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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

MARC SPITZER, Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
MIKE GLEASON  
KRISTIN K. MAYES

In the matter of:

YUCATAN RESORTS, INC.,  
3222 Mishawaka Avenue.  
South Bend, IN 46615;  
P.O. Box 2661  
South Bend, IN 46680;  
Av. Coba #82 Lote 10, 3er. Piso  
Cancun, Q. Roo  
Mexico C.P. 77500

YUCATAN RESORTS, S.A.,  
3222 Mishawaka Avenue.  
South Bend, IN 46615;  
P.O. Box 2661  
South Bend, IN 46680;  
Av. Coba #82 Lote 10, 3er. Piso  
Cancun, Q. Roo  
Mexico C.P. 77500

RESORT HOLDINGS INTERNATIONAL,  
INC.,  
3222 Mishawaka Avenue  
South Bend, IN 46615;  
P.O. Box 2661  
South Bend, IN 46680;  
Av. Coba #82 Lote 10, 3er. Piso  
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DOCKET NO. S-03539A-03-0000

REPLY IN SUPPORT OF SECURITIES  
DIVISION'S MOTION FOR  
AUTHORITY TO ISSUE AN  
ADMINISTRATIVE SUBPOENA FOR  
PRODUCTION OF DOCUMENTS

Arizona Corporation Commission

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1 **WORLD PHANTASY TOURS, INC.,** )  
 a/k/a MAJESTY TRAVEL )  
 2 a/k/a VIAJES MAJESTY )  
 Calle Eusebio A. Morales )  
 3 Edificio Atlantida, P Baja )  
 APDO, 8301 Zona 7 Panama, )  
 4 )  
**AVALON RESORTS, S.A.** )  
 5 Av. Coba #82 Lote 10, 3er. Piso )  
 Cancun, Q. Roo )  
 6 Mexico C.P. 77500 )  
 )  
 7 **MICHAEL E. KELLY and LORY KELLY,** )  
 husband and wife, )  
 8 29294 Quinn Road )  
 North Liberty, IN 46554; )  
 9 3222 Mishawaka Avenue )  
 South Bend, IN 46615; )  
 10 P.O. Box 2661 )  
 South Bend, IN 46680, )  
 11 )  
 Respondents. )  
 12 )

13  
 14 In response to the Securities Division’s Motion for Authority to issue an Administrative  
 15 Subpoena (“Subpoena Motion”) in this matter, Respondents have filed a 19 page Joint Brief in  
 16 Opposition to the Securities Division’s Motion for Authority to Seek the Production of Documents  
 17 (“Joint Brief”). Quite simply, this Joint Brief offers nothing of substance to suggest that the  
 18 Securities Division’s Subpoena Motion is in any way inappropriate, unsuitable, or unfounded.  
 19 Instead, Respondents submit an underwhelming collection of objections that focus more on the  
 20 problems associated with their own civil discovery attempts than on the legitimacy of the  
 21 Division’s Subpoena Motion. In the absence of compelling opposition, the presiding  
 22 Administrative Law Judge should grant the Securities Division’s Subpoena Motion for subsequent  
 23 issuance in accordance with the Rules of Practice and Procedure before the Corporation  
 24 Commission.

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1 **I. DISCUSSION**

2 **A. *The Securities Division has demonstrated the requisite level of "Reasonable***  
3 ***Need" necessary to garner authorization to pursue administrative discovery***

4 In their Joint Motion, Respondents first suggest that the Securities Division ("Division")  
5 has failed to establish a requisite level of reasonable need as prescribed under the administrative  
6 discovery statutes, in particular A.R.S. §41-1062. To support this argument, Respondents make a  
7 series of claims that, curiously enough, have no bearing on the concept of "reasonable need."  
8 Respondents first cite to the fact that the Division's administrative discovery request comes a year  
9 after the initial Temporary Order in this case was filed. How this time period should impact the  
10 issue of whether certain documents are reasonably necessary to the Division's case, the hearing of  
11 which is scheduled for February 2005, is unclear. What is clear is that Respondents could easily  
12 provide, and the Division could readily review, all requested documentation several months in  
13 advance of trial.

14 On the issue of "reasonable need," Respondents next point to the fact that they themselves  
15 have been unsuccessful in acquiring any documents from the Division.<sup>1</sup> How Respondents'  
16 discovery difficulties can impact whether the Division has "reasonable need" for three narrow sets  
17 of documents as requested in the Subpoena Motion is again completely incomprehensible. Quite  
18 simply, Respondents' own discovery issues *are not in issue* in this instance; Respondents'  
19 discovery travails have utterly no bearing on whether the documents sought by the Division are  
20 reasonably necessary.

21 As a final point on the issue of "reasonable need," Respondents contend that the Division  
22 has been "conducting discovery regarding this action *for more than a year...*" *Joint Motion, p. 7,*  
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24 <sup>1</sup> This assertion is presently inaccurate. As ordered by the ALJ in this matter, the Division made available  
25 to the Respondents on Friday, October 1, 2004, four full binders containing the proposed exhibits the  
26 Division plans to utilize at the administrative hearing in this case. The hearing is scheduled to begin at the  
end of February 2005 (in approximately 150 days).

1 ¶1. As before, this claim simply has no logical connection to whether the documents requested in  
2 the Division's Subpoena Motion are reasonably necessary to the Division's case in this matter. If  
3 anything, the fact that the Division is pursuing administrative discovery after such a period of time  
4 only strengthens the notion that the sought-after documentation is both elusive and important - i.e.,  
5 reasonably necessary - to this administrative proceeding.

6 ***B. The Division's Subpoena Motion does not violate due process***

7 As a second objection to the Division's Subpoena Motion, Respondents argue that if the  
8 Division is granted the authority to pursue administrative discovery in this matter, Respondents  
9 will have been deprived of their due process rights. This claim lacks merit simply on its face; the  
10 Subpoena Motion concerns the Division's pursuit of lawful administrative discovery - not the  
11 curtailment of any of Respondents' rights.

12 Respondents nevertheless cite to a series of federal cases where courts have found that,  
13 under circumstances in which only one party to an administrative action was allowed to pursue  
14 discovery, the due process rights of the other party was being compromised. In fact, the holdings  
15 derived from those cases have no applicability with respect to the present administrative action. In  
16 this case, neither Respondents nor the Division has ever been precluded from seeking lawful  
17 administrative discovery. Indeed, any "roadblocks" Respondents have encountered in connection  
18 with their pursuit of discovery in this case have arisen from Respondents' self-imposed reliance on  
19 inappropriate Rules of Civil Procedure and/or misinterpretations of the applicable rules and  
20 procedures governing administrative discovery. In short, no party to this action has been deprived  
21 of administrative discovery rights, and Respondents' obligatory objection based on specious due  
22 process deprivations is in fact groundless.

23 This "due process" complaint rings particularly hollow in light of the fact that Respondents  
24 are the only parties to this action that have in fact acquired documents from its opponent in this  
25 matter. In July 2004, the presiding administrative law judge ordered that the Division make  
26 available to Respondents a collection of proposed exhibits for hearing no later than October 1,

1 2004 (approximately five months prior to trial, an unprecedented length of time). Respondents  
2 have since collected four volumes of this documentation that the Division intends to introduce at  
3 hearing next year.

4 **C. *The Division's Subpoena Motion seeks the acquisition of three relevant,***  
5 ***unambiguous sets of documents and records***

6 As a final objection to the Division's Subpoena Motion, Respondents levy a catch-all  
7 objection towards the substance the Division's discovery request. Adding to their claim that the  
8 Division's discovery request is vague, ambiguous and overbroad, Respondents argue that the  
9 discovery request also seeks documentation irrelevant to the present action. In light of the limited,  
10 narrowly tailored documents requested in the Division's Subpoena Motion, these generic  
11 characterizations become, of all things, amusing.

12 Respondents' claim that the documents the Division seeks to acquire are irrelevant is  
13 premised on the remarkable proposition that the only matter in issue is whether the Universal  
14 Lease is a security. Continuing this line of reasoning, Respondents conclude that any other  
15 document, such as a Universal Lease investor list, is necessarily irrelevant to these proceedings.<sup>2</sup>  
16 Based on this logic, then, the identity of the entities and individuals associated with this program,  
17 the amount of Arizona money invested into this program, and the ultimate destination of these  
18 investor funds in Mexico are all irrelevant. Such a position is, of course, untenable.

19 Relevant materials are those materials that tend to prove or disprove a fact that is of  
20 consequence. *Arizona Rules of Evidence, Rule 403*. Since Respondents have not, at least to the  
21 Division's knowledge, conceded all 59 allegations originally brought by the Division in its  
22 Amended Temporary Order to Cease and Desist, there are obviously many matters of consequence  
23 other than the concededly important issue of whether the Universal Lease is a security. The  
24 materials requested by the Division in its Subpoena Motion are particularly relevant with respect to

25 \_\_\_\_\_  
26 <sup>2</sup> Without a complete Arizona investor list, this administrative tribunal will be hard-pressed to arrive at a  
full and accurate restitution award.

1 multiple matters of consequence including, without limitation, the amount of money raised in this  
2 program, the Universal Lease parties involved, and the destination of diverted Universal Lease  
3 investor funds.

4 Respondents also suggest that the Division's proposed subpoena for documents is "not  
5 properly propounded on the named Respondents to this proceeding." In fact, it is readily apparent  
6 from various accounting reports to this action (as disclosed to Respondents on October 1, 2004)  
7 that the parties to this action have an intimate financial relationship with the entities identified in  
8 the Division's Subpoena Motion. It is also readily apparent that by diverting millions of dollars to  
9 these entities, Respondents have made these parties particularly relevant to this action.  
10 Accordingly, the document request to Respondents for information relating to these entities is  
11 entirely appropriate.

12 As a final objection, Respondents complain that this document request is overbroad and  
13 burdensome. This objection is particularly frivolous with respect to the first two sets of documents  
14 the Division is seeking: a simple investor list and a collection of their own *publicly filed*  
15 incorporating documents. With respect to the final of the three narrow document requests, the  
16 Division is seeking a basic production of identifying information on companies and related entities  
17 that have received millions of dollars from the Universal Lease program. On its face, such a  
18 production would neither be burdensome nor overbroad and, as such, this discovery objection  
19 again derives more out of a desire not to cooperate than from any legitimate document production  
20 concern.

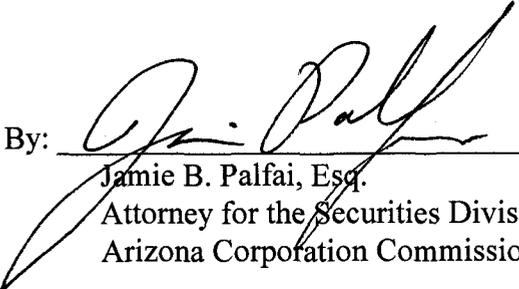
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1 **II. CONCLUSION**

2 As outlined in its Subpoena Motion, the Division's administrative discovery attempt is  
3 designed to acquire documentation in the possession or control of the Respondents that is highly  
4 relevant to this proceeding. It stands to reason that the Division has a compelling need for such  
5 materials, and that the Division is entitled to such materials as provided under the Arizona  
6 Administrative Procedures Act.

7 Through their Joint Brief, Respondents have subsequently offered nothing of substance to  
8 suggest that this legitimate discovery request is in any way inappropriate or contrary of the rules and  
9 laws governing administrative adjudications. Accordingly, the Division requests that the  
10 Administrative Law Judge grant the Division's Subpoena Motion so as to allow the Division to  
11 pursue administrative discovery in accordance with applicable law.

12 RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of October, 2004.

13  
14 By:   
15 Jamie B. Palfai, Esq.  
16 Attorney for the Securities Division of the  
17 Arizona Corporation Commission

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21 ORIGINAL AND THIRTEEN (13) COPIES of the foregoing  
22 filed this 12<sup>th</sup> day of October, 2004, with

23 Docket Control  
24 Arizona Corporation Commission  
25 1200 West Washington  
26 Phoenix, AZ 85007

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COPY of the foregoing hand-delivered this  
12<sup>th</sup> day of October, 2004, to:

ALJ Marc Stern  
Arizona Corporation Commission  
Hearing Division  
1200 West Washington  
Phoenix, AZ 85007

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