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**STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING
whether there has been a violation of the
Securities Act of Washington by:

LAGUNA S.A.; JILL JENSEN AMES;
KATHERINE SWANBERG; JEFF FINCH,

Respondents.

Order Number S-09-133-09-SC01

STATEMENT OF CHARGES AND NOTICE
OF INTENT TO ENTER AN ORDER TO
CEASE AND DESIST, IMPOSE FINES, AND
RECOVER COSTS

8 THE STATE OF WASHINGTON TO:

Laguna S.A.
Jill Jensen Ames
Katherine Swanberg
Jeff Finch

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STATEMENT OF CHARGES

12 Please take notice that the Securities Administrator of the State of Washington has reason to believe that the
13 Respondents Laguna S.A.; Jill Jensen Ames; Katherine Swanberg; and Jeff Finch, have violated the
14 Securities Act of Washington and that their violations justify the entry of an order of the Securities
15 Administrator against each to cease and desist from such violations under RCW 21.20.390(1), to impose
16 fines pursuant to RCW 21.20.395, and to charge costs pursuant to RCW 21.20.390(5). The Securities
17 Administrator finds as follows:

18

TENTATIVE FINDINGS OF FACT

19

Respondents

20 1. Laguna S.A. is a real estate development company with its place of business at 209 Calle
21 La Libertad, Granada, Nicaragua. Laguna S.A. is believed to have been formed and organized in
22 Nicaragua.

23 STATEMENT OF CHARGES AND NOTICE OF INTENT TO
24 ENTER AN ORDER TO CEASE AND DESIST, IMPOSE FINES,
AND RECOVER COSTS

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DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
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1 2. Jill Jensen Ames (“Jensen Ames”) is a resident of Kenmore, Washington. Jensen Ames is a
2 real estate agent. In addition, she was the owner of the now-closed Champion Escrow LLC dba Reliance
3 Escrow. Champion Escrow was registered as an escrow company with the Washington Department of
4 Financial Institutions from approximately 2005 to 2008.

5 3. Katherine Swanberg (“Swanberg”) is a resident of Issaquah, Washington. Swanberg works
6 for a mortgage broker and is currently licensed as a loan originator with the Washington Department of
7 Financial Institutions.

8 4. Jeff Finch is an individual with a last known residence in Granada, Nicaragua. Finch was
9 principal with Laguna S.A. until October 2008.

10 Nature of the Offering

11 5. Between March and May 2007, Jill Jensen Ames (“Jensen Ames”) and Katherine Swanberg
12 (“Swanberg”) raised at least \$820,000 by offering and selling an investment opportunity involving land in
13 Nicaragua to 15 investors, most of whom were Washington residents.

14 6. Jensen Ames and Swanberg had agreed to sell a block of land to investors in the United States
15 for Jeff Finch and his development company Laguna S.A. The block of land was located in a resort
16 development called Los Congos in Laguna de Apoyo, Nicaragua. Jensen Ames and Swanberg told
17 investors that Laguna S.A. was offering the land at wholesale prices and that within 3 to 9 months, Laguna
18 S.A. would market and sell the land as individual lots at retail prices. The investors would profit from the
19 difference between the wholesale and retail price.

20 7. The investment opportunity was structured so that Laguna S.A. retained title to the land at all
21 times. This meant that investors at all times lacked the ability to sell the land or to otherwise realize a profit
22 on their own. Investors therefore depended on the efforts of Laguna S.A. to produce the expected profit.

1 8. The investors did not intend to hold the land long term, but rather to sell quickly for profit.
2 Some of the investors were not accredited or sophisticated, and several of the investors had no prior
3 relationship with Jensen Ames and Swanberg. Several investors took out lines of credit to finance their
4 investment. The investors were not experienced in purchasing investment property in Nicaragua, and were
5 not present in Nicaragua to assist with the development, management, or marketing of the property.

6 9. Jensen Ames and Swanberg recruited potential investors by sending announcements to an
7 email list of personal contacts and by contacting people by telephone. In addition, they held group meetings
8 at Microsoft and at Guidant Financial Group to discuss the Los Congos investing opportunity. Attendees
9 were allowed to bring guests with whom Jensen Ames and Swanberg had no prior relationship.

10 10. Jensen Ames and Swanberg informed potential investors that Laguna S.A. was offering the
11 block of land for a total wholesale price of \$1 million, and that the block of land had been divided into 20
12 lots. However, at the time Jensen Ames and Swanberg represented that they were selling individual lots, the
13 land had not been short platted and no individual lots existed. To date, the land still has not been short
14 platted as individual lots.

15 11. At the meetings, Jensen Ames and Swanberg provided potential investors with a spreadsheet
16 showing the wholesale price, retail price, and the projected return on investment for each purported lot.
17 Jensen Ames and Swanberg represented that investors could buy in at \$45,000 to \$50,000 per purported lot
18 and Laguna S.A. would resell at \$79,900 to \$95,900 per lot. Their presentation included PowerPoint slides
19 which touted "ROI's of 52% to 79% in less than 1 year!"

20 12. Jensen Ames and Swanberg represented that in order to participate, investors needed to
21 complete a Lot Reservation Agreement. The Lot Reservation Agreements stated that:

22 The purchase price of the reserved lot(s) is based on wholesale purchase of an entire phase
23 of premium lots. Those lots, once purchased by the buyer, are available for long term hold

1 or can be marketed and sold at retail prices through Los Congos' onsite sales staff, hereby
2 referred to as the Los Congos Resort Marketing Program (LCRMP). The wholesales
3 pricing offered in this agreement in [sic] based on a bulk purchase of 20 lots during a
4 simultaneous closing. Should all 20 lots not sell, Laguna S.A. will not be liable for selling
5 any of the individual lots listed on this agreement. As part of the purchase agreement for
6 and at various release times the lots will be offered to the public at retail pricing. The
7 investors will retain the earnings from the retail sales. See attached ROI pro-forma for
8 details on projected investment returns, which are very attractive.

13. The Lot Reservation Agreement further stated that 25% of the investors' funds would be
withheld in escrow to be released in installments as infrastructure was completed.

Title to the Property Remained with Laguna S.A.

14. Rather than having the investors take title to the land, Jensen Ames and Swanberg instructed
investors to enter into a Promise to Sell agreement, or "Promesa de Venta." Jensen Ames and Swanberg
understood a Promesa de Venta to be a method of holding property rights in Nicaragua short term without
officially taking title. Though title would remain in the name of Laguna S.A, Jensen Ames and Swanberg
assured investors that the Promesa de Venta would entitle them to the proceeds when the land sold.

15. Jensen Ames and Swanberg instructed investors to sign a document appointing Katherine
Swanberg as their Attorney in Fact. Swanberg would enter in to the Promesa de Venta.

16. Jeff Finch prepared or caused to be prepared the Promesa de Venta. The Promesa de Venta
stated that Laguna S.A promised to sell 16 lots to Katherine Swanberg for \$806,000, to be paid in one
installment of \$604,500, with five installments of \$40,300 to follow as infrastructure was completed. The
Promesa de Venta stated that Katherine Swanberg represented a group of investors; however, names of the
investors were not provided in Promesa de Venta.

1 Investor Funds Were Pooled

2 17. Jensen Ames and Swanberg conducted the land investment as a group transaction. The
3 investors deposited approximately \$820,000 of funds into a pooled escrow account at Champion Escrow
4 dba Reliance Escrow, an escrow company owned by Jensen Ames.

5 18. Despite not raising the full \$1 million for the bulk purchase of 20 lots, Jensen Ames and
6 Swanberg proceeded with the purchase transaction. On May 16, 2009, Swanberg sent a wire of \$551,364 to
7 Laguna S.A. in Nicaragua. On May 21, 2007, Swanberg authorized a second wire of \$198,636. The two
8 wires totaled \$750,000.

9 19. Swanberg reserved only 10% of investors' funds in the escrow account, which was
10 inconsistent with both the terms of the Lot Reservation Agreement and the Promesa de Venta.

11 Investors Received No Returns

12 20. Jensen Ames and Swanberg had represented that Laguna S.A. would begin selling the land for
13 profit in July 2007. However, after receiving the investors' funds, Laguna S.A. delayed the date it would
14 offer the land for sale.

15 21. To date, no part of the land has been sold or offered for sale. In addition, there have been no
16 deeds or other title documents recorded in Nicaragua regarding the investors' right to profits in the land.

17 22. Jensen Ames and Swanberg told investors that the delay in selling the land occurred because
18 of a change in the government of Nicaragua, hostility to Jeff Finch as an American-born developer, an
19 attack on the Los Congos website by European environmentalists, a moratorium on the sale of waterfront
20 property in Nicaragua, and revocation of previously granted building and environmental permits. Jensen
21 Ames and Swanberg failed to disclose these risks to investors prior to their investment.

1 23. In May 2008, due to the delay in selling the land for profit, Jensen Ames and Swanberg
2 returned the funds which remained in the escrow account. Investors received approximately 10% of the
3 investment back.

4 24. In October 2008, Jeff Finch announced he was leaving Laguna S.A. Finch has informed
5 Jensen Ames and Swanberg that the investors' money was spent on the property and cannot be returned.

6 Other Securities Offerings

7 25. In or around 2007, Jensen Ames and Swanberg raised \$941,000 for a condo conversion project
8 by offering promissory notes paying 20% interest. The condo conversion project, Mercer Villa Partners
9 LLC, failed to turn a profit and all investor money was lost. According to Jensen Ames, a business partner
10 absconded with \$400,000 of investors' money, and the bottom fell out of the real estate market.

11 Misrepresentations and Omissions

12 26. In conducting the offer and sale of the investment opportunity, Respondents failed to
13 provide material information, including but not limited to: financial statements for Laguna S.A.; the
14 business background and experience of Jeff Finch, Laguna S.A., Jill Jensen Ames, and Katherine
15 Swanberg; the status of the short platting; the general risks of investing; and the specific risks of
16 investing in real estate as foreigners in a third-world country.

17 Registration Status

18 27. Laguna S.A. is not currently registered to sell its securities in the State of Washington and
19 has not previously been registered.

20 28. Jill Jensen Ames is not currently registered as a securities salesperson or broker-dealer in
21 the State of Washington and has not previously been so registered.

1 29. Katherine Swanberg is not currently registered as a securities salesperson or broker-dealer
2 in the State of Washington and has not previously been so registered.

3 30. Jeff Finch is not currently registered as a securities salesperson or broker-dealer in the State
4 of Washington and has not previously been so registered.

5
6 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

7 **CONCLUSIONS OF LAW**

8 1. The offer and/or sale of Los Congos investment opportunity constitutes the offer or sale of
9 a security as defined in RCW 21.20.005(10) and (12). The investment opportunity meets the definition of
10 an investment contract.

11 2. The offer and/or sale of said securities violated RCW 21.20.140, the securities registration
12 provision of the Securities Act, because the Laguna S.A offerings were not registered in the State of
13 Washington.

14 3. The offer and/or sale of said securities was made in violation of RCW 21.20.040, the
15 provision of the Securities Act which requires registration of securities salespersons and broker-dealers,
16 because Respondents sold securities while not registered as a securities salesperson or broker-dealer in
17 the State of Washington.

18 4. The offer and/or sale of said securities was made in violation of RCW 21.20.010, the anti-
19 fraud provision of the Securities Act, because Respondents, in connection with the offer or sale of said
20 securities directly or indirectly made untrue statements of material fact or omitted to state material facts
21 necessary in order to make the statements made, in light of the circumstances under which they were
22 made, not misleading.

1 **NOTICE OF INTENT TO ORDER THE RESPONDENT TO CEASE AND DESIST**

2 Pursuant to RCW 21.20.390(1), and based on the above Tentative Findings of Fact and Conclusions of
3 Law, the Securities Administrator intends to order that Respondents Laguna S.A., Jill Jensen Ames,
4 Katherine Swanberg, and Jeff Finch, and their agents and employees, each shall cease and desist from
5 violations of RCW 21.20.140, RCW 21.20.040, and RCW 21.20.010.

6 **NOTICE OF INTENT TO IMPOSE FINES**

7 Pursuant to RCW 21.20.395 and based upon the above Tentative Findings of Fact and Conclusions of
8 Law, the Securities Administrator intends to order that:
9

- 10 a. Respondent Laguna S.A. shall be liable for and pay a fine of \$5,000;
11 b. Respondent Jill Jensen Ames shall be liable for and pay a fine of \$5,000;
12 c. Respondent Katherine Swanberg shall be liable for and pay a fine of \$5,000; and
13 d. Respondent Jeff Finch shall be liable for and pay a fine of \$5,000.

14 **NOTICE OF INTENT TO RECOVER COSTS**

15 Pursuant to RCW 21.20.390(5), and based upon the Tentative Findings of Fact and Conclusions of Law,
16 the Securities Administrator intends to order that the Respondents Laguna S.A., Jill Jensen Ames,
17 Katherine Swanberg, and Jeff Finch, shall be jointly and severally liable for and pay the Securities
18 Division the costs, fees, and other expenses incurred in the conduct of the administrative investigation
19 and hearing of this matter of not less than \$5,000.

20 **AUTHORITY AND PROCEDURE**

21 This Statement of Charges is entered pursuant to the provisions of RCW 21.20.390 and RCW 21.20.395
22 and is subject to the provisions of Chapter 34.05 RCW. The Respondents may each make a written

1 request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND
2 OPPORTUNITY FOR HEARING accompanying this Statement of Charges. If a Respondent does not
3 request a hearing, the Securities Administrator intends to adopt the foregoing Tentative Findings of Fact
4 and Conclusions of Law as final, enter a final cease and desist order as to that Respondent, and impose
5 the fines and costs sought.

6 DATED and ENTERED this 23rd day of December, 2009.

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10 MICHAEL E. STEVENSON
11 Securities Administrator

12 Approved by:

13 

14 _____
15 SUZANNE SARASON
16 Chief of Enforcement

17 Presented by:

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19 _____
20 JILL M. VALLEY
21 Enforcement Attorney