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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

2008 AUG 21 P 12:30
AZ CORP COMMISSION
DOCKET CONTROL

In the matter of:

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.

Docket No. S-20600A-08-0340

RESPONDENTS MICHAEL J. SARGENT AND PEGGY L. SARGENT'S MOTION TO STAY

(Oral Argument Requested)

Arizona Corporation Commission
DOCKETED
AUG 21 2008

DOCKETED BY

I. INTRODUCTION.

Clark L. Derrick, Esq., of the law firm of Kimerer & Derrick, P.C., represents Michael J. Sargent in connection with a criminal investigation currently being conducted by the Attorney General's Office into the activities of Mark Bosworth & Associates, LLC, and certain entities and individuals. In early June 2008, Mr. Derrick spoke with Donald E. Conrad, Chief of the Attorney General's Criminal Section. During this conversation, Mr. Conrad told Mr. Derrick that Mr. Sargent is a "target" in the criminal investigation being conducted by his office. Mr. Derrick's Affidavit is attached as Exhibit 1.

Approximately a month later, on July 3, 2008, the Securities Division of the Arizona Corporation Commission ("the Division") issued its Notice of Opportunity for Hearing regarding Proposed Order to Cease and Desist, for Restitution, for Administrative Penalties and for other

1 Affirmative Action (the "Notice") naming Michael J. Sargent and Peggy L. Sargent as
2 Respondents. On July 24, 2008, Mr. and Mrs. Sargent timely requested a hearing and have filed an
3 Answer.

4 Although the Securities Division could use this pending administrative proceeding as the
5 vehicle to conduct its discovery, it chose instead to ignore the discovery provisions provided by the
6 Commission's Rules of Practice, the applicable Civil Rules and the Administrative Procedures Act.
7 It elected on July 28, 2008, twenty-five (25) days after the issuance of the Notice, to issue an
8 *investigative* subpoena pursuant to A.R.S. §§ 44-1823 and 44-3133. A copy of the Division's
9 investigative subpoena and related correspondence is found at Exhibit 2.

10 The investigative subpoena issued by the Division contains language not found in Requests
11 for Production of Documents and subpoenas issued by the Commission pursuant to the applicable
12 rules regarding contested cases before it. In particular, the following language is found on the face
13 of the investigative subpoena:

14 The Securities Division may disclose the information or documents to a county
15 attorney, *the attorney general*, a United States attorney, or to law enforcement or
16 regulatory officials to be used in any administrative, civil or *criminal*
17 *proceeding*. *You may, in accordance with the rights guaranteed to you by the*
18 *Fifth Amendment of the Constitution of the United States, refuse to give any*
19 *information that might establish a direct link in a chain of evidence leading to*
20 *your criminal conviction.*

21 (Emphasis supplied.) There can be no doubt that the subpoena issued by the Division on July 28,
22 2008 reflects an effort to collect evidence to aid an ongoing investigation. The subpoena is clear
23 that the information may be disclosed to the Attorney General. It refers to the rights guaranteed a
24 person by the Fifth Amendment of the Constitution of the United States. It notes that Mr. Sargent
25 can refuse to give information that might establish a direct link in the chain of evidence *leading to*
26 *his criminal conviction.*

27 Given the statutes under which the subpoena was issued and the bold and threatening
language contained on its face, it is appropriate that discovery and this administrative proceeding be
stayed as to Respondents Michael J. and Peggy L. Sargent until such time as the Attorney General

1 completes the criminal investigation and/or prosecution. To do otherwise, is to burden Mr. Sargent
2 with the dilemma of being forced to answer questions in the administrative proceeding while at the
3 same time having to protect himself during a criminal investigation. If he asserts his Fifth
4 Amendment privilege in connection with administrative context, that assertion could be used
5 against him to create an adverse inference which could result in an order requiring him to pay, as
6 alleged in the Notice, "at least \$5,600,000." Notice at p. 3, l. 22, and p. 6, ls. 16-18. Mr. Sargent
7 should not be subject to this parallel jeopardy.

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 Given the existence of the Attorney General's criminal investigation and his designation as
10 a "target," this proceeding threatens Mr. Sargent's ability to preserve the sanctity of his federal and
11 state privilege against self-incrimination during the parallel civil and criminal proceedings. The
12 situation in which Mr. Sargent finds himself has been called a "cruel dilemma" by courts and
13 commentators, a "damned if you do and damned if you don't" scenario. See, e.g., *United States v.*
14 *\$250,000*, 808 F.2d 895, 900-01 (1st Cir. 1987); Elkan Abramowitz & Jed Rackoff, *The Fifth*
15 *Amendment Privilege in Civil Litigation: Assertion, Waiver and Consequences*, 137 PLI/Crim 211,
16 244 (1985).

17 If Mr. Sargent testifies and/or provides sworn discovery responses in this administrative
18 matter, his answers could be used against him in the pending criminal investigation, a fact the
19 Securities Division stresses on the face of its subpoena. But if a party invokes the Fifth
20 Amendment privilege to prevent discovery of evidence in the civil case, a tribunal may preclude the
21 party from presenting evidence on its own behalf (see, e.g., *SEC v. Cymaticolor Corp.*, 106 F.R.D.
22 545, 549-50 (S.D.N.Y. 1985), and draw an adverse inference therefrom. *Baxter v. Palmigiano*, 425
23 U.S. 308, 318 (1976). Mr. Sargent would, therefore, be crippled in his ability to vigorously defend
24 against the broad-based, unspecified allegations of the Securities Division, if compelled to proceed
25 in this action now. If he invokes his constitutional privilege against self-incrimination, he could
26 severely impair his ability to defend against the civil claims in the Notice. Mr. Sargent should not
27 be denied his ability to defend those actions.

The United States Supreme Court and many other courts have recognized that a stay is

1 appropriate in these circumstances. The United States Supreme Court has recognized that a
2 defendant should not be forced to choose between protecting himself criminally or civilly. The
3 Court explained that in cases of parallel criminal and civil proceedings, “the appropriate remedy
4 would be a protective order ... postponing civil discovery until termination of the criminal action.”
5 *United States v. Kordel*, 397 U.S. 1, 9 (1970); *see also Wallace v. Kato*, 127 S. Ct. 1091, 1098
6 (2007) (explaining that “it is within the power of the district court, and in accord with common
7 practice, to stay the civil action until the criminal case or the likelihood of a criminal case is
8 ended.”).

9 Following the Supreme Court’s lead, many courts around the country, in similar
10 circumstances, have stayed some or all civil discovery (and on occasion, the entire civil case) until
11 the criminal cases have been resolved. *See, e.g., Afro-Lecon, Inc. v. United States*, 820 F.2d 1198,
12 1203, 1207 (Fed. Cir. 1987); *Wehling v. Columbia Broad. Sys.*, 608 F.2d 1084, 1089 (5th Cir.
13 1979); *United States v. Mellon Bank, N.A.*, 545 F.2d 869, 872-74 (3d Cir. 1976); *State Farm Lloyds*
14 *v. Wood*, Civ. A. No. H-08-503, 2006 WL 3691115, at *3 (S.D. Tex. I Dec. 12, 2006); *Maloney v.*
15 *Gordon*, 328 F. Supp. 2d 508, 511-14 (D. Del. 2004); *SEC v. Mutuals.com, Inc.*, No. Civ. A.
16 3:3:03-CV-2912-O, 2004 WL 1629929, at *4 (N.D. Tex. July 20, 2004); *Frierson v. City of*
17 *Terrell*, No. Civ. A. 3:02-CV-2340-H, 2003 WL 21355969, at *8 (N.D. Tex. June 6, 2003);
18 *Bureerong v. Uvawas*, 167 F.R.D. 83, 87 (C.D. Cal. 1996); *Volmar Distrib., Inc. v. New York Post*
19 *Co.*, 152 F.R.D. 36, 39-40 (S.D.N.Y. 1993); *United States v. Moultonboro*, 781 F. Supp. 830, 834-
20 35 (D.N.H. 1992); *Brock v. Tolkaw*, 109 F.R.D. 116, 119-121 (E.D.N.Y. 1985); *Ex parte Rawls*,
21 953 So.2d 374, 384-87 (Ala. 2006); *State v. Deal*, 740 N.W.2d 755, 764-70 (Minn. 2007).

22 Given the conflicting interests at stake when a parallel civil and criminal proceedings
23 occurs, a court may “stay civil proceedings pending the outcome of parallel criminal proceedings.”
24 *Federal Sav. & Loan Ins. Corp. v. Molinaro*, 889 F.2d 899, 902 (9th Cir. 1989). The court should
25 consider the extent to which a defendant’s Fifth Amendment rights are implicated along with the
26 particular facts and circumstances of the case. *Id.* The other factors a court should consider when
27 ruling on a motion to stay a civil action pending resolution of criminal proceedings are:

- (1) the interest of the Securities Division in proceeding expeditiously with the litigation or

- 1 any particular aspect of it, and the potential prejudice to the Securities Division of a delay;
- 2 (2) the burden that any particular aspect of the proceedings may impose on Mr. Sargent;
- 3 (3) the convenience of the tribunal in the management of its cases, and the efficient use of
- 4 judicial resources;
- 5 (4) the interests of persons not parties to the litigation; and
- 6 (5) the interest of the public in the pending civil and criminal investigation.

7 Each of these issues is considered below.

8 **1. The interest of the Securities Division in proceeding expeditious.**

9 The relief that Mr. Sargent seeks is temporary and easy to fashion. It would not interfere
10 with the Securities Division's ability to continue to prepare its case by pursuing discovery against
11 other parties and third parties.

12 In *Pacers, Inc. v. Superior Court*, 87 Cal.App.3d 686, 688 (1984). The California Court of
13 Appeals chastised the lower court for forcing defendants "to choose between their silence and a
14 'meaningful chance of avoiding the loss through judicial process of a substantial amount of
15 property,'" and made clear that "[a] party asserting the Fifth Amendment privilege should suffer no
16 penalty for his silence." (*quoting People v. Coleman*, 13 Cal.3d 867, 885 (1975.)) The Court of
17 Appeals then stayed discovery for 13 months (until the criminal statute of limitations had run) and
18 concluded that "postponing [defendants'] depositions ... will cause inconvenience and delay to [the
19 plaintiffs]; however, protecting a party's constitutional rights is paramount." *Id.* at 690.

20 Three facts were critical to the *Pacers* holding. *First*, the defendants faced a non-trivial
21 threat of criminal prosecution: even though the grand jury already had refused to return indictments
22 against them, the mere existence of the U.S. Attorney's "open file" was sufficient to trigger
23 significant Fifth Amendment concerns. *Second*, the facts underlying the civil and criminal
24 proceedings were essentially the same. And *third*, even though defendants asked the trial court for
25 a two-year postponement of their depositions (until the criminal statute of limitations had run),
26 such "inconvenience and delay" to the plaintiffs did not outweigh the defendants' interests in
27 vindicating their constitutional right to remain silent. *Id.*

Pacers instructs courts confronted with civil defendants facing concurrent criminal charges

1 to “weigh the parties’ competing interests with a view toward accommodating the interests of both
2 parties, if possible.” *Id.* Tribunals performing the requisite balancing must remember that such
3 defendants are “generally entitled to a stay of discovery in the civil action until disposition of the
4 criminal matter.” *Id.*

5 **2. The burden on Mr. Sargent of proceeding with the administrative action.**

6 The Administrative Law Judge’s resolution of whether Mr. Sargent is entitled to a stay to
7 preserve his ability to fully and fairly defend both the civil and criminal allegations against him has
8 enormous legal significance. Absent a clear ruling, parties such as Mr. Sargent will continue to be
9 forced to choose between responding to the Securities Division’s discovery - and risk waiving their
10 Fifth Amendment privilege and/or prematurely revealing their arguments and defenses to the
11 criminal prosecutors - or invoking their Fifth Amendment privilege - and hand an enormous tactical
12 advantage to the Securities Division (which may be seeking upwards of \$5,600,000 from
13 Mr. Sargent). This, the *Pacers* court recognized, is far too costly a penalty for the exercise of a
14 critical constitutional right and “violate[s] concepts of fundamental fairness.” 162 Cal.App.3d at
15 690.¹

16 In today’s post-Enron world, the courts have already seen a wave of parallel civil and
17 criminal proceedings that have placed civil defendants in the same unfair predicament that
18 Mr. Sargent now faces: whether to severely compromise their defense of actions that seek tens of
19 millions of dollars in damages against them by asserting their Fifth Amendment rights during
20 discovery. Recognizing this dilemma and its inherent unfairness, many federal courts have granted
21 stays to civil defendants facing parallel and related criminal proceedings.²

22 ¹ See also *Coleman*, 13 Cal.3d at 878 (defendant who faces dual criminal and non-criminal charges risks “seriously
23 incriminating] himself if he exercises his right to be heard.... If he remains silent he not only loses his opportunity to
24 present a conceivably convincing case [in his own defense] but also incurs the risk that notwithstanding the ideals of
25 the Fifth Amendment his silence will be taken as an indication that there are no valid reasons” to find in his favor).

26 ² See *Javier H. v. Garcia-Botello*, 218 F.R.D. 72, 74-76 (W.D.N.Y. 2003); *Frierson*, 2003 WL 21355969 at *3-4;
27 *SEC v. Healthsouth Corp.*, 261 F. Supp. 2d 1298, 1316 (N.D.Ala. 2003); *SEC v. Kozlowski*, No. 02 Civ. 7312, 2003
WL 1888729 at *1-2 (S.D.N.Y. Apr. 15, 2003); *In re Worldcom Sec. Litig.*, Nos. 02-CIV-3288 and 02-CIV-4816,
2002 WL 31729501 at *4-5 (S.D.N.Y. Dec. 5, 2002); *Bruner Corp. v. Salogh*, 819 F. Supp. 811, 814-16 (E.D.Wis.
1993); *Koulouris v. Builders Fence Co., Inc.*, 146 F.R.D. 193, 194-95 (W.D.Wash. 1991). Courts of other states
have done likewise. See, e.g., *People ex rel. Hartigan v. Kafka & Sons Bldg. Co.*, 625 N.E.2d 16, 20 (Ill. App. Ct.
1993); *Ex parte White*, 551 So.2d 923, 925-26 (Ala. 1989); *Zonghetti v. Jeromack*, 541 N.Y.S.2d 235, 237
(N.Y.App.Div. 1989); *DeSiervi v. Liverzani*, 523 N.Y.S.2d 147, 147-48 (N.Y.App.Div. 1988).

1 The Hobson's choice at the heart of Mr. Sargent's Motion to Stay has also been the subject
2 of a growing number of legal commentaries and is the source of cutting-edge legal debate, the
3 resolution of which calls out for the Administrative Law Judge to grant Mr. Sargent's Motion. *See*
4 David U. Gourevitch, "*Between a Rock and a Hard Place: Parallel Proceedings in the Post-Enron*
5 *Era*," 1383 *PLI/Corp.* 503, 507 (2003). ("In today's post-Enron world, those enmeshed in
6 regulatory investigations face a difficult dilemma: if they testify in the regulatory investigation, they
7 damage their position in the increasingly likely event of a criminal investigation"); Tower C. Snow,
8 et al., "*Defending Securities Class Actions*", SH083 ALI-ABA 177, 191, 237-39 (2003) ("Due to
9 the increased interest of the United States Attorney's Office in securities fraud cases ..., one must
10 consider instructing a client to assert his or her Fifth Amendment privilege against self-
11 incrimination in civil class actions"); Steven M. Salky, "Evaluating the Legal Ramifications in
12 Complex Corporate Investigations of Asserting (or Not Asserting) the Fifth Amendment," SH077
13 ALI-ABA 387, 389-90 (2002) (a corporate executive must consider "the legal consequence that
14 assertion of the privilege may have in any one of the numerous proceedings in which [he or she]
15 may be a party").

16 Indeed, because the Fifth Amendment "protects against *any* disclosures which the witness
17 reasonably believes could be used in a criminal prosecution *or could lead to other evidence that*
18 *might be so used*," Mr. Sargent would have to repeatedly invoke his Fifth Amendment rights in
19 response to a broad range of questions. *Kastigar v. United States*, 406 U.S. 441, 444-45 (1972)
20 (emphasis added). A stay is intended to help a defendant avoid this trap and preserve the sanctity
21 of his Fifth Amendment rights without compromising his ability to defend himself civilly, when the
22 balancing of interests weighs in his favor.

23 **3. The interests of the Securities Division weighed against the prejudice caused by**
24 **the delay.**

25 In evaluating whether the Securities Division may be burdened by a stay, "courts may insist
26 that the plaintiff establish more prejudice than simply a delay in his right to expeditiously pursue
27 his claim." *Id.* at *2 (quoting *In re Adelfia Communications Sec. Litig.*, No. 02-1781, 2003 WL
22358819, at *4 (E.D. Pa. May 13, 2003)). Fifth Amendment considerations outweigh a Plaintiff's

1 complaints regarding inconvenience, delay, or stale memories. *Volmar Distrib.*, 152 F.R.D. at 40.

2 A stay would be a minor inconvenience to the Securities Division, especially when
3 compared to civil stays that are issued automatically upon a party's bankruptcy, *see* 11 U.S.C. §
4 362, for an appeal of a variety of interlocutory orders by a trial court, or when an insurance
5 company is placed in receivership. In each of these situations, there is a recognition that there are
6 other interests at stake that trump a litigant's right to an expeditious pursuit of its claim. The same
7 is true of Mr. Sargent's Fifth Amendment rights in these circumstances. Here, the Securities
8 Division knows there are no ongoing activities about which it complains in the Notice.

9 **4. The private interests of and burden on the Respondents.**

10 This issue has been analyzed above. Because of the pending criminal investigation and the
11 overlap in the civil and criminal proceedings, "the risks to the fair resolution of the criminal case
12 outweigh the benefits of expedition in the civil case." *Wood*, 2006 WL 3691115, at *3; *see also*
13 *Librado v. M.S. Carriers, Inc.*, No. Civ. A. 3:02-CV-2095, 2002 WL 31495988, at *3 (burden
14 established by showing that that truck driver "faces a conflict between asserting his Fifth
15 Amendment rights and fulfilling his legal obligations as a witness in this civil action"). This factor
16 - avoiding the "cruel dilemma" faced by Mr. Sargent - weighs strongly in favor of a stay.

17 **5. The interests of the tribunal.**

18 Issues common to both civil and criminal proceedings are often more effectively addressed
19 in the criminal context first. *United States v. \$2,067,437.08*, No. 6:07-cv-391, 2008 WL 238514, at
20 *3 (E.D. Tex. Jan. 28, 2008). A stay pending the resolution of criminal proceedings can promote
21 judicial efficiency, because "[if] the civil action is stayed until the conclusion of the criminal
22 proceedings, there is no need to make rulings regarding potential discovery disputes involving
23 issues that may affect the criminal case." *Wood*, 2006 WL 3691115, at *3; *accord Shaw*, 2007 WL
24 1465850, at *2. Further, "the outcome of the criminal proceedings may guide the parties in
25 settlement discussions and potentially eliminate the need to litigate some or all of the issues in this
26 case." *Wood*, 2006 WL 3691115, at *3; *accord Shaw v. Hardberger*, No. SA-06-CA-751-XR,
27 2007 WL 1465850, at *2 (W.D. Tex. may 16, 2007). Moreover, the Securities Division can make
no showing that granting Mr. Sargent's requested relief will unduly interfere with the management

1 of this docket, so this factor does not weigh against a stay. *See Mutuals.com, Inc.*, 2004 WL
2 1629929, at *4; *Librado*, 2002 WL 31495988, at *3. It is well known the Securities Division takes
3 the position that its administrative proceedings are immune from the effect of any statutes of
4 limitation.

5 6. The public interest.

6 The public's interest weighs in favor of a stay where it would "not 'impose an undue
7 hardship' on [the] plaintiff and [where] it would allow for a constitutional resolution of the
8 concurrent disputes while protecting [Alvarez] from unnecessary adverse consequences." *Frierson*,
9 2003 WL 21355969, at *4. Further, "[t]he public's interest in the integrity of the criminal case is
10 entitled to precedence over the civil litigant." *Wood*, 2006 WL 3691115, at *3 (quoting *Javier H.*,
11 218 F.R.D. 72, 75; *accord Shaw*, 2007 WL 1465850, at *2. This factor, like the others, weighs in
12 favor of a stay.

13 Civil discovery has been stayed during the pre-indictment phase of a criminal case. In
14 *Brock v. Tolkow*, 109 F.R.D. at 120 n.2 (E.D.N.Y. 1985), the defendant was facing both discovery
15 in a civil suit for breach of fiduciary duties under the Employee Retirement Income Security Act of
16 1974 (ERISA) and a criminal investigation into the same charges. No defendant had been indicted.
17 Yet the court stayed the civil discovery. The court focused on two factors; the scope of the stay,
18 and that a stay would not threaten any public interest. *Id.*, at 120.

19 CONCLUSION

20 The interweaving of discovery and cross-fertilization of information as between parallel
21 civil and criminal actions, even where the criminal action is still in its nascent stage, requires the
22 Administrative Law Judge to exercise discretion and consider many factors. When those facts are
23 considered, it is clear that discovery and the administrative proceeding should be stayed as to the
24 Respondents Michael J. Sargent and Peggy L. Sargent until such time as the criminal matter is
25 resolved.

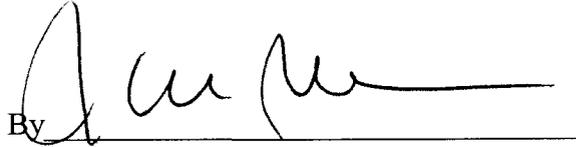
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RESPECTFULLY SUBMITTED this 21st day of August, 2008.

ROSHKA DeWULF & PATTEN, PLC

By 

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Attorneys for Respondents
Michael J. Sargent and Peggy L. Sargent

ORIGINAL and thirteen copies of the foregoing
filed this 21st day of August, 2008 with:

Docket Control
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Copy of the foregoing hand-delivered
this 21st day of August, 2008 to:

Marc E. Stern, Hearing Officer
Hearing Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Aaron S. Ludwig, Esq.
Securities Division
Arizona Corporation Commission
1300 West Washington Street, 3rd Floor
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Copy of the foregoing mailed
this 21st day of August, 2008 to:

Robert D. Mitchell, Esq.
Joshua R. Forest, Esq.
Julie M. Beauregard, Esq.
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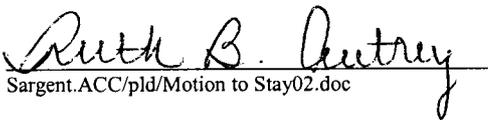

Sargent.ACC/pld/Motion to Stay02.doc

Exhibit 1

Exhibit 2

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

BRIAN C. McNEIL
EXECUTIVE DIRECTOR



ARIZONA CORPORATION COMMISSION

MATTHEW J. NEUBERT
DIRECTOR

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007
TELEPHONE: (602) 542-4242
FAX: (602) 594-7470
E-MAIL: securitiesdiv@azcc.gov

Via Certified Mail, Return Receipt Requested [Personal Service]

Michael Sargent
77 E. Missouri, #3
Phoenix, AZ 85012

Re: **Mark Bosworth, et. al.**

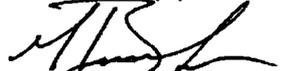
/File No. 7844

Dear Mr. Sargent:

Enclosed you will find a Subpoena Duces Tecum which requires your appearance before the Securities Division on **August 21st, 2008**. In lieu of personal appearance, you may provide the requested documents by the due date by mailing them to **Special Investigator Michael D. Brokaw**, Securities Division, Arizona Corporation Commission, 1300 West Washington Street, Third Floor, Phoenix, Arizona 85007. Testimony concerning the documents will be scheduled at a later time, if necessary.

Should you have any questions regarding this subpoena, please feel free to contact me at (602) 542-0205 or (602) 542-4242.

Very truly yours,


Michael D. Brokaw
Special Investigator

SUBPOENA
SECURITIES DIVISION
ARIZONA CORPORATION COMMISSION

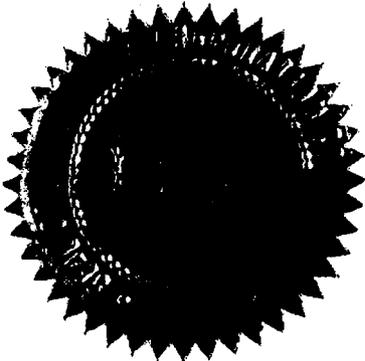
TO Michael Sargent
77 E. Missouri, #3
Phoenix, AZ 85012

In the matter of

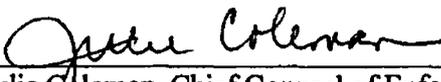
Mark Bosworth, et. al. **file number 7844**

**involving possible violations of the Securities Act
and/or Investment Management Act of Arizona.**

PURSUANT TO A.R.S. § 44-1823 AND A.R.S. § 44-3133, YOU ARE HEREBY REQUIRED to appear before **Special Investigator Michael D. Brokaw** of the Securities Division of the Arizona Corporation Commission at 1300 West Washington, Third Floor, Phoenix, Arizona 85007, on the **21st day of August, 2008** at **10:00 AM**, to PRODUCE THE DOCUMENTS SPECIFIED IN EXHIBIT "A", which is attached and incorporated by reference.



The seal of the Arizona Corporation Commission is affixed hereto, and the undersigned, a member of said Arizona Corporation Commission, or an officer designated by it, has set her hand at Phoenix, Arizona this 28th day of July, 2008.



Julie Coleman, Chief Counsel of Enforcement
Securities Division

Information and documents obtained by the Securities Division in the course of an investigation are confidential, unless made a matter of public record. The Securities Division may disclose the information or documents to a county attorney, the attorney general, a United States Attorney, or to law enforcement or regulatory officials to be used in any administrative, civil, or criminal proceeding. You may, in accordance with the rights guaranteed to you by the Fifth Amendment of the Constitution of the United States, refuse to give any information that might establish a direct link in a chain of evidence leading to your criminal conviction.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Linda Hogan, Executive Assistant to the Executive Director, voice phone number 602/542-3931, e-mail lhogan@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

Pursuant to A.R.S. § 44-1825 and A.R.S. § 44-3134, failure to comply with this subpoena may result in the application for a finding of contempt.

Pursuant to A.A.C. R14-4-304, any person required to appear at a formal interview may be represented by legal counsel.

Exhibit "A"

From the period beginning January 1, 2005 to the present, all documents (including, but not limited to, records, contracts, agreements, written lists, books, correspondence, e-mails, any and all papers, etc.), whether stored on electronic media or otherwise, in your personal possession or that you are reasonably able to obtain, incident or relating to:

- a. 3 Gringos Mexican Investments, LLC
- b. Bosworth Commercial, Inc.
- c. Mark Bosworth and Associates, LLC