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14 Thuc Nguyen

15

16 **BEFORE THE ARIZONA CORPORATION COMMISSION**

17

18 SAFARI MEDIA, INCORPORATED

19 1580 North Kolb, #200

20 Tucson, Arizona 85715

21

22 MARYANNE CHISHOLM

23 4056 N. West Fernhill Circle

24 Tucson, Arizona 85750

25

26 MARK FILLMORE CHISHOLM

27 4056 N. West Fernhill Circle

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30 THUC NGUYEN

31 300 Linda Vista Terrace

32 Fremont, California 94539

33

34 Respondents.

35

36 Respondent, Thuc Nguyen ("Respondent") submits this motion to dismiss the matter
37 filed against Respondent by the Arizona Corporations Commission (the "Commission") *In*
38 *the Matter of Safari Media, Inc. et al.*, for lack of personal jurisdiction over Respondent.

39

40 **PRELIMINARY STATEMENT**

41

42 The relief by the Commission is improper in the case of Respondent since the
43 Commission has not adequately established personal jurisdiction over Respondent in the
44 State of Arizona pursuant to the Arizona "long-arm" statute, Ariz.R.Civ.Pro. 4(e)(2), and
45 federal standards of due process.

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AZ CORP COMMISSION
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Arizona Corporation Commission
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Docket No. S-03242A-99-0000

**RESPONDENT THUC NGUYEN'S
MOTION TO DISMISS FOR LACK
OF PERSONAL JURISDICTION**

1 **STATEMENT OF FACTS**

2 The facts relevant to the current motion concern Respondent, a Nevada resident, and
3 his lack of connections with the State of Arizona. The Commission does not even allege that
4 Respondent is an Arizona resident. Rather, the Commission concedes that during the
5 pertinent time described *In the Matter of Safari Media, Inc. et al.*, Respondent was a
6 California resident with his place of business in California. At no time did Respondent ever
7 reside in Arizona, or have any substantial contact with such State sufficient to give rise to
8 personal jurisdiction over him. At no time did Respondent maintain offices, telephone
9 listings, employees or property in Arizona. (See Declaration of Thus Nguyen submitted
10 herewith.) The Commission has set forth no facts of any kind establishing jurisdiction over
11 Respondent in Arizona.

12 The order filed by the Commission asserts that Respondent assisted in the sale of
13 Safari Media stock. However, the Commission fails to set forth that Respondent made any
14 sales of stock in Arizona, or any improper sales of stock at all. The Commission fails to state
15 whether any offerees allegedly solicited by Respondent were citizens of Arizona, or whether
16 Respondent had any contact with them in Arizona. The Commission fails even to state the
17 identities of the offerees allegedly solicited by Respondent in violation of Arizona law. The
18 Commission asserts only that "Respondents acted as dealers and/or salesman within and/or
19 from Arizona." This vague conclusion is insufficient to state any facts concerning this
20 Respondent.

21 **ARGUMENT**

22 A prima facie case for jurisdiction must be established by the party asserting its
23 existence. *Karsten v. United States Golf Association*, 728 F. Supp. 1429 at 1431 (1990).
24 Furthermore, a challenge to personal jurisdiction conveys upon the party asserting it, the
25 burden of establishing that it exists. *Taylor v. Portland Paramount Corp.*, 383 F.2d 634, 639
26 (9th Cir. 1967).

27 . . .

28 . . .

1 As shown below, the Commission has not demonstrated a sufficient case for personal
2 jurisdiction over Respondent in Arizona. Therefore, the Commission's allegations against
3 Respondent should be dismissed.

4 **1. Lack of Jurisdiction under Arizona Long Arm Statute.**

5 Arizona's long-arm statute, Ariz. R. Civ. P. 4(e)(2) confers personal
6 jurisdiction over a nonresident defendant doing business in the state or that has caused an
7 event to occur in the state out of which the claim, which is the subject of the complaint,
8 arose.

9 Arizona courts analyze personal jurisdiction problems under a traditional 2-
10 step analysis. First, it is determined whether the nonresident defendant satisfies one of the
11 two conditions within the meaning of Ariz. R. Civ. P. 4(e)(2), and second, it is considered
12 whether assertion of jurisdiction would accord with federal due process standards. *Lycoming*
13 *v. Superior Court*, 534 P.2d 1323 at 1325 (Ariz. App.1974).

14 **(a) "Doing Business" in the State.**

15 To comport with the requirement of "doing business" in the State, a showing
16 must be made of a systematic and continuous course of conduct within the state by the
17 individual over whom jurisdiction is asserted. *Denn v. Southern Peru Copper Corp.*, 19
18 Ariz. App. 453 at 455 (1973). There is no such showing in the case of Respondent.
19 Throughout the time described in the Commission's order, Respondent conducted his
20 business operations in California. There is no showing, or even allegation, of any ongoing
21 business operations by Respondent in Arizona. In fact, Respondent did not maintain a
22 business number or address in Arizona, did not have employees in Arizona, and did not pay
23 Arizona taxes. There has been no factual showing that Respondent engaged in a "systematic
24 and continuous course of conduct within the state." Accordingly, Respondent was not
25 conducting business in Arizona within the meaning of the statute.

26 **(b) Caused an Event to Occur in the State.**

27 The question of whether a defendant has "caused an event to occur" that then
28 leads to the harm, which is the subject of the claim, hinges on the meaning of "event." A

1 mere allegation of harm or injury suffered by the plaintiff in the forum state is not by itself
2 sufficient evidence. Rather, the actual damage-causing event must have occurred in Arizona,
3 not just the effect. *Amba Marketing Systems, Inc. v. Jobar International, Inc.*, 551 F.2d 784
4 (9th Cir. 1977).

5 The Commission has not shown that any action made by Respondent, whether
6 subject of any alleged harm or not, occurred in Arizona. There has been no factual showing
7 by the Commission that any harm-causing action by Respondent *occurred in Arizona*. A
8 generalized “and/or” allegation, purportedly made against all of the respondents, that
9 “Respondents acted as dealers and/or salesman within and/or from Arizona” is insufficient to
10 state any jurisdictional facts against this Respondent individually.

11 Indeed, courts have found personal jurisdiction lacking in cases where
12 defendants possess substantially more contacts than those existing in this case. For instance,
13 In *Northcross v. Joslyn Fruit Co., Inc.*, 439 F. Supp. 371 (D. Ariz. 1977), Plaintiff, a citizen
14 of Arizona, filed suit alleging breach of contract against defendant, a corporation in Colorado
15 with its principal place of business in Colorado. The Court did not find the purchase by
16 defendant of several shipments of agricultural products and the subsequent breach of a
17 purchase contract with the Arizona plaintiff sufficient to find personal jurisdiction in
18 Arizona. It should be noted that the defendant in *Northcross* initiated the sales, a series of
19 five business transactions was involved, several phone conversations occurred and a large
20 amount of money was at issue. These elements provide a greater degree of contact with
21 Arizona than do any alleged facts relevant in this case.

22 Even if the Commission based its prima facie showing of jurisdiction on
23 Respondents position as a stockholder or member in Safari Media, additional contacts would
24 have to exist. Arizona’s long-arm statute allows assertion of personal jurisdiction over
25 officers of a corporation only as long as the court finds those officers to have sufficient
26 minimum contacts with Arizona. *Davis v. Metro Productions*, 885 F.2d 515 (9th Cir. 1989).
27 Thus, affiliation with the Arizona entity alone does not suffice.

28

1 For the above reasons, the Commission has not established a prima facie case
2 for jurisdiction over Respondent. Although the analysis could sufficiently end here, in the
3 event that the Commission submits affidavits or other evidence that it alleges in some way
4 establish facts pointing to jurisdiction, the analysis would continue with the federal due
5 process standard described below.

6 **2. Federal Due Process Standard.**

7 Federal law is controlling on the second step of the two-part Arizona personal
8 jurisdiction analysis. The Ninth Circuit uses a three-part test to determine whether
9 jurisdiction comports with due process:

- 10 a. the nonresident defendant must purposefully direct his activities . . .; or perform
11 some act by which he purposefully avails himself of the privilege of conducting
12 activities in the forum, thereby invoking the benefits and protections of its laws;
13 b. the claim must be one which arises out of or relates to the defendant's forum-
14 related activities;
15 c. the exercise of jurisdiction must comport with fair play and substantial justice, i.e.,
16 it must be reasonable. *Lake v. Lake*, 817 F. 2d 1416 at 1421 (9th Cir. 1987);

17 It is essentially a question of whether a party has sufficient "minimum contacts" with
18 a forum such that invoking jurisdiction there would be consistent with the constitution.
19 *International Shoe Co. v. State of Washington*, 326 U.S. 310 at 316 (1945). Although under
20 this flexible standard a case-by-case determination necessarily must be made, courts adhere
21 to the above-mentioned three-part test in making such determinations.

22 Additional factors that a court may consider are the quality, nature and extent of
23 defendant's activity in the state, whether the conduct was purposeful, the burden on the
24 defendant to defend himself in a foreign jurisdiction, the forum state's interest in
25 adjudicating the dispute and plaintiff's interest in obtaining convenient and effective relief.

26 Here, Respondent did not purposefully direct his activities toward the State of
27 Arizona, nor did he purposefully avail himself of the privilege of conducting activities in the
28 forum, thereby invoking the benefits and protections of its laws. Moreover, there is no

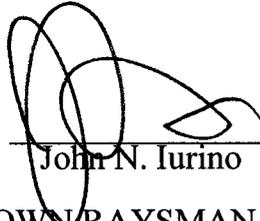
1 showing that the claim against Respondent arises out of or relates to any forum-related
2 activities by Respondent. Under these circumstances, the exercise of jurisdiction over
3 Respondent would not comport with fair play and substantial justice, i.e., it would not be
4 reasonable. *Lake*, 817 F. 2d 1416 at 1421. Respondent has not had sufficient “minimum
5 contacts” with the State of Arizona such that invoking jurisdiction there would be consistent
6 with the constitution. As such, any attempted exercise of personal jurisdiction over
7 Respondent would violate due process.

8 **CONCLUSION**

9 For the foregoing reasons, it is respectfully submitted that this matter should be
10 dismissed as to Respondent Thuc Nguyen, because the Commission has not plead, and
11 cannot prove, sufficient facts to establish personal jurisdiction over Respondent in the State
12 of Arizona.

13 DATED this 31st day of May, 2000.

14 LEWIS AND ROCA LLP

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16
17 By  _____

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