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BEFORE THE ARIZONA CORPORATION COMMISSION

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KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

ARIZONA CORPORATION 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, L.L.C., an Arizona limited liability company;

3 GRINGOS MEXICAN INVESTMENTS, L.L.C., an Arizona limited liability company;

Respondents.

DOCKET NO. S-20600A-08-0340

RESPONSE TO RESPONDENTS MICHAEL J. SARGENT AND PEGGY L. SARGENT'S MOTION TO QUASH SUBPOENA

(Assigned to the Honorable Marc E. Stern)

Arizona Corporation Commission  
DOCKETED

MAR 31 2009

DOCKETED BY

The Securities Division ("the Division") of the Arizona Corporation Commission ("the Commission") hereby responds to Respondents Michael J. Sargent and Peggy L. Sargent's (collectively "Sargent") Motion to Quash Subpoena ("the Motion") and requests that it be denied because the subpoena at issue is not overly broad, was properly served, and contains all required legal notices.

**I. The subpoena is not overly broad.**

The subpoena to Respondent 3 Gringos Mexican Investments, L.L.C. ("3GMI") does, in fact, ask for all documents in the custodian of records' possession incident or relating to 3GMI and 21 other entities. However, it is important to note that all of the other entities are either

1 respondents in this case or entities controlled by or related to respondents in this case, including  
2 all three members of 3GMI – one of whom is Sargent. As such, it is reasonable to believe that  
3 3GMI has documents incident or relating to all of the listed entities. Furthermore, contrary to  
4 Sargent's assertion that requests related to the other entities should be directed to the custodians  
5 of records of those entities, the Division wants the documents of 3GMI, including 3GMI  
6 documents that relate to the other entities. Of course, the other entities might have documents  
7 that relate to 3GMI, but it is perfectly reasonable, proper, and not overly broad to request from  
8 3GMI all 3GMI documents that relate to the other entities.

9 **II. The subpoena was properly served.**

10 3GMI is a member-managed limited liability company and, as such, service upon 3GMI  
11 is good and proper upon service of any of its three managing members, namely Sargent and  
12 Respondents Mark Bosworth and Stephen Van Campen. Here, the Division served the subpoena  
13 upon Sargent and, now that 3GMI has been served with a subpoena for documents, 3GMI is  
14 obliged to respond and produce them. Just because the subpoena is addressed to the custodian of  
15 records and Sargent denies being that, does not mean that 3GMI has not been served.

16 The Division properly served the subpoena upon 3GMI by serving Sargent and it may not  
17 be quashed just because Sargent says that he is not the custodian of records. At the personal  
18 appearance before the Division on March 16, 2009 required by the subpoena, Sargent could have  
19 testified under oath that he is not the custodian and that he does not have 3GMI documents in his  
20 possession. Instead, Sargent filed the Motion and argues simply that he is not the custodian.  
21 Curiously, Sargent does not state that he does not have 3GMI documents.

22 In denying that he is the custodian, Sargent raises the red herrings that he was never  
23 appointed custodian, that he never accepted responsibility for that position, and that Bosworth  
24 controls and leads 3GMI. On the contrary, the Division's investigation revealed that Sargent (not  
25 Bosworth or Van Campen) is the custodian of records and that he controls and leads 3GMI.  
26 Sargent possesses the documents of 3GMI (for example, its bank statements are mailed to

1 Sargent's residence), signs 3GMI checks (in fact, he is the only authorized signer), writes letters  
2 as its principal, and leads 3GMI in all matters to this day. As for appointment as custodian and  
3 acceptance of responsibility for that position, there is no legal obligation for an LLC to appoint a  
4 custodian of records like there is an obligation to appoint a statutory agent and there is no formal  
5 acceptance of the responsibility of custodian that takes place.

6 The Division properly served the subpoena at Sargent's residence because it is the last  
7 known **mailing** address of 3GMI. The last known **business** address of 3GMI listed in the records  
8 of the Commission is undeliverable and Sargent has failed to continuously maintain a place of  
9 business as required by A.R.S. §29-604. This failure, coupled with the fact that Sargent is the  
10 custodian of records of 3GMI (as evidenced by, among other things, the mailing of 3GMI bank  
11 statements to Sargent's residence), makes Sargent's residence the last known mailing address. Thus,  
12 the Division's service of the subpoena at Sargent's residence is proper service pursuant to A.A.C.  
13 R14-4-303.E.4.

14 **III. The subpoena contains all required legal notices.**

15 The subpoena contains all required legal notices as it references A.A.C. R14-4-304, the rule  
16 that spells out the rights of witnesses. The poor quality copy of the subpoena attached to the Motion  
17 cuts off the bottom of the subpoena's front page where the rule is cited. As such, a copy of the front  
18 page of the subpoena is attached hereto as Exhibit A.

19 **IV. Conclusion.**

20 Based on the foregoing, the subpoena is not overly broad, was properly served, and contains  
21 all required legal notices. As such, the Motion should be denied and Sargent must produce the  
22 3GMI documents.

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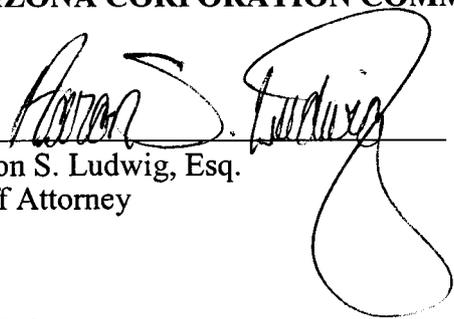
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RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of March 2009.

**SECURITIES DIVISION of the  
ARIZONA CORPORATION COMMISSION**



Aaron S. Ludwig, Esq.  
Staff Attorney

**ORIGINAL and 13 COPIES** of the foregoing filed  
this 31<sup>st</sup> day of March 2009 with:

Docket Control  
Arizona Corporation Commission  
1200 W. Washington St.  
Phoenix, AZ 85007

**COPY** of the foregoing mailed/delivered  
this 31<sup>st</sup> day of March 2009 to:

The Honorable Marc E. Stern  
Hearing Division  
Arizona Corporation Commission  
1200 W. Washington St.  
Phoenix, AZ 85007

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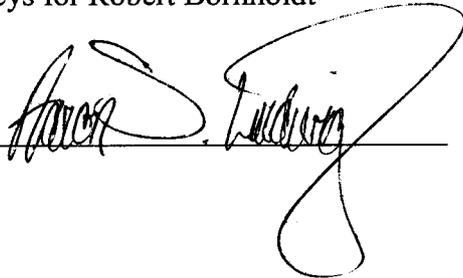


EXHIBIT A

**SUBPOENA**  
SECURITIES DIVISION  
ARIZONA CORPORATION COMMISSION

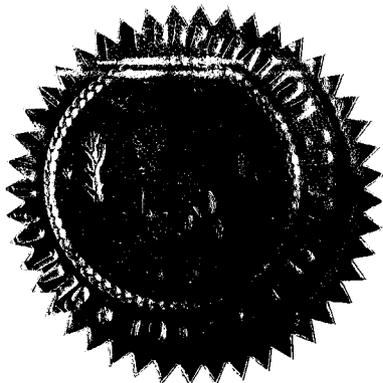
**TO Custodian of Records**  
**3 Gringos Mexican Investments, LLC**  
**77 E. Missouri St. #3**  
**Phoenix, AZ 85012**

**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 **16th day of March, 2009** 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 his hand at Phoenix, Arizona this 18th day of February, 2009.

  
\_\_\_\_\_  
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 Shaylin A. Berlin, Executive Assistant to the Interim Executive Director, voice phone number 602/542-3931, e-mail [saberlin@azcc.gov](mailto:saberlin@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.