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**AZ CORP COMMISSION
DOCKET CONTROL**

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

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

Arizona Corporation Commission
DOCKETED

NOV 23 2009

DOCKETED BY

In the matter of:

ENERGETICS, INC., a Nevada Corporation;

STEVEN P. GIUFFRIDA and
MICHELLE GIUFFRIDA, husband and wife;

RODNEY PETERSON and
VIRGINIA PETERSON, husband and wife,

Respondents.

Docket No. S-20648A-09-0010

**ANSWER TO FIRST AMENDED
NOTICE OF OPPORTUNITY
FOR HEARING
AND
CROSS-CLAIMS**

Respondents Rodney and Virginia Peterson (collectively "Petersons") for their response to the First Amended Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and for other Affirmative Action, ("First Amended Notice"), hereby admit, deny and allege as follows. Petersons deny all allegations not specifically admitted herein.

**I.
JURISDICTION**

1. Answering paragraph 1 of the First Amended Notice, Petersons admit the allegations contained therein.

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II.

RESPONDENTS

2. Answering paragraph 2 of the First Amended Notice, Petersons admit upon information and belief the first sentence thereof, and deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations and accordingly deny them.

3. Answering paragraph 3 of the First Amended Notice, Petersons deny knowledge or information sufficient to form a belief as to the truth of the allegations and accordingly deny them.

4. Answering the allegations set forth in the first sentence in paragraph 4 of the First Amended Notice, Petersons refer to the Nevada public records the contents of which speak for itself. Petersons admit, upon information and belief, the allegations set forth in the second sentence of paragraph 4. Petersons deny knowledge of information sufficient to form a belief as to the truth of the remaining allegations and accordingly deny them.

5. Answering paragraph 5 of the First Amended Notice, Petersons deny knowledge or information sufficient to form a belief as to the truth of allegations asserted therein and therefore deny them.

6. Answering paragraph 6 of the First Amended Notice, Petersons deny knowledge or information sufficient to form a belief as to the truth of allegations asserted therein and therefore deny them.

7. Answering paragraph 7 of the First Amended Notice, Petersons admit the allegation contained therein.

8. Answering paragraph 8 of the First Amended Notice, Petersons refer to the Nevada public records the content of which speaks for itself. Notwithstanding the forgoing, Petersons deny that Mr. Peterson was an officer or director of Energetics after September 15, 2008.

9. Answering the first sentence of paragraph 9 of the First Amended

1 Notice, Petersons admit that Virginia Peterson is the spouse of Rodney Peterson.
2 With respect to the second sentence, Petersons state that the allegations contained
3 therein constitute legal conclusions as to which no answer is required. To the extent a
4 response is required, Petersons deny the allegations contained therein.

5 10. Answering paragraph 10 of the First Amended Notice, Petersons deny
6 the allegations contained therein.

7 11. Answering paragraph 11 of the First Amended Notice, Petersons state
8 that no response is required.

9 12. Answering paragraph 12 of the First Amended Notice, Petersons state
10 that no response is required.

11 **III.**
12 **FACTS**

13 13. Answering paragraph 13 of the First Amended Notice, Petersons deny
14 the allegations contained therein.

15 14. Answering paragraph 14 of the First Amended Notice, Petersons deny
16 the allegations contained therein.

17 15. Answering paragraph 15 of the First Amended Notice, Petersons deny
18 the allegations contained therein.

19 16. Answering paragraph 16 of the First Amended Notice, Petersons refer to
20 the promissory notes, the terms and conditions of which speak for themselves.

21 17. Answering paragraph 17 of the First Amended Notice, Petersons refer to
22 the royalty agreements, the terms and conditions of which speak for themselves.

23 18. Answering paragraph 18 of the First Amended Notice, Petersons admit
24 that Rodney Peterson, as an officer and agent of Respondent Energetics and for the
25 benefit of Energetics, executed three promissory notes. Petersons deny knowledge or
26 information sufficient to form a belief as to the truth of the remaining allegations
27 contained therein and accordingly deny them.

28 19. Answering paragraph 19 of the First Amended Notice, Petersons admit

1 that Rodney Peterson, as an officer and agent of Respondent Energetics and for the
2 benefit of Energetics, executed three royalty agreements. Petersons deny knowledge
3 or information sufficient to form a belief as to the truth of the remaining allegations
4 contained therein and accordingly deny them.

5 20. Answering paragraph 20 of the First Amended Notice, Petersons admit
6 upon information and that at least two promissory notes are due and payable.
7 Petersons deny knowledge or information sufficient to form a belief as to the truth of
8 the allegations contained in the second sentence and accordingly deny them.
9 Petersons deny the remaining allegations contained therein.

10 21. Answering paragraph 21 of the First Amended Notice, Petersons denies
11 that he resigned as president in October 2008. Petersons admit the remaining
12 allegations contained therein.

13 22. Answering paragraph 22 of the First Amended Notice, Petersons deny
14 knowledge or information sufficient to form a belief as to the truth of the allegations
15 and accordingly deny them.

16 23. Answering paragraph 23 of the First Amended Notice, Petersons deny
17 knowledge or information sufficient to form a belief as to the truth of the allegations
18 and accordingly deny them.

19 24. Answering paragraph 24 of the First Amended Notice, Petersons deny
20 knowledge or information sufficient to form a belief as to the truth of the allegations
21 and accordingly deny them.

22 25. Answering paragraph 25 of the First Amended Notice, Petersons deny
23 knowledge or information sufficient to form a belief as to the truth of the allegations
24 and accordingly deny them.

25 26. Answering paragraph 26 of the First Amended Notice, Petersons deny
26 knowledge or information sufficient to form a belief as to the truth of the allegations
27 and accordingly deny them.

28 27. Answering paragraph 27 of the First Amended Notice, Petersons deny

1 knowledge or information sufficient to form a belief as to the truth of the allegations
2 and accordingly deny them.

3 28. Answering paragraph 28 of the First Amended Notice, Petersons deny
4 knowledge or information sufficient to form a belief as to the truth of the allegations
5 and accordingly deny them.

6 29. Answering paragraph 29 of the First Amended Notice, Petersons deny
7 knowledge or information sufficient to form a belief as to the truth of the allegations
8 and accordingly deny them.

9 30. Answering paragraph 30 of the First Amended Notice, Petersons deny
10 knowledge or information sufficient to form a belief as to the truth of the allegations
11 and accordingly deny them.

12 31. Answering paragraph 31 of the First Amended Notice, Petersons deny
13 knowledge or information sufficient to form a belief as to the truth of the allegations
14 and accordingly deny them.

15 32. Answering paragraph 32 of the First Amended Notice, Petersons deny
16 knowledge or information sufficient to form a belief as to the truth of the allegations
17 and accordingly deny them.

18 33. Answering paragraph 33 of the First Amended Notice, Petersons deny
19 knowledge or information sufficient to form a belief as to the truth of the allegations
20 and accordingly deny them.

21 34. Answering paragraph 34 of the First Amended Notice, Petersons deny
22 knowledge or information sufficient to form a belief as to the truth of the allegations
23 and accordingly deny them.

24 35. Answering paragraph 35 of the First Amended Notice, Petersons deny
25 the allegations contained therein to the extent the reference to "Respondents" includes
26 Mr. Peterson. In all other respects, Petersons deny knowledge or information
27 sufficient to form a belief as to the truth of the allegations and accordingly deny them.

28 36. Answering paragraph 36 of the First Amended Notice, Petersons deny

1 the allegations contained therein to the extent the reference to "Respondents" includes
2 Mr. Peterson. In all other respects, Petersons deny knowledge or information
3 sufficient to form a belief as to the truth of the allegations and accordingly deny them.

4 37. Answering paragraph 37 of the First Amended Notice, Petersons deny
5 the allegations contained therein to the extent the reference to "Respondents" includes
6 Mr. Peterson. In all other respects, Petersons deny knowledge or information
7 sufficient to form a belief as to the truth of the allegations and accordingly deny them.

8 38. Answering paragraph 38 of the First Amended Notice, Petersons deny
9 the allegations contained therein to the extent the reference to "Respondents" includes
10 Mr. Peterson. In all other respects, Petersons deny knowledge or information
11 sufficient to form a belief as to the truth of the allegations and accordingly deny them.

12 39. Answering paragraph 39 of the First Amended Notice, Petersons admit
13 that Rodney Peterson is not registered as a dealer or salesman with the Arizona
14 Corporation Commission. Petersons deny knowledge or information sufficient to
15 form a belief as to the truth of the remaining allegations and accordingly deny them.

16 IV.

17 VIOLATION OF A.R.S. § 44-1841

18 (Offer and Sale of Unregistered Securities)

19 40. Answering paragraph 40 of the First Amended Notice, Petersons deny
20 the allegations contained therein.

21 41. Answering paragraph 41 of the First Amended Notice, Petersons deny
22 the allegations contained therein.

23 42. Answering paragraph 42 of the First Amended Notice, Petersons state
24 that the allegations contained therein constitute legal conclusions as to which no
25 answer is required. To the extent an answer is required, Petersons deny the
26 allegations contained therein.

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V.

VIOLATION OF A.R.S. § 44-1842

(Transactions by Unregistered Dealers or Salesmen)

43. Answering paragraph 43 of the First Amended Notice, Petersons deny the allegations contained therein to the extent the reference to "Respondents" includes Mr. Peterson. In all other respects, Petersons deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations and accordingly deny them.

44. Answering paragraph 44 of the First Amended Notice, Petersons state that the allegations contained therein constitute legal conclusions as to which no answer is required. To the extent an answer is required, Petersons deny the allegations contained therein.

VI.

VIOLATION OF A.R.S. § 44-1991

(Fraud in Connection with the Offer or Sale of Securities)

45. Answering paragraph 45 of the First Amended Notice, Petersons state that the allegations contained therein constitute legal conclusions as to which no answer is required. To the extent an answer is required, Petersons deny the allegations contained therein to the extent the reference to "Respondents" includes Mr. Peterson. In all other respects, Petersons deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations and accordingly deny them.

46. Answering paragraph 46 of the First Amended Notice, Petersons state that the allegations contained therein constitute legal conclusions as to which no answer is required. To the extent an answer is required, Petersons deny the allegations contained therein to the extent the reference to "Respondents" includes Mr. Peterson. In all other respects, Petersons deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations and accordingly

1 deny them.

2 47. Answering paragraph 47 of the First Amended Notice, Petersons state
3 that the allegations contained therein constitute legal conclusions as to which no
4 answer is required. To the extent an answer is required, Petersons deny the
5 allegations contained therein.

6 48. Answering paragraph 48 of the First Amended Notice, Petersons state
7 that the allegations contained therein constitute legal conclusions as to which no
8 answer is required. To the extent an answer is required, Petersons deny knowledge or
9 information sufficient to form a belief as to the truth of the allegations contained
10 therein and accordingly deny them.

11 **AFFIRMATIVE DEFENSES**

12 1. For their First Affirmative Defense, Petersons state that the First
13 Amended Notice fails to state a claim upon which relief can be granted.

14 2. For their Second Affirmative Defense, Petersons state that at all times,
15 Mr. Peterson acted in good faith.

16 3. For their Third Affirmative Defense, Petersons state that the
17 Commission has failed to plead its fraud claim with the required particularity.

18 4. For their Fourth Affirmative Defense, Petersons state that Mr. Peterson
19 did not act with the requisite scienter required under the Arizona Securities Act.

20 5. For their Fifth Affirmative Defense, Petersons state that Mr. Peterson
21 did not sell or transfer "securities" within the meaning of the Arizona Securities Act.

22 6. For their Sixth Affirmative Defense, Petersons state that the Promissory
23 Notes are an "exempt" transaction within the meaning of the Arizona Securities Act.

24 7. For their Seventh Affirmative Defense, Petersons state that the
25 individuals who are parties to the promissory notes executed by Energetics were
26 "accredited" within the meaning of the Arizona Securities Act.

27 8. For their Eighth Affirmative Defense, Petersons state that Mr. Peterson
28 at all relevant times hereto, acted through a corporation, Energetics, Inc., and the

1 Commission has failed to allege facts sufficient to pierce the corporate veil thereof.

2 9. For their Ninth Affirmative Defense, Petersons allege that damages
3 incurred by a party to the promissory notes, if any, were not caused or proximately
4 caused by Mr. Peterson's actions.

5 10. For their Tenth Affirmative Defense, Petersons allege that to the extent
6 a party to the promissory notes suffered damages, those damages must be offset by
7 the value the party received from the Respondents and others.

8 11. For their Eleventh Affirmative Defense, Petersons allege that any
9 statements alleged in the First Amended Notice attributed to Mr. Peterson are not
10 material.

11 12. For their Twelfth Affirmative Defense, Petersons allege that any
12 statements alleged in the First Amended Notice attributed to Mr. Peterson are not
13 false.

14 13. For their Thirteenth Affirmative Defense, Petersons allege that Mr.
15 Peterson had reasonable grounds to believe, and in fact in good faith did believe, that
16 all statements whether written or oral, allegedly made by him were true and not
17 misleading.

18 14. For their Fourteenth Affirmative Defense, Petersons allege that the
19 parties to the promissory notes were not ignorant of the alleged falsity of any
20 statements alleged in the First Amended Notice attributed to Mr. Peterson.

21 15. For their Fifteenth Affirmative Defense, Petersons allege that the parties
22 to the promissory note did not in fact rely, did not reasonably rely, and did not have
23 the right to rely, on any statements alleged in the First Amended Notice attributed to
24 Mr. Peterson.

25 16. For their Sixteenth Affirmative Defense, Petersons allege that they are
26 entitled to indemnification for all costs and expenses relative to their defense in this
27 matter.

28 17. For the Seventeenth Affirmative Defense, Petersons allege that the

1 Commission failed to join necessary and indispensable parties, including: Sovereign
2 Advisory Services, Inc., Joseph Stein, Frank Guiffrida, and UFS, Inc., in whose
3 absence complete justice and relief cannot be afforded.

4 18. For their Eighteenth Affirmative Defense, Petersons allege that damages
5 suffered by any party to the promissory notes, if any, were the result of the
6 intervening and superseding conduct of others, including but not limited to the other
7 Respondents.

8 19. For their Nineteenth Affirmative Defense, Petersons assert the defenses
9 of accord and satisfaction, payment, release, statute of frauds and limitations, and all
10 other affirmative defenses set forth in Ariz. R. Civ. P. 8.

11 20. For their Twentieth Affirmative Defense, Petersons allege that except
12 for the salary Mr. Peterson received in the ordinary course of his employment at
13 Energetics, Petersons did not receive directly or indirectly any of the funds that were
14 paid to Energetics by the parties to the promissory notes and cannot be held to
15 disgorge or otherwise pay restitution for funds Petersons never possessed. *See D.*
16 *Dobbs*, Remedies §4.1 at 234 (the principle of restitution “is to deprive the defendant
17 of the benefits that in equity and good conscience he should not keep”); *id.* §4.5 at
18 260 (“[w]hen restitution is made in money...there are often alternative ways of
19 measuring the recovery. In all cases, of course, the purpose is to measure the benefit
20 to the defendant.”); *id.* §4.6 at 279 (“**restitution is usually denied...if the benefit**
21 **received by the defendant has been...passed on to another, so that in fact he**
22 **received no net benefit.**”) (emphasis added).

23 21. For their Twenty-First Affirmative Defense, Petersons allege the
24 following non-parties, among others are at fault: Sovereign Advisory Services, Inc.,
25 Joseph Stein, Frank Guiffrida, and UFS, Inc. To the extent Petersons are liable for the
26 acts set forth in the First Amended Notice, Petersons seek contribution and indemnity
27 from all non-parties at fault.

28 22. For their Twenty-Second Affirmative Defense, Petersons allege that the

1 Court must assess percentages of fault, if any, and apportion damages, if any, in direct
2 proportion to each alleged actors' degree of fault, regardless whether the actor was
3 named in this action as set forth in A.R.S. § 12-2501 *et seq.*

4 23. For their Twenty-Third Affirmative Defense, Petersons allege that the
5 First Amended Notice is both vague and non-specific. Further, no discovery has been
6 taken in this matter. For that reason, Petersons expressly reserve the right to amend
7 this Answer and assert additional and further affirmative defenses as they become
8 known.

9
10 **CROSS CLAIMS AGAINST RESPONDENTS ENERGETICS, INC., STEVEN**
11 **P. GIUFFRIDA and MICHELLE GIUFFRIDA**

12 Petersons, for their Cross-Claims against Energetics, Inc., Steven P. Guiffrida
13 and Michelle Guiffrida, allege as follows:

14 1. Petersons incorporate by reference paragraphs 1-48 of their Answer and
15 paragraphs 1-23 of their Affirmative Defenses as if fully set forth herein.

16 **GENERAL ALLEGATIONS**

17 2. Mr. Peterson was approached by Frank Guiffrida in the Spring of 2008
18 to work at Energetics, Inc. as its President, commencing April 3, 2008.

19 3. Upon information and belief, Energetics, Inc. is a company owned and
20 controlled by one or more of the following Frank Guiffrida, Steven P. Guiffrida,
21 Joseph Stein, UFS, Inc. and/or Sovereign Advisory Inc. or others.

22 4. On April 3, 2008, Mr. Peterson became a director of Energetics.

23 5. On September 12, 2008, Mr. Peterson tendered his resignation effective
24 September 15, 2008.

25 6. During the period April 3, 2008 and September 15, 2008, Mr. Peterson
26 was an employee of Energetics.

27 7. At no time during the period April 3, 2008 and September 15, 2008 did
28 Mr. Peterson have an ownership or controlling interest in Energetics, UFS Inc.,

1 Sovereign Advisory Inc. or any other entity relevant to this matter.

2 **COUNT I**
3 **(CONTRIBUTION AND INDEMNITY)**

4 8. Petersons repeat and reallege the foregoing allegations of this Cross-
5 Claim.

6 9. Any conduct of Mr. Peterson alleged in the First Amended Notice was
7 authorized by Energetics and arose out of the course and scope of Mr. Peterson's
8 employment with Energetics and was solely as an agent and for the benefit of
9 Energetics.

10 10. To the extent Petersons are found liable in this matter, it is solely by
11 virtue of Mr. Peterson's employment with Energetics.

12 11. The relationship between Mr. Peterson and Energetics is such that if any
13 liability is assessed against Mr. Peterson for the claims asserted in the First Amended
14 Notice, Energetics, Steven P. Guiffrida and Michelle Giuffrida and/or those who own
15 and control it should be responsible for that liability.

16 12. Energetics is obligated, based on principles of law and equity, to
17 indemnify and hold Petersons harmless from any judgment, fine, loss, liability,
18 damage or expense, including any judgment in favor of the Securities Division of the
19 Arizona Corporation Commission. *See INA Ins. Co. v. Valley Forge Ins. Co.*, 150
20 Ariz. 248, 252, 722 P.2d 975, 979 (App. 1986) (agent should recover from a principal
21 when agent incurs liability for an act performed on behalf of the principal); *Cella Barr*
22 *Assocs. v. Cohen*, 177 Ariz. 480, 486-87, 868 P.2d 1063, 1069-70 (App. 1994)
23 (same).

24 13. As a result of the foregoing, Petersons are entitled to a judgment against
25 Energetics, Steven P. Guiffrida and Michelle Giuffrida for the amount of any
26 judgment against Petersons, plus Petersons' attorneys' fees in defending this matter.

27 WHEREFORE, Petersons pray for a judgment against Energetics, Steven P.
28

1 Guiffrida and Michelle Giuffrida for any sum that may be recovered against Peterson
2 by reason of the acts alleged in the First Amended Notice, and to reimuburse
3 Petersons for their reasonable costs and attorneys' fees.

4
5 **COUNT II**
6 **STATUTORY JOINT TORTFEASER DETEMINATION**

7 14. Petersons repeat and reallege the foregoing allegations of this Cross-
8 Claim.

9 15. In the event Mr. Peterson is found liable for the acts alleged in the First
10 Amended Notice, and to the extent permitted under the joint tortfeaser statute to seek
11 indemnity and contribution, Petersons seek a determination A.R.S. § 12-2501 *et seq.*
12 of his pro rata share of liability.

13 WHEREFORE, Petersons pray for a judgment against Energetics, Steven P.
14 Guiffrida and Michelle Giuffrida for any sum that may be recovered against Peterson
15 by reason of the acts alleged in the First Amended Notice, and to reimuburse
16 Petersons for their reasonable costs and attorneys' fees.

17 **COUNT III**
18 **(EQUITABLE SUBROGATION AND RESTITUTION)**

19 16. Petersons repeat and reallege the foregoing allegations of this Cross-
20 Claim.

21 17. All of the promissory notes that are the subject matter of this action
22 were made in favor of Energetics, Inc.

23 18. Except for the salary Mr. Peterson received in the ordinary course of his
24 employment at Energetics, Petersons did not receive directly or indirectly any of the
25 funds that were paid to Energetics by the parties to the promissory notes.

26 19. To the extent Energetics, Steven P. Guiffrida or Michelle Giuffrida,
27 collected \$225,000 as asserted in the First Amended Notice, except for the salary Mr.
28 Peterson received in the ordinary course of his employment at Energetics, Petersons

1 did not receive directly or indirectly any of part of such funds.

2 20. To the extent Petersons are ordered or adjudged liable to pay as
3 restitution in this matter any part of the \$225,000 collected by Energetics as asserted
4 in the First Amended Notice, Energetics, Steven P. Guiffrida or Michelle Giuffrida
5 must indemnify and hold Petersons harmless for any such amount.

6 21. Energetics, Steven P. Guiffrida or Michelle Giuffrida is therefore liable
7 to Petersons under the doctrine of equitable subrogation. *Rowley Plastering Co., Inc.*
8 *v. Marvin Gardens Dev. Corp.*, 180 Ariz. 212, 214, 883 P.2d 449,451(App. 1994)
9 (“The doctrine of equitable subrogation is founded upon principles of equity; its
10 purpose is to compel the ultimate payment of a debt by one who in justice and good
11 conscience ought to pay it. . . . As now applied, it is broad enough to include every
12 instance in which one person, not acting as a mere volunteer or intruder, pays a debt
13 for which another is primarily liable, and which in equity and good conscience should
14 have been discharged by the latter. . . . Equitable subrogation is used to enforce
15 restitution in order to prevent unjust enrichment.”)(internal citations and quotations
16 omitted).

17
18 WHEREFORE, Petersons pray for a judgment against Energetics, Steven P.
19 Guiffrida and Michelle Giuffrida to pay for any restitution ordered by reason of the
20 acts alleged in the First Amended Notice and to indemnify and reimburse any
21 restitution that Petersons may be ordered to pay as a result of any act alleged in the
22 First Amended Notice.

23 Dated this 23rd day of November, 2009.

24 OSBORN MALEDON, P.A.

25 By 
26 Maureen Beyers
27 2929 North Central Avenue
28 Phoenix, AZ 85012

Attorneys for Respondents
Rodney and Virginia Peterson

1 Original and 13 copies of the foregoing
2 filed this 23rd day of November, 2009 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 Copy of the foregoing hand-delivered
8 this 23rd day of November, 2009 to:

9 Aikaterine Vervilos
10 Arizona Corporation Commission
11 1300 West Washington Street
12 Phoenix, Arizona 85007

13 The Honorable Marc E. Stern
14 Administrative Law Judge
15 1200 West Washington
16 Phoenix, AZ 85007

17 Lyn Farmer
18 Arizona Corporation Commission
19 1200 West Washington Street
20 Phoenix, Arizona 85007

21 Copies of the foregoing mailed
22 this 23rd day of November, 2009 to:

23 Jeffrey Proper
24 Jeffrey M. Proper, PLLC
25 10645 North Tatum Boulevard, Suite C200-652
26 Phoenix, AZ 85028
27 Attorneys for Respondent Energetics and
28 Respondents Giuffrida

Arizona Reporting Service, Inc.
2200 North Central Avenue, Suite 502
Phoenix, AZ 85004

26 By 
27 2805083