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BEFORE THE ARIZONA CORPORATION COMMISSION

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**COMMISSIONERS:**  
MIKE GLEASON – Chairman  
WILLIAM A. MUNDELL  
JEFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

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ARIZONA CORP COMMISSION  
DOCKET CONTROL

In the matter of:

Docket No. S-20600A-08-0340

MARK W. BOSWORTH and LISA A. BOSWORTH, husband and wife;  
STEPHEN G. VAN CAMPEN and DIANE V. VAN CAMPEN, husband and wife;  
MICHAEL J. SARGENT and PEGGY L. SARGENT, husband and wife;  
ROBERT BORNHOLDT and JANE DOE BORNHOLDT, husband and wife;  
MARK BOSWORTH & ASSOCIATES, LLC, an Arizona limited liability company;  
3 GRINGOS MEXICAN INVESTMENTS, LLC, an Arizona limited liability company;

Respondents.

**RESPONDENTS MICHAEL J. AND PEGGY L. SARGENT'S 12(b)(6) MOTION TO DISMISS THE ALLEGED VIOLATIONS OF A.R.S. § 44-1991**

Arizona Corporation Commission  
**DOCKETED**  
AUG 15 2008

DOCKETED BY *mm*

Respondents Michael J. and Peggy L. Sargent (“Respondents”), hereby move to dismiss Paragraphs 24 and 25 of the Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, for Restitution, for Administrative Penalties, and for Other Affirmation Action (the “Notice”) pursuant to, *inter alia* and without limitation, Ariz.R.Civ.P. 9(b) and 12(b)(6). Respondents, in filing this Motion, do not concede that the alleged investment contracts and promissory notes at issue constitute a “securities,” as the term is defined under applicable statutes and case authority, and reserve the right to challenge any such assertion by the Securities Division. Rather, the Securities Division’s fraud claims are not plead with the requisite specificity and are subject to dismissal. This Motion is supported by the following Memorandum of Points and Authorities.

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. BASIS OF MOTION TO DISMISS.**

3 The Securities Division fails in its attempt to allege securities fraud claims against  
4 Respondents. Rule 9(b) expressly states, “[i]n all averments of fraud or mistake, the  
5 circumstances constituting fraud or mistake *shall be stated with particularity.*” See Ariz.R.Civ.P.  
6 9(b)(emphasis supplied). As noted by the Arizona District Court, “the complaint must allege  
7 specific facts regarding the fraudulent activity, such as the time, date, place and content of the  
8 alleged fraudulent representation, how or why the representation was false or misleading, and in  
9 some cases the identity of the person engaged in the fraud.” *In re White Electronic Designs Corp.*  
10 *Sec. Lit.*, 416 F.Supp.2d 754, 761-62 (D.Ariz. 2006); see also *In re Metricom Secs. Litig.*, 2004  
11 WL 966291, at \*8 (N.D.Cal. Apr. 29, 2004)(citing *In re GlenFed Sec. Litig.*, 42 F.3d 1541,  
12 1547-49 (9th Cir. 1994).

13 In direct contravention of the foregoing authority, the Securities Division has failed to craft  
14 a Notice in such a way that a reader can determine: (a) what material statements (or portions  
15 thereof) are alleged to be false or misleading; (b) the reason or reasons the statements are  
16 misleading; (c) who, specifically, made the statements; (d) when the statements were made;  
17 (e) where the statements were made; (f) to what individual or entity were the alleged statements  
18 made; or (g) how allegedly omitted information, if disclosed, would be relevant or meaningful.  
19 *Id.* Thus, the Securities Division’s A.R.S. § 44-1991 allegations should be dismissed pursuant to  
20 Ariz.R.Civ.P. 12(b)(6).

21 **II. SECURITIES FRAUD CLAIMS SHOULD BE DISMISSED.**

22 **1. The Securities Fraud Allegations Lack Particularity And Are Deficient On**  
23 **Their Face.**

24 With regard to the Securities Division’s securities fraud claims found in Paragraphs 24 and  
25 of the Notice, the Securities Division generically alleges that “Respondents, directly or  
26 indirectly: (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of  
27 material fact or omitted to state material facts that were necessary in order to make the statements

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1 made not misleading in the light of the circumstances under which they were made; or (iii)  
2 engaged in transactions, practices, or courses of business that operated or would operate as a fraud  
3 or deceit upon offerees and investors.” Notice at page 5, ¶ 24.

4 The only hint the Securities Division provides about the timing of the fraud allegations is  
5 they occurred sometime “from at least April 2006 until at least October 2007.” *Id.* at ¶ 12.  
6 Nowhere in the Notice does the Securities Division specifically state which Respondent and/or  
7 agent of any Respondent made the foregoing misrepresentations and allegedly omitted material  
8 facts. *Id.* No specific date, month or year is provided by the Securities Division as to when the  
9 misrepresentations were made and material facts were not disclosed. *Id.* No explanation is  
10 provided as to why the misrepresentations are “material” as alleged in the Notice. *Id.* The  
11 Securities Division does not allege where the violations occurred, who “approved” them and/or  
12 how any such individual or entity had authority to commit the violations. *Id.* No specificity is  
13 provided as to which Respondent, if any, was present when the violations were allegedly  
14 committed. *Id.*

15 Therefore, the Securities Division’s fraud allegations facially lack the particularity  
16 required under Rules 8(a)(2) and 9(b), and they should be dismissed pursuant to Rule 12(b)(6).

17 **III. CONCLUSION**

18 For the foregoing reasons, Defendants respectfully request that their Rule 12(b)(6) Motion  
19 to Dismiss be granted, and the Administrative Law Judge issue a recommended Order that the  
20 alleged violations of A.R.S. § 44-1991 be dismissed.  
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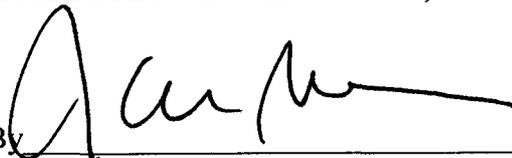
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RESPECTFULLY SUBMITTED this 15th day of August, 2008.

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By 

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ORIGINAL and thirteen copies of the foregoing  
filed this 15th day of August, 2008 with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
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Copy of the foregoing hand-delivered  
this 15th day of August, 2008 to:

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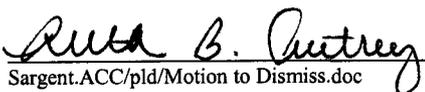
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