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Attorneys for Respondents AGRA-  
Technologies, Inc.; William Jay  
and Sandra Lee 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;

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;

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

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

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

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

Respondents.

DOCKET NO. S-20484A-06-0669

**RESPONDENTS' AGRA-  
TECHNOLOGIES, INC., THE  
PIERSONS, AND THE BAKERS  
OPPOSITION TO THE ACC'S  
STATEMENT OF FACTS AND  
SEPARATE CONTROVERTING  
STATEMENT OF FACTS IN  
SUPPORT OF THEIR  
OPPOSITION TO ACC'S MOTION  
FOR RULING REGARDING  
ALLEGEDLY UNREGISTERED  
SECURITIES**

(Administrative Law Judge Marc Stern)

Arizona Corporation Commission  
**DOCKETED**  
AUG 17 2007

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1 Respondents AGRA-Technologies, Inc. ("AGRA"), Pierson and Baker  
2 (collectively "Respondents") hereby submit this Opposition and Separate Controverting  
3 Statement of Facts in Opposition to the Securities Division's ("ACC") Motion for Ruling  
4 that Respondents' "Ore Rights & Mining Agreement" Investments Are Unregistered  
5 Securities (the "Motion") pursuant to Ariz. R. Civ. P. 56(c)(2). This Opposition and  
6 Separate Controverting Statement of Facts sets forth additional facts meriting denial of the  
7 Motion.<sup>1</sup> Additional facts may be discovered as this matter progresses and this statement  
8 of facts should not be construed as a complete and final statement of the facts supporting  
9 the claims or defenses of Respondents in this litigation.

### 10 MEMORANDUM OF POINTS AND AUTHORITIES

11 All evidence submitted in support of a motion for summary judgment must be  
12 admissible under the Arizona Rules of Evidence. *See* Ariz. R. Civ. P. 56(e) (supporting  
13 and opposing affidavits shall be made on personal knowledge, and shall set forth such  
14 facts as would be admissible in evidence). Accordingly, inadmissible testimony in  
15 affidavits purporting to support or oppose summary judgment motions must be struck.  
16 *See id.*; *Jabczenski v. Southern Pac. Mem'l Hosp.*, 119 Ariz. 15, 18-19, 579 P.2d 53, 56-  
17 57 (Ct. App. 1978) (hearsay inadmissible in support of motion for summary judgment).  
18 Similarly, all documentary evidence submitted under Rule 56, which is hearsay,  
19 inauthentic, without foundation, or irrelevant, should be struck from the record and not  
20 considered. *See e.g., Birchfield v. Thiercof*, 5 Ariz. App. 484, 487, 428 P.2d 148, 151  
21 (1967) (unauthenticated facsimile copies were inadmissible and insufficient to support  
22 motion for summary judgment).

23 As explained in detail below, much of the evidence cited by the ACC in support of  
24 its Motion is inadmissible under the Rules of Evidence. As such, the Judge should not  
25 consider this evidence when ruling on the ACC's Motion.

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26  
27 <sup>1</sup> This Controverting Statement of Facts is made for the purpose of responding to the ACC's Motion only.  
28 Any alleged failure to controvert any "fact" asserted by the ACC should not be deemed an admission as to  
any other aspect of this litigation.



1 purchasers' money represented AGRA's primary source of cash. Tab 15 is comprised of  
2 the ACC's certifications, which have no relevance to the issues in this Motion.

3 The ACC cites Hodges EUO Transcript, Tab 11, p. 98:7-11. That portion of the  
4 transcript reads:

5 Q: BY MR. DAILEY: Is it not true, Mr. Hodges, that  
6 since July 2003 to October 18, 2006, Agra never stopped trying  
7 to raise funds through the same of Ore Rights & Mining  
8 Agreements stock and bridge loan investments?

9 A: I take the Fifth.

10 The ACC asks the Judge to draw a negative inference from Mr. Hodges' invocation of his  
11 Fifth Amendment right. In fact, rather than basing its Motion on facts that are admissible  
12 in evidence, the ACC relies almost exclusively on testimony where the deponent invokes  
13 his Fifth Amendment Rights. As explained in detail in Respondents' Response to the  
14 ACC's Motion, the non-moving party's invocation of the Fifth Amendment right does not  
15 free the summary judgment movant from showing that the evidence in the record  
16 mandates judgment as a matter of law. *LaSalle Bank Lake View v. Seguban*, 54 F.3d 387,  
17 389-94 (7th Cir. 1995). Accordingly, no adverse inference should be drawn from this  
18 testimony.

19 **Statement of Fact No. 2:** Respondents sold approximately 1000 Units Contract  
20 investments in exchange for approximately \$10,580,000 to approximately two hundred  
21 different widely disbursed investors residing in numerous states and abroad, including:  
22 (1) Alabama; (2) Arizona; (3) California; (4) Colorado; (5) Delaware; (6) Florida; (7)  
23 Hawaii; (8) Indiana; (9) Maryland; (10) Minnesota; (11) Montana; (12) Nevada; (13) New  
24 York; (14) North Carolina; (15) Ohio; (16) Oregon; (17) Rhode Island; (18) Texas; (19)  
25 Utah; (20) Virginia; and (21) Washington, and throughout Canada, Britain and Bermuda.  
26 (Tab 7, ¶11; also, e.g., Tab 6). The Unit Contract investors expected a profit in return for  
27 their investment. (Campbell EUO Transcript, Tab 9, p. 36:1 to 38:5, Paille EUO  
28 Transcript, Tab 10, p. 75:3-7, p. 111:8-13, p. 112:19-25; Tab 11, pp. 81:25 to 84:13.)



1 The terms "investor" and "investment" are not used anywhere in the documents  
2 themselves. By using the terms "investor" and "investment," the ACC suggests a legal  
3 conclusion: that these Mining Agreements are "investment contracts" under Arizona law,  
4 which they are not.

5 The documents in Statement of Fact No. 3 have not been properly authenticated.  
6 Moreover, they are not contracts, and were not executed. Thus, there is no evidence that  
7 they were actually provided to any alleged "investors."

8 **Statement of Fact No. 4:** Under the Unit Contract offering materials, a single  
9 Unit Contract purportedly entitles an investor to, "50 tons of platinum bearing ore for  
10 processing." (E.g., Tab 1, ACC015312; Tab 4, ACC007015; Tab 5, ACC011384.)

11 **Response to Statement of Fact No. 4:** The ACC improperly categorizes the  
12 principals who executed Unit Contracts (e.g., Mining Agreements) as "investors," a term  
13 which is not used anywhere in the documents themselves. By using the terms "investors,"  
14 the ACC suggests a legal conclusion: that these Mining Agreements are "investment  
15 contracts" under Arizona law, which they are not. Moreover, the documents in Statement  
16 of Fact No. 4 have not been properly authenticated. They are not contracts, and were not  
17 executed. Thus, there is no evidence that they were actually provided to any alleged  
18 "investors."

19 **Statement of Fact No. 5:** Respondents originally promised to process their  
20 investors' volcanic cinders within 12 months. (Tab 1, ACC015330; Tab 4, at  
21 ACC007005; Tab 6, ACC009732-ACC009735.) Given their failure to produce any  
22 marketable quantities of any precious metals from the volcanic cinders on a cost effective  
23 basis to date, Respondents eventually changed their Unit Contract to state that they would  
24 process the cinders within 18, and then to state that they might process them within 24  
25 months. (Tab 3, AC075084; Tab 6.)

26 **Response to Statement of Fact No. 5:** The ACC again improperly categorizes  
27 the principals who executed Unit Contracts (e.g., Mining Agreements) as "investors,"  
28 thereby suggesting that these Mining Agreements are "investment contracts" under

1 Arizona law, which they are not. Moreover, the pages cited from Tabs 1 and 4; and Tab  
2 3, AC075084 have not been properly authenticated. They were not executed. Thus, there  
3 is no evidence that they were actually provided to any alleged "investors."

4 Tab 6, pages ACC009734-35 have nothing to do with the 12-month period  
5 discussed in Statement of Fact No. 5, and are irrelevant. The ACC cites no support for its  
6 gratuitous statement that AGRA "fail[ed] to produce any marketable quantities of any  
7 precious metals from volcanic cinders on a cost effective basis to date. . . ." Accordingly,  
8 that statement should not be considered by the Judge.

9 **Statement of Fact No. 6:** Under the plain language of the Unit Contract offering  
10 materials, Respondents and a Unit Contract investor agreed to share in the anticipated  
11 profits from Respondents' extraction of precious metals extracted from the Sheep Hill  
12 volcanic cinders:

13 PRINCIPAL [investor] agrees to receive 100% of the first \$50,000 of  
14 precious metal recovered from the PRINCIPALS tonnage, 20% of the next  
15 \$100,000, and 10% of the remainder of the profits from MINERS' [Agra's]  
processing of its ore.

16 (Tab 1, ACC015330; Tab 3, ACC075084; Tab 4, ACC007005; Tab 5, ACC011373; Tab  
17 6, ACC010803, *also*, Tab 9, p. 36:20-25; Tab 10, p. 111:22-25, p. 112:1-12; Tab 11, p.  
18 82:3-13.) Nevertheless, to date, despite selling the Unit Contract securities since at least  
19 July 2003, Respondents have not processed any of the volcanic cinders purchased by the  
20 Unit Contract investors, or paid them any returns on their Unit Contract investments. To  
21 date, Agra has not even made a profit from the sale of any precious metals extracted from  
22 the volcanic cinders. (Tab 9, p. 23:14 to 26:16; Tab 10, p. 47:20-25, pp. 52:14 to 53:11, p.  
23 117:13-19; Tab 11, pp. 36:17 to 37:25, pp. 39:18 to 40:15; *also*, Tab 1-4 & 6,  
24 demonstrating changing processing dates from 12 months, 18 months to maybe in 24  
25 months.)

26 **Response to Statement of Fact No. 6:** The documents cited in Tabs 1, 3, 4, and  
27 5 have not been properly authenticated. Moreover, they were never executed, thus there is  
28 no evidence that they were actually provided to any alleged "investors." The ACC

1 improperly categorizes the principals who executed Unit Contracts (e.g., Mining  
2 Agreements) as "investors," a term which is not used anywhere in the documents  
3 themselves. The ACC even goes so far as to insert the term "investor" into the quoted  
4 language in Statement of Fact No. 6. By using the terms "investors," the ACC suggests  
5 that these Mining Agreements are "investment contracts" under Arizona law, which they  
6 are not.

7 **Statement of Fact No. 7:** Respondents pooled the Unit Contract investors' money  
8 together, in part, to allegedly purchase or develop: (a) a purported precious metal  
9 processing plant; and (b) alleged precious metal recovery technologies and processes.  
10 (Tab 8, ACC011145, "The new mining contract investment revenue will be used to buy  
11 equipment and make the necessary plant modifications to convert the plant from the old  
12 Galleon process to the new KMH process and continue to fund the company operation  
13 until they get into full production."; Tab 9, p. 32:15-22; Tab 10, p. 95:1-6, pp. 100:23 to  
14 101:12, p. 112:6-12; Tab 11, pp. 69:23-70:18, p. 82:14-24.)

15 **Response to Statement of Fact No. 7:** Statement of Fact No. 7 is not supported  
16 by the evidence. There is no evidence that any of the documents in Tab 8 were ever  
17 provided to shareholders and/or principals to the Mining Agreements. Furthermore, much  
18 of the deposition testimony cited in Statement of Fact No. 7 is a conglomerate of various  
19 Fifth Amendment invocations, which do not relieve the ACC of its burden to prove that  
20 the evidence in the record mandates judgment as a matter of law. *LaSalle Bank Lake*  
21 *View v. Seguban*, 54 F.3d 387, 389-94 (7th Cir. 1995).

22 **Statement of Fact No. 8:** The Unit Contract investors' money represents  
23 Respondents' primary source of operating capital. (Tab 7, ¶12; also, Tab 9, pp. 21:23 to  
24 25:15, p. 39:13-16, pp. 56:19-22 to 57:6; Tab 10, pp. 96:25 to 97:10; Tab 11, pp. 39:21 to  
25 40:15, pp. 58:25 to 59:11.)

26 **Response to Statement of Fact No. 8:** Once again, the ACC improperly  
27 categorizes the principals who executed Unit Contracts (e.g., Mining Agreements) as  
28 "investors," thereby suggesting that these Mining Agreements are "investment contracts"

1 under Arizona law, which they are not.

2 Statement of Fact No. 8 is not supported by the evidence. Special Investigator  
3 Gary Clapper's affidavit (Tab 7) is the opinion of one impartial investigator and cannot be  
4 the exclusive support for the ACC's Statement of Fact No. 8. Hodges' testimony (Tab 11,  
5 pp. 39:21 to 40:15) is irrelevant to the issue of whether revenue from the Mining  
6 Agreements represented AGRA's primary source of operating capital. The remaining  
7 deposition testimony is a series of Fifth Amendment invocations, which do not relieve the  
8 ACC of its burden to prove that the evidence in the record mandates judgment as a matter  
9 of law. *LaSalle Bank Lake View v. Seguban*, 54 F.3d 387, 389-94 (7th Cir. 1995).

10 **Statement of Fact No. 9:** Respondents sold the Unit Contract investments based  
11 on their representations that they allegedly possessed special technologies and expertise,  
12 as well as the alleged advanced AGRA Plant that enabled them to obtain marketable  
13 quantities of valuable precious metals on an economically feasible basis. (*E.g.*, Tab 1,  
14 ACC015307, "...but only in this past year has the process developed with Galleon  
15 Technology and Developed Corp. proven to be both economically feasible and  
16 agriculturally compatible." *Also*, Tab 9, p. 36:1-18; Tab 10, p. 81:2-8, p. 109:3-17; Tab  
17 11, pp. 80:19 to 81:8, p. 94:21-25.)

18 **Response to Statement of Fact No. 9:** Statement of Fact No. 9 is not supported  
19 by the evidence. The ACC cannot point to any evidence showing that AGRA owns or  
20 holds exclusive rights to the Galleon Technology. As such, the principals to the Mining  
21 Agreements could have hired another source to mine and process their cinders using  
22 Galleon technology besides AGRA. Hodges testified only that he himself purchased the  
23 mining units based on AGRA's representation that it could extract precious metals from its  
24 volcanic cinders on a cost-effective basis. *See* Tab 11, p. 94:21-25. Hodges made no  
25 representations as to AGRA's representations to other principals or the intentions of those  
26 principals. The remaining deposition testimony is another series of Fifth Amendment  
27 invocations, which do not relieve the ACC of its burden to prove that the evidence in the  
28 record mandates judgment as a matter of law. *LaSalle Bank Lake View v. Seguban*, 54

1 F.3d 387, 389-94 (7th Cir. 1995).

2 **Statement of Fact No. 10:** To date, no Unit Contract investor has either asked to,  
3 or actually removed their tonnage of volcanic cinders from Respondents' facilities in a  
4 futile attempt to processes such tonnage of volcanic cinders to extract any precious metals  
5 they might contain. (Tab 9, p. 37:15-19; Tab 10, pp. 113:1 to 115:15; Tab 11, p. 81:25 to  
6 84:13; Tab 7, ¶11.)

7 **Response to Statement of Fact No. 10:** In Statement of Fact No. 10, the ACC  
8 again improperly mischaracterizes principals as "investors," even though they have not  
9 been determined to be so under Arizona law. Statement of Fact No. 10 is also  
10 argumentative insofar as it implies that a principal's attempts to process cinder would be  
11 "futile." The ACC has no factual basis for making that statement.

12 Statement of Fact No. 10 is generally unsupported by the evidence. The testimony  
13 cited by the ACC does not support the allegations made therein. Hodges' testimony at  
14 Tab 11, p. 84:13 simply states that Hodges himself does not believe that he has the  
15 capability of taking physical possession of his volcanic cinders and personally extracting  
16 metal from them. The issue, however, is not what Hodges' believes he personally has the  
17 capability to do. What matters is what the principals were entitled to do under the terms  
18 of the Mining Agreements.

19 Much of the remaining deposition testimony is another series of Fifth Amendment  
20 invocations, which do not relieve the ACC of its burden to prove that the evidence in the  
21 record mandates judgment as a matter of law. *LaSalle Bank Lake View v. Seguban*, 54  
22 F.3d 387, 389-94 (7th Cir. 1995).

23 **Statement of Fact No. 11:** The Unit Contract investors were passive, and they  
24 have no managerial or other significant duties with respect to the either their investment or  
25 AGRA, or their promised profits. (*E.g.*, Tabs 1-6; *also*, Tab 9, p. 37:1-5; Tab 10, p.  
26 112:13-25, p. 113:1-22, p. 115:1-15; Tab 11, p. 85:3-6.)

27 **Response to Statement of Fact No. 11:** Statement of Fact No. 11 is a legal  
28 conclusion, which is not supported by the evidence; it is incorrect, argumentative,

1 speculative, an unqualified statement of opinion, irrelevant and should be excluded. *See*  
2 Ariz. R. Evid. 402-403, 601-602. Again, the ACC improperly mischaracterizes principals  
3 as "investors," even though they have not been determined to be so under Arizona law.  
4 Furthermore, the evidence cited by the ACC provides no support for Statement of Fact  
5 No. 11 whatsoever. Tabs 1-6 provide no support for this allegation, and the cited  
6 deposition testimony is merely another series of Fifth Amendment invocations, which do  
7 not relieve the ACC of its burden to prove that the evidence in the record mandates  
8 judgment as a matter of law. *LaSalle Bank Lake View v. Seguban*, 54 F.3d 387, 389-94  
9 (7th Cir. 1995).

10 **Statement of Fact No. 12:** In lieu of taking possession of any precious metals  
11 extracted from their Sheep Hill volcanic cinders, the Unit Contract investors have a choice  
12 of having Respondents sell the amount of platinum that may be recovered from their  
13 volcanic cinders for cash based on the current market rate for the commodity. (Tab 1,  
14 ACC015329; Tab 4, ACC007004; Tab 5, ACC011372.)

15 **Response to Statement of Fact No. 12:** Statement of Fact No. 12 is a legal  
16 conclusion, which is not supported by the evidence; it is incorrect, speculative, an  
17 unqualified statement of opinion, irrelevant and should be excluded. *See* Ariz. R. Evid.  
18 402-403, 601-602. The documents cited are identical, and they speak for themselves.  
19 They clearly indicate that "any platinum recovered by Agra . . . that is the property of the  
20 principal may be exchanged for cash." As such, Statement of Fact No. 12 is factually  
21 incorrect because: (1) any platinum that is exchanged for cash must first be recovered; (2)  
22 AGRA does not sell the platinum for Principal as the ACC suggests; rather, the Principal  
23 sells the platinum to AGRA; (3) the cited documents say nothing about current market  
24 value rates.

25 **Statement of Fact No. 13:** Respondents did not segregate or separate one  
26 individual Unit Contract investor's tonnage of purchased volcanic cinders from those of  
27 another. (Tab 9, p. 38:18-21; Tab 10, pp. 117:20 to 118:18; Tab 11, pp. 87:16 to 88:18.)  
28 . . .

1           **Response to Statement of Fact No. 13:** In support of Statement of Fact No. 13,  
2 the ACC cites the deposition testimony of Richard Campbell, Lawrence Paille, and Jerry  
3 Hodges, who this law firm does not represent, and who are not authorized to speak on  
4 behalf of, or bind, AGRA or these Respondents. Accordingly, their testimony should not  
5 be considered with respect to the charges against AGRA or these Respondents.

6           **Statement of Fact No. 14:** The Unit Contracts are not registered to be offered or  
7 sold within or from Arizona. (Tab 12.)

8           **Response to Statement of Fact No. 14:** Statement of Fact No. 14 is not supported  
9 by the evidence. The only support offered by the ACC for this statement are the  
10 certifications of the ACC's own employees, which are biased.

11           **Statement of Fact No. 15:** Agra, Pierson, Baker, Campbell, Paille nor Hodges are  
12 registered as securities brokers, dealers or salesman to either issue securities or offer or  
13 sell securities within or from Arizona. (Tab 12; Tab 13, Paille Admission of lack of  
14 registration; Tab 9, pp. 15:13 to 22:22; Tab 10, pp. 25:3 to 26:2; Tab 11, p. 20:11-23.)

15           **Response to Statement of Fact No. 15:** None of the persons or entities listed in  
16 Statement of Fact No. 15 actually offered or sold the alleged "securities" (e.g., the Mining  
17 Agreements) at issue. Third-parties, such as PGM Marketing LLC, sold these  
18 Agreements, and in doing so, AGRA relied on those third-party agents to alert AGRA to  
19 any authorizations that needed to be obtained. As such, AGRA cannot be held liable for  
20 the sale of securities if the Mining Agreements are found to be such, since AGRA nor  
21 Respondents ever sold the Mining Agreements.

## 22           **AGRA'S CONTROVERTING STATEMENT OF FACTS**

- 23           1.           AGRA is a minerals resource company, which researches and develops new  
24 ways to recover precious metals from the mineral resources it owns or controls.  
25           *See* ACC's Statement of Facts, Tab 1, ACC015307.
- 26           2.           From 2003 until 2006, AGRA sold to various buyers large volcanic cinders  
27 of ore body and the right to extract precious metals from those cinders. *See* ACC's  
28 Statement of Facts, Tab 6, ACC010803 - 04. The buyers could then extract the

1 precious metals from their cinders using their own desired means and sell them on  
2 the open market for a significant profit. *See generally* ACC's Statement of Facts,  
3 Tab 6.

4 3. In connection with the sales of volcanic cinders, AGRA offered to process  
5 the buyers' cinders in exchange for a small fee. *See* ACC's Statement of Facts, Tab  
6 6, ACC010803 - 04. The buyer had the option to extract and process the metals by  
7 its own means or to hire AGRA to do the same. *See* ACC's Statement of Facts,  
8 Tab 1, ACC015311. AGRA specifically conveyed this fact to buyers in AGRA's  
9 informational summaries regarding the Platinum Recovery Project, which stated:  
10 "After purchasing the rights to the material containing the [platinum] the  
11 PRINCIPAL may remove and process the ore by means other than those used by  
12 Agra Technologies, Inc." *Id.* Because the buyers were free to extract and process  
13 the metals by their own means, their ability to profit from the sale did not depend  
14 upon the efforts of AGRA.

15 4. The buyers are free to sell the precious metals on the open market, or, if the  
16 buyer retains AGRA to extract and process the metals, the buyer may sell them  
17 back to AGRA. *See* ACC's Statement of Facts, Tab 1, ACC0129.

18 5. The terms of each sale were included in an Ore Rights & Mining  
19 Agreement, which the parties executed. *See* ACC's Statement of Facts, Tab 6,  
20 ACC010803-04.

21 RESPECTFULLY SUBMITTED this 17 day of August, 2007.

22 QUARLES & BRADY, LLP

23 By \_\_\_\_\_

24 Lonnie J. Williams, Jr.  
25 Carrie M. Francis  
26 Attorneys for AGRA-Technologies, Inc.;  
27 William Jay and Sandra Lee Pierson; and  
28 William H. and Patricia M. Baker

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Phoenix, Arizona 85007

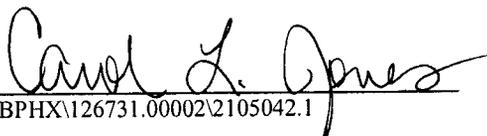
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Securities Division  
Arizona Corporation Commission  
Attn: Mike Dailey and Mark Dinell  
1300 West Washington  
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Phoenix, Arizona 85007

ONE COPY of the foregoing mailed  
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