learned that Ay Chihuahua bills were not being paid, and that Ruiz had a big party in the restaurant where he provided complimentary food, drinks and services to a large number of people.

57. Approximately 10 days after that, Respondent contacted Ruiz and asked him about the unpaid bills and again asked him about his ownership interest that he had not provided an investment for.

58. Ruiz responded by stating that he did not need to invest money for his ownership interest because he had contributed his "talent" to the restaurant. Respondent disagreed and stated that the restaurant needed money to survive, not talent, and stated that Ruiz needed to ensure that the bills were paid and the employees were paid.

59. Respondent then learned that Ruiz had not been depositing daily restaurant profits to the Ay Chihuahua bank account as is he was supposed to.

60. Additionally, Respondent learned that Serna had not been depositing daily profits into the Ay Chihuahua bank account either. Respondent also learned that Serna had hosted parties at Ay Chihuahua where he provided complimentary food, beverages, and services to large numbers of people without approval from all the owners.

61. On or about April 16, 2011, Ruiz changed the name of the restaurant without getting approval from the other owners.

62. Approximately 2 weeks after Gonzalez had entered into the transaction to become an owner and manager of Ay Chihuahua, he stopped working at Ay Chihuahua because he did not like the atmosphere and felt it was not working.

63. Approximately one month after the ownership transaction, Respondent finally asked Ruiz to stop working at Ay Chihuahua because he did not need Ruiz' talent and Ruiz had not contributed any money to Ay Chihuahua. Additionally, Respondent felt Ruiz was stealing from Ay Chihuahua.

64. Serna continued working at Ay Chihuahua through May, 2011, but when Respondent learned that he had also had been taking profits from the restaurant, he asked him to leave as well. Respondent's suspicion was further supported by the fact that he learned that Serna had been fired from Costa Vida for allegedly committing theft as well.

65. Even after the ownership transaction, Respondent continued paying the newly accrued debts of Ay Chihuahua, including the employee salaries. Even after Respondent had to ask Ruiz and Serna to leave, he continued to try and make the restaurant work.

66. During this time, Gonzalez came into Ay Chihuahua a few times to discuss the future of the restaurant and his investment. Respondent informed him that the restaurant was not working, and that he would likely have to close. Gonzalez was disappointed and asked

Respondent if he could try and bring new investors. Respondent said yes, but no investors ever came in that were suitable.

67. Finally, on or about June 15, 2011, Respondent closed the restaurant because it was costing him too much money to try and keep it running.

68. Respondent never deposited any of the investment provided by Serna or Gonzalez into his personal accounts. That money went into a business account that paid down Ay Chihuahua's \$16,000 back rent. The remaining \$11,000 stayed in the account to pay down Ay Chihuahua expenses.

69. Respondent does not have the capability to draw up the agreements involved in this matter. This fact is evidenced by Respondent's minimal ability to read and write the English language.

### **DEFENSES**

70. Respondent incorporates and re-alleges paragraphs 1-69.

71. Respondent hereby asserts the following defenses on his behalf, and hereby reserves the right to assert any available defenses not included herein in the future:

#### DEFENSE #1

72. Respondent never knowingly defrauded any party in relation to his dealing with Ay Chihuahua.

73. Additionally, Respondent did not knowingly enter into any transaction which contained misstatements or misleading information.

74. Finally, Respondent did not understand the transaction which created an exchange of securities between him and Serna, Ruiz and Gonzalez. Thus, he did not knowingly commit any type of securities fraud.

75. Furthermore, Respondent reasonably relied upon the advice of Ruiz because of the fact that Ruiz had portrayed himself as an accountant and business expert. Thus, Respondent's participation in the stock transfer was not reckless or negligent.

#### DEFENSE #2

76. Respondent did not commit securities fraud because he provided full disclosure about his intent involving the transaction. Specifically, Respondent informed Serna and Gonzalez that they're investments would be used to pay down Ay Chihuahua's back rent debt. Additionally, Respondent informed them that he wanted to end his relationship with the business. Furthermore, Respondent never guaranteed that any of their investments would be returned. Finally, Respondent did not orchestrate the stock transfer.

77. Respondent did not provide fraudulent statements to any of the parties because everything he said was truthful based on his understanding. In reference to the statement in the Contract for Purchase of Corporate Stock which said that Ay Chihuahua had no debts or obligations, that statement was true based on Respondent's understanding. Specifically, Respondent believed that once he paid down the back rent, Ay Chihuahua's back debts would be covered. Thus, Ay Chihuahua's only debts and obligations would be those incurred in the future. Respondent did not think future debts and obligations were included. Thus, when he read the part in the Contract for Purchase of Corporate which stated that Ay had no debts or obligations, he understandably thought that was accurate. Additionally, Respondent's understanding is bolstered by the fact that he informed Serna and Gonzalez that he would cover any other existing debts himself. Thus, when Serna and Gonzalez invested Ay Chihuahua had no back debts, and only upcoming obligations. Respondent did not understand that Ay Chihuahua's employee salaries, and future rent are generally considered to be debts or obligations. Finally, Ruiz is the

one who drew up this agreement and ensured Respondent that it was accurate. Thus, Respondent did not make any false statements to any party in relation to an investment in Ay Chihuahua.

DEFENSE #3

78. Respondent did not benefit personally by the investment of Serna or Gonzalez. Specifically, when they provided the \$27,000, that money went directly into an account for Ay Chihuahua for which Serna was the only signer. At no time did Respondent deposit any of that money into his personal account, nor did he ever apply it for any personal use whatsoever. That money simply paid down back rent, and stayed in the account for Serna to access and use for Ay Chihuahua expenses.

DEFENSE #4

79. Serna and Gonzalez' claims are barred due to the doctrines of waiver, estoppels, and unclean hands.

DEFENSE #5

80. Plaintiff's claims, if any, are barred in that Plaintiff's claims, if any, are the result of acts of third parties over which Defendant maintained no control.

DEFENSE #6

81. Serna's, Gonzalez', and Ruiz' claims are barred due to their fraud and misrepresentation.

**COUNTERCLAIMS**

82. Respondent incorporates and re-alleges paragraphs 1-81.

83. Respondent asserts the following counterclaims as follows and reserves the right to assert counterclaims and cross-claims not included herein in the future:

**COUNTERCLAIM #1**

84. Juan Manuel Ruiz committed securities fraud against Respondent, Serna, and Gonzalez when he used his self perpetuated reputation as an accountant and businessman to knowingly create a stock transfer without following the proper procedures as outlined in the Utah Uniform Securities Act.

**COUNTERCLAIM #2**

85. Juan Manuel Ruiz defrauded Respondent, Serna and Gonzalez when he knowingly created the agreements which misrepresented his position in relation to Ay Chihuahua, his investment to Ay Chihuahua, and the debts and obligations of Ay Chihuahua.

**COUNTERCLAIM #3**

86. Juan Manuel Ruiz and Julio Serna committed theft against Respondent and Gonzalez when they failed to daily profits from Ay Chihuahua into the Ay Chihuahua bank account.

**RELIEF REQUESTED**

WHEREFORE, based on the Supplemental Facts, Defenses, and Counterclaims asserted above, Respondent respectfully requests that the Utah Division of Securities dismiss the Order to Show Cause against him. Additionally, Respondent asks that the Division provide whatever relief it deems just and necessary.

DATED this 31<sup>st</sup> day of August, 2012.

  
Robb Jones  
Attorney for Defendant

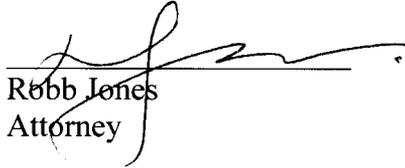
**CERTIFICATE OF SERVICE**

I certify that on the 31<sup>st</sup> day of August, 2012, I caused a true and correct copy of the ANSWER AND SUPPLEMENTAL RESPONSE, to be served by:

- a. First-Class Mail \_\_\_\_\_ ;
- b. Email \_\_\_\_\_ ; or
- c. Hand Delivery ✓ ;

To:

D. Scott Davis  
Assistant Attorney General  
Utah Division of Securities  
160 East 300 South, 5<sup>th</sup> Floor  
Salt Lake City, Utah 84114-0872  
(801) 366-0358

  
\_\_\_\_\_  
Robb Jones  
Attorney