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GOODSON AND MANLEY, PLC
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Attorneys for Respondent Rene Couch

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AZ CORP COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

MARC SPITZER
Chairman
JIM IRVIN
Commissioner
WILLIAM A. MUNDELL
Commissioner
JEFF HATCH-MILLER
Commissioner
MIKE GLEASON
Commissioner

Arizona Corporation Commission
DOCKETED

OCT 29 2004

DOCKETED BY

In the Matter of:)
)
TIERRA GROUP,)
)
PRESERVATION TRUST)
CORPORATION,)
)
PARTNERSHIP PRESERVATION)
TRUST,)
)
CATERPILLAR FOUNDATION)
PROPERTIES,)
)
RENE L. COUCH,)
)
TERRY COUCH,)
)
Respondents.)
_____)

Docket No. S-03437A-03-0000

**RESPONSE TO MOTION
TO RECOGNIZE SECURITIES
DIVISION ALLEGATIONS
AS ADMITTED**

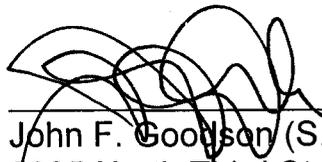
Undersigned counsel, on behalf of Respondent Rene L. Couch, hereby
responds to the Securities Division's Motion to Recognize Securities Division

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Allegations as Admitted, dated October 7, 2004.

This Response is supported by the case record in this matter, by the Affidavit of Rene L. Couch filed with this Response, and by the accompanying Memorandum of Points and Authorities.

Dated this 27th day of October, 2004. GOODSON AND MANLEY, PLC



John F. Goodson (S.B.A. #01279)
2025 North Third Street, Suite 200
Phoenix, Arizona 85004
Attorneys for Respondent Rene Couch

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 ***Procedural History Relevant to this Response***

4 On or about February 3, 2003, Rene L. Couch's attorney, John R.
5 Augustine, Jr. ("Augustine"), filed a Notice of Appearance and Request for
6 Hearing on Behalf of Respondent Rene Couch. Hearings in this matter were held
7 on March 12, 2003 and April 30, 2003. During this time, the parties were in
8 settlement negotiations.

9 Rene L. Couch ("Couch"), has not heard from Augustine since the Summer
10 of 2003. Then, to Couch's surprise, he received a Motion to Recognize Securities
11 Division Allegations As Admitted, dated October 7, 2004. As far as Couch knew,
12 Augustine had handled this matter to its conclusion and Couch had no further
13 procedural responsibilities.

14 ***Discussion***

15 ***Right to Counsel.***

16 Subsection (B) of A.R.S. § 41-1092.07 provides that "The parties to a
17 contested case or appealable agency action have the right to be represented by
18 counsel ...". In the case *sub judice*, Couch believed that Augustine had properly
19 filed an Answer in order to preserve his rights in this matter. Couch discovered for
20 the first time in mid-October, 2004 that Augustine apparently failed to do this. It
21 would violate Couch's statutory and Constitutional rights to an attorney to punish
22 Couch (by granting the Division's Motion) as a result of his Attorney's failure to
23 submit a timely Answer in this matter.

1 **Violation of Due Process.**

2 Section (C) of A.R.S. § 41-1092.07 states that “All parties shall have the
3 opportunity to respond and present evidence and argument on all relevant
4 issues.” Such procedures are required by the Due Process Clause of the Fifth
5 Amendment to the U.S. Constitution. The determination of what constitutes “fair
6 process” depends on three factors:

- 7 1. The **importance of the individual interest** involved;
8 2. The value of specific **procedural safeguards** to that interest; and
9 3. The **government interest** in fiscal and administrative efficiency.

10 *Mathews v. Eldridge*, 424 U.S. 319 (1976).

11 Regarding the **first factor**, if the Division’s Motion is granted, Couch will be
12 subject to potentially hundreds of thousands of dollars of fines without an
13 opportunity to respond and confront the Division’s witnesses at a contested
14 hearing. Thus, it must be given great weight

15 The **second factor** should also be given great weight. The procedural
16 safeguard of allowing Couch to submit an Answer and attend a hearing regarding
17 the underlying allegations directly helps protect his interest.

18 The **third factor**, however, is less important. This matter has already been
19 pending since early 2003. The requirement of holding a hearing would cost the
20 State of Arizona some money, but this pales in comparison to the amount that
21 might potentially be levied against Couch.

22 Thus, it would be a violation of Due Process to not allow Couch to submit
23 an Answer and to present evidence and argument at a hearing in this matter.
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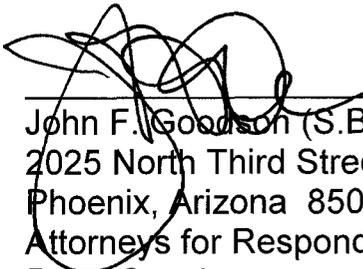
1 **Grant of Division's Motion Would Be Unreasonable, Arbitrary and**
2 **Capricious.**

3 "Due process of law" demands that the law shall not be unreasonable,
4 arbitrary, or capricious. *American Federation of Labor v. American Sash & Door*
5 *Co.*, 67 Ariz. 20, 189 P.2d 912 (1948), *aff'd* 69 S.Ct. 258, 335 U.S. 538, 6
6 A.L.R.2d 481, 93 L.Ed. 222.

7 In this case, it would be unreasonable and capricious not to give Couch a
8 second chance to file an Answer in this matter. Couch is not a lawyer, and is
9 inexperienced in the procedural requirements for preserving his rights to a
10 contested hearing in this matter. That is, after all, the reason that he retained an
11 attorney in the first place. It is not his fault that his attorney, Augustine, failed to
12 timely file an Answer herein.

13 Dated this 27th day of October, 2004.

GOODSON AND MANLEY, PLC

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Rene Couch

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25 ORIGINAL and THIRTEEN COPIES of the foregoing were filed this 27th day of
26 October, 2004 with:

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30 1200 West Washington

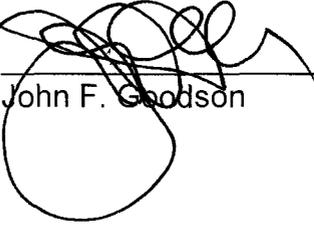
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Phoenix, Arizona 85007

COPY of the foregoing mailed this 27th day of October, 2004 to:

ALJ Marc Stern
Ariz. Corp. Comm'n/Hearing Division
1200 West Washington
Phoenix, Arizona 85007

Respondent Terry G. Couch
9821 East Mirasol Circle, #2191
Scottsdale, Arizona 85260



John F. Goodson