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Attorneys for Respondents AGRA-
Technologies, Inc.; William J.
and Sandra L. Pierson; William
H. and Patricia M. Baker

Lonnie J. Williams, Jr. (#005966)
Carrie M. Francis (#020453)

BEFORE THE ARIZONA CORPORATION COMMISSION

In the matter of:

AGRA-TECHNOLOGIES, INC. (a/k/a ATI),
a Nevada corporation,
5800 North Dodge Avenue, Bldg. A
Flagstaff, AZ 86004-2963;

DOCKET NO. S-20484A-06-0669

WILLIAM JAY PIERSON (a/k/a BILL
PIERSON) and SANDRA LEE PIERSON
(a/k/a SANDY PIERSON), husband and wife,
6710 Lynx Lane
Flagstaff, AZ 86004-1404;

**REPLY RE AGRA'S MOTION TO
SET EVIDENTIARY HEARING**

RICHARD ALLEN CAMPBELL (a/k/a
DICK CAMPBELL) and SONDR A JANE
CAMPBELL, husband and wife,
8686 West Morten Avenue
Glendale, AZ 85304-3940;

Arizona Corporation Commission
DOCKETED

FEB 20 2007

WILLIAM H. BAKER, JR. (a/k/a BILL
BAKER) and PATRICIA M. BAKER,
husband and wife,
3027 N. Alta Vista
Flagstaff AZ 86004

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JERRY J. HODGES and JANE DOE
HODGES, husband and wife,
1858 Gunlock Court
St. George, UT 84790-6705;

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LAWRENCE KEVIN PAILLE (a/k/a
LARRY PAILLE) and JANE DOE PAILLE,
husband and wife,
220 Pinon Woods Drive
Sedona, AZ 85351-6902;

Respondents.

1 Respondents AGRA-TECHNOLOGIES, INC., WILLIAM J. PIERSON (a/k/a
2 BILL PIERSON) and SANDRA L. PIERSON (a/k/a SANDY PIERSON), and WILLIAM
3 H. BAKER, JR. (a/k/a BILL BAKER) and PATRICIA M. BAKER (hereinafter jointly
4 referred to as "Respondents") hereby reply to the Arizona Corporation Commission's (the
5 "Commission") Response to Respondents' Motion to Set Evidentiary Hearing.
6 Respondents again request that an evidentiary hearing be set to resolve the Commission's
7 Temporary Cease and Desist Order ("Temporary Order") as is required by Administrative
8 Rule 14-4-307.

9 **I. R 14-4-307 REQUIRES A HEARING DATE BE SET**

10 Much of the Commission's Response is based on their incorrect and erroneous
11 interpretation of R 14-4-307. Because R 14-4-307 is simply written and abundantly clear,
12 and because the Commission fails to understand its requirements, Respondents are
13 including in this reply the full text of this simple, short rule. R 14-4-307 reads as follows:

14 **R14-4-307. Temporary Orders**

- 15 A. When the Commission determines that the public welfare
16 requires immediate action, the Commission may issue a
17 temporary cease-and-desist order, which will be in effect
18 for 180 days or until vacated, modified, or made permanent
19 in accordance with this rule, whichever comes first. The
20 Commission may delegate this authority to the Director.
- 21 B. Temporary cease-and-desist orders shall be served pursuant
22 to the provisions of R14-4-303.
- 23 C. The temporary cease-and-desist order shall set forth that the
24 respondent will be afforded a hearing upon request to
25 docket control of the Commission if the request is filed in
26 writing within 20 days of service of the temporary cease-
27 and-desist order. If a request for a hearing is not filed
28 within 20 days, the Commission may, by written findings
of fact and conclusions of law, vacate, modify, or make
permanent the temporary cease-and-desist order.
- D. When a respondent requests a hearing in accordance with
the provisions of this rule, the Commission shall set a date,
time, and place for the hearing and shall forthwith notify
the respondent. The date set for the hearing shall be within

1 30 days, but not earlier than ten days, after the written
2 request for hearing has been filed, unless otherwise
3 provided by law, stipulated by the parties, or ordered by
4 the Commission. The Commission may, after such
5 hearing, by written findings of fact and conclusions of law,
6 vacate, modify, or make permanent the temporary cease-
7 and-desist order.

8 E. The effective date stated in subsection (A) shall be tolled
9 from the date a hearing is requested until a decision is
10 entered, unless otherwise ordered by the Commission.

11 A quick reading of this Rule makes several points undeniably clear. First, in the
12 case of a temporary cease and desist order, a temporary order is only effective for 180
13 days after it is issued unless it is vacated, modified, or made permanent (none of which
14 have happened in this case). Second, respondents who request a hearing on a temporary
15 order within 20 days of its service upon them are absolutely entitled to a hearing. Third,
16 when a respondent requests a hearing within 20 days of service of the temporary order, the
17 Commission must set a date, time, and place for the hearing within 30 days of the request.
18 The statute is extremely clear on this point and expressly uses the word "shall" in
19 describing the Commission's duty to set a hearing within 30 days. There is no element of
20 discretion built into the Rule on the timing for setting the hearing. Finally, the 180-day
21 time frame for the effectiveness of the temporary order is only tolled from the time that a
22 hearing is requested until a decision is entered. This tolling provision not only assumes
23 that a hearing will be set within 30 days of a request, but also operates completely
24 independent of the Commission's responsibility to set a hearing within 30 days of an
25 initial request.

26 The Commission's response readily admits that Respondents are entitled to a
27 hearing. However, the Commission erroneously concludes that the timing of the hearing
28 is within the sound discretion of the administrative law judge ("ALJ"). Nothing in R
14-4-307 gives an ALJ any discretion whatsoever with regard to the timing of a hearing
on a temporary order. Again, the Rule clearly specifies that where a respondent requests a

1 hearing within 20 days of the issuance of a temporary order, a respondent shall have a
2 hearing date set within 30 days of that request.

3 The Commission's response additionally raises various issues and items that in no
4 way affect the requirements of R 14-4-307, and most of which deal with the
5 Commission's separate investigation in the Respondents' business, which has always
6 taken place independent of the Temporary Order in this matter. Notwithstanding the fact
7 that the Commission's arguments are unrelated to and have no effect on the timing
8 requirements of R 14-4-307, Respondents will address the Commission's various
9 arguments.

10 **II. THE COMMISSION'S ARGUMENTS ARE IRRELEVANT**

11 **A. The Commission's Temporary Order is Preventing Respondents from 12 Operating their Business in a Normal Manner.**

13 The Commission claims that because the Temporary Order only restricts
14 Respondents from violations of the Securities Act, Respondents are able to continue
15 operating their business in a normal manner. The Commission's position is short-sighted
16 and overlooks two obvious points. First, the mere existence of a Temporary Order from
17 the Commission on any business in which the order alleges various violations of the
18 Securities Act is damaging and interrupts the normal flow of business. Second,
19 Respondents deny that they are violating the Securities Act in any manner; however, the
20 Commission has listed various practices of Respondents that are integral and necessary to
21 the running of Respondents' business and has labeled those practices as violations of the
22 Securities Act.

23 The Commission cannot reasonably be attempting to argue that its Temporary
24 Order is not interrupting Respondents' business. Besides the fact that Respondents must
25 now curtail business activities that the Commission has erroneously labeled as violations
26 of the Securities Act, the Temporary Order is tarnishing the good name and reputation of
27 Respondents' company. The Temporary Order has resulted in an unfavorable
28 classification with the Better Business Bureau and an investigation into Respondents'

1 company by the Internal Revenue Service. There is no need to list the myriad of negative
2 consequences and related ripple effect that interrupt Respondents' business on a daily
3 basis as a result of the Commission's Temporary Order. To add insult to injury, the
4 Commission refuses to agree to a date for a hearing on the Temporary Order as is required
5 by the Rules.

6 **B. The Commission Can Continue Its Investigation into Respondents'**
7 **Business Without the Temporary Order.**

8 The Commission's investigation of Respondents' business began well before the
9 Temporary Order and, similarly, could continue after a hearing on the Temporary Order.
10 Because the Commission's investigation is not dependent upon the existence of the
11 Temporary Order in this matter, the Commission's arguments and issues raised
12 concerning the production of material and privileged documents are related in no way to
13 the timing of a hearing on the Temporary Order and are not items to be considered by the
14 ALJ in setting a hearing date. Likewise, the status of settlement negotiations with any of
15 the Respondents are totally irrelevant to the setting of a hearing date on the Temporary
16 Order. Those are items that can occur regardless of whether the Temporary Order is in
17 effect or vacated.

18 **C. Respondents Reliance on *Polaris* is Accurate and Applicable.**

19 The Commission has attempted to compare their obviously egregious and unfair
20 behavior in *Polaris v. ACC*, 652 P.2d 1023, 133 Ariz. 500 (1982) to their inappropriate
21 actions in the present matter. The Commission points out that their inappropriate actions
22 in the present matter do not nearly reach the level of their egregious actions in *Polaris*. It
23 appears that the Commission is arguing that it should be allowed to circumvent R
24 14-4-307 because it is not acting nearly as bad as it has acted in the past. Unfortunately
25 for the Commission, Rule 14-4-307 is applicable to Temporary Orders that the
26 Commission issues even in cases where the Commission is stalling and its uncooperative
27 tactics are less severe than they have been in the past. The rule of *Polaris* does apply in
28 this matter because the Commission is no longer using the Temporary Order to gather

1 appropriate information, but rather as an intrusive and unnecessary wedge to put undue
2 pressure on Respondents' business.

3 **D. The Commission's Interpretation of R 14-4-307 is Absurd.**

4 The Commission seems to be arguing that because a Temporary Order may be in
5 effect for 180 days under the Rule, it consequently must be in effect for 180 days. This
6 reasoning is absurd as the Rule clearly states that the 180 day time frame only applies if a
7 Temporary Order is not vacated, modified, or made permanent -- all of which are results
8 that may occur because of a hearing. The Commission also points to the tolling provision
9 in Subsection E of that Rule, in an effort to paint R 14-4-307 as a rule that is not time
10 specific and could potentially allow a Temporary Order to remain in effect for an
11 extremely long time. The fact that Subsection E allows the effective date of a Temporary
12 Order to be tolled from the date a hearing is requested until a decision at the hearing --
13 after the proceeding portions of the Rule require strict adherence to a 30-day time frame
14 for setting the hearing -- undeniably establishes that the Rule anticipates a very short time
15 frame between the request of a hearing and a final decision.

16 In fact, the existence of the tolling provision in Subsection E makes the 30-day
17 requirement for setting a hearing all the more important. There is no other provision by
18 law, stipulation by the parties, or order by the Commission in effect in this case that
19 trumps the 30-day requirement of Subsection D of R 14-4-307. The language of the
20 statute is clear, and discretion is not an element of this statute. The preamble to the
21 Securities Act is irrelevant to a statute that is undeniably clear on its face. Simply put, the
22 requirement that a hearing be set within 30 days of Respondents' November 3, 2006,
23 request, is a requirement that cannot be circumvented in this matter.

24 **III. CONCLUSION**

25 Respondents requested a hearing on the Temporary Order in this matter on
26 November 3, 2006. This request was timely under R 14-4-307. As a result, Respondents
27 are entitled (and have been entitled) to a hearing on the Temporary Order within 30 days
28 from that date, as there are no provisions by law, stipulations by the parties, or orders by

1 the Commission that would negate that requirement. The timing of the hearing and the
2 30-day requirement are not discretionary. The Commission has made every effort to
3 delay and stall the setting of a hearing in this matter and has indeed filled its response with
4 irrelevant arguments in further effort to prevent this hearing from occurring.
5 Respondents, therefore, respectfully request that the ALJ immediately set a date, time, and
6 place for a hearing on the Temporary Order, so that Respondents may finally be afforded
7 the rights guaranteed to them under R 14-4-307.

8 RESPECTFULLY SUBMITTED this 20th day of February, 2007.

9 QUARLES & BRADY LLP

10
11 By 
12 Lonnie J. Williams, Jr.
Carrie M. Francis

13 ORIGINAL and thirteen copies of the fore-
14 going filed this 20th day of February, 2007, to:

15 Docket Control
16 Arizona Corporation Commission
1200 West Washington
Phoenix, Arizona 85007

17 ONE COPY of the foregoing hand-delivered
18 this 20th day of February, 2007, to:

19 Marc Stern, ALJ
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21 ONE COPY of the foregoing mailed
22 this 20th day of February, 2007, to:

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