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2010 JAN 19 P 1:34 Arizona Corporation Commission

ARIZONA CORPORATION COMMISSION
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BEFORE THE ARIZONA CORPORATION COMMISSION

9 In re the Matter of:
 10 SECURE RESOLUTIONS, INC., an
 11 Arizona Corporation;
 12 DOUGLAS COTTLE and KYLA COTTLE,
 13 HUSBAND AND WIFE,
 14 Respondent.

Docket No: S-20677A-09-0256

**EXPEDITED MOTION FOR ORDER
TO DISCLOSE INFORMATION BY
SECURITIES DIVISION AND RE
URGING OF ORIGINAL MOTION TO
CONTINUE**

Assigned to the Honorable Marc E. Stern

Michael S. Baker, Esq.
The Baker Law Firm, LLC
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Phoenix, AZ 85006

15
 16 Respondents, by and through undersigned Counsel, hereby requests on an expedited
 17 basis, that this Court enter orders granting the following motion for order to disclose
 18 information by the Securities Division and also to reconsider the original motion continue filed
 19 in this matter on January 5, 2010. This motion is supported by the following memorandum of
 20 points and authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

21
 22 On or about January 8, 2010, Counsel for Respondents received three binders of
 23 information that had been gathered, analyzed, and organized by the Securities Division. The
 24 securities division has had this case investigated and worked on for well over a year and a half.
 25 In these three binders were exhibits to be used at the hearing in this case scheduled for

1 February 8, 2010. While it appears customary that the Corporation Commission's orders
2 require such dissemination thirty days prior to hearing, it also must be pointed out that it
3 clearly makes it difficult for any respondent to adequately defend ones self against accusations
4 made by the Commission when disclosure of witnesses and exhibits is only provided thirty
5 days prior to hearing, including who is to testify, what exhibits will be used, and what experts
6 are going to be called. The Securities Division has indicated it uses A.R.S. § 44-2042 as a
7 reason to protect claimants, and witnesses, but in many instances it appears that it is used as a
8 sword and a shield against proper disclosure of material evidence and lists of witnesses that
9 would tend to assist respondents in defending claims.

11 Nevertheless, on or about January 13, 2010, Counsel, along with the Cottles, after having
12 received the three binders of information, had a meeting with Mr. Huynh to discuss 1) settling
13 the matter and 2) short of settling, whether additional information could be had regarding the
14 Securities Division's claims due to what Counsel and the Cottles felt to be insufficient
15 disclosure in light of the disclosure of the twelve witnesses listed by the Securities Division.

16 First, there was a request by Counsel and the Cottles' to obtain all notes and
17 information created by Guy Phillips, whom the Securities Division lists as a Special
18 Investigator. Mr. Huynh declined to turn this information over. Counsel points out that Guy
19 Phillips created an affidavit in CV 2008-091739 on or about July 29, 2008 in which was filed
20 in the Maricopa County Superior Court. (See Exhibit A) Counsel also points out that the
21 division lists Sean Callahan as an expert in this case. However, nothing from Sean Callahan
22 has been turned over to the Cottles or Counsel for Respondents. In both cases, the Securities
23 Division shall clarify whether Guy Phillips is going to testify to "facts" or as to his "expert
24 opinion", especially in light of the fact that Guy Phillips had conversations with investors and
25 is alleged to have opined certain ideas to investors.

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1 Regardless, clearly, *Slade v. Schneider* (App. Div.1 2006) 212 Ariz. 176, 129 P.3d 465
2 applies in this case. In addition, the division's "consulting expert, as a testifying expert; the
3 accountant's entire case file was discoverable to the extent that he obtained those materials in
4 the course of his investigation and they related to the subject of his testimony. *Slade v.*
5 *Schneider* (App. Div.1 2006) 212 Ariz. 176, 129 P.3d 465. Here, the entire file from witness
6 number two, Sean Callahan, Expert, should be turned over to the Cottles. It has not been. In
7 fact, there is an exhibit spreadsheet at the end of the exhibit list with a rather large monetary
8 figure created presumably by Mr. Callahan but no supporting documents exist that have been
9 turned over to support such a figure, nor the methodology used to discover it either. Also,
10 attached exhibit A discusses an affidavit written by Guy Phillips and it is clearly arguable
11 whether or not Guy Phillips now has waived his privilege that they are claiming is work
12 product when he has essentially become a "fact witness" in disputing assertions by other
13 witnesses in the case. (See Exhibit A) This is not an affidavit in support of a Temporary
14 Restraining Order filed by the Securities Division as discussed by *Schneider v. Schneider*
15 (Supra) but is rather an affidavit in support of his own recollection and memory of events
16 during his own investigation which is completely different. *Indeed Slade v. Schneider* (App.
17 Div.1 2006) 212 Ariz. 176, 129 P.3d 465 distinguishes the affidavit filed by investigator Guy
18 Phillips and one done for requesting a Temporary Restraining Order, here, Guy Phillips
19 interjects himself in factual assertions made by the Cottles and others, and as such becomes a
20 witness in the case for factual issues on rebuttal and impeachment. As such, all of Guy
21 Phillips' and Sean Callahan's notes and work product should also be turned over as previously
22 requested.

23 In addition, there are five boxes of documents that were subpoenaed by the Securities
24 Division of alleged transactions and information between SRI and Houlihan Lokey Howard &
25 Zukin Capital, Inc, a firm hired by SRI. Due to SRI being bankrupt and the Cottles no longer
being controlling members of SRI, they are not privy to any of the information in those boxes

1 of documents. Yet the Securities Division upon being asked for either a CD of all that
2 information or access to review and copy that information has declined to permit same. The
3 Securities Division however, in their exhibits refer to information contained within those
4 boxes, yet will not permit the Cottles to have them to see if pertinent information exists to
5 refute claims. Houilhan Lockey relates to some twenty-three claims within the original
6 complaint by the Securities Division. In essence, the Securities Division is using the Houlihan
7 boxes as both a sword and shield. If they are intending to use this information, why are they
8 not willing to disclose all contents in some fashion, or at least allow a reproduction since the
9 Cottles cannot obtain them. If the information is obtainable via CD it seems to be a very easy
10 disclosure indeed.

12 Also, under *Schneider v. Schneider* (Supra), it appears that the Cottles are permitted to
13 have the testifying witnesses' information disclosed, including their complaints to the
14 Securities Division. While not requesting ALL complainants' information or ALL investor
15 information, the witnesses that are planning to testify should have their information disclosed
16 to the Cottles for proper examination and analysis. They are now public information, and as
17 such, should not have their information protected.

18 There is also a recorded interview of Dawn Kern, SRI's bookkeeper done by Mr.
19 Callahan, the expert, that should be turned over, and this is part and parcel with all the
20 information gathered and disseminated by the expert Sean Callahan on the case, along with a
21 the deposition transcript of Robert Allen. While Counsel acknowledges that Mr. Huynh agrees
22 to allow Counsel to inspect Mr. Allen's transcript at the Securities Division Office, it begs the
23 question as to why a transcript can not be copied and turned over at the Cottles expense.

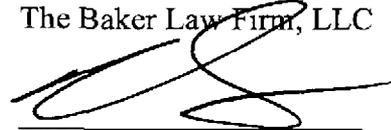
24 Finally, due to all the aforementioned issues of disclosure and discovery, it is again re-
25 urged that the hearing on this matter be postponed for 30-60 days. Despite the best efforts of

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1 Counsels to settle the matter it appears that the matter will proceed to hearing, and as such, in
2 order for a fundamentally fair hearing to be conducted, it is respectfully requested that this
3 matter be continued so that the discovery issues can be resolved and adequate time be given to
4 review such discovery. Again, the final hearing has not been continued yet, and as the
5 investigation has been ongoing for quite some time, a postponement of 30-60 days is
6 reasonable under the circumstances.
7

8
9 **RESPECTFULLY SUBMITTED THIS 19 DAY OF JANUARY, 2010.**

10 The Baker Law Firm, LLC



11
12 **MICHAEL S BAKER**
13 Attorney At Law

14 Original of the foregoing to be filed
15 this 19 day of January 2010 with:

16 Docket Control
17 Arizona Corporation Commission
18 1200 W. Washington St.
19 Phoenix, AZ 85007

20 Copy of the foregoing to be mailed/delivered
21 this 19 day of January 2010 to:

22 Phong (Paul) Huynh, Esq.
23 Arizona Corporation Commission
24 Securities Division
25 1300 W. Washington St., Third Floor
Phoenix, AZ 85007

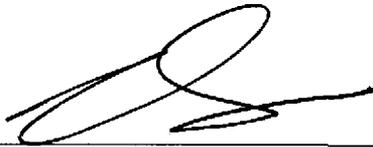


EXHIBIT A

1 TERRY GODDARD
 Attorney General
 Firm Bar No. 14000

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7 Julie Coleman, #018288
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10 Attorneys for Defendants State of Arizona,
 11 Arizona Corporation Commission, and Guy Phillips

12 **SUPERIOR COURT OF ARIZONA**
 13 **MARICOPA COUNTY**

<p>14 SECURE RESOLUTIONS, INC., a 15 foreign corporation, 16 Plaintiff, 17 v. 18 STATE OF ARIZONA, a governmental entity; THE ARIZONA CORPORATION 19 COMMISSION, an agency of the state; GUY PHILLIPS, special Investigator; JOHN and JANE 20 DOES I-V; BLACK CORPORATIONS I-V; WHITE PARTNERSHIPS I-V; RED LIMITED 21 LIABILITY ENTITIES I-V; BLUE 22 GOVERNMENTAL ENTITIES I-V, 23 Defendants.</p>	<p>) No. CV 2008-091739)) RESPONSE IN OPPOSITION TO) TEMPORARY RESTRAINING ORDER,) ORDER TO SHOW CAUSE,) PRELIMINARY INJUNCTION, AND) PERMANENT INJUNCTION) MOTION TO DISMISS) (Hon. Joseph Kreamer)</p>
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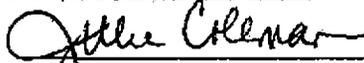
24 Defendants, the state of Arizona, Arizona Corporation Commission, and Guy Phillips, by
 25 and through the undersigned attorneys, hereby submit their response in opposition to Plaintiff's
 26 Temporary Restraining Order, Order to Show Cause, Preliminary Injunction, and Permanent

1 Injunction. Secure Resolutions, Inc. ("Secure"), seeks an injunction against the Arizona
2 Corporation Commission's investigation of Secure. Arizona law mandates that the Arizona
3 Corporation Commission ("Commission") enforce the state's securities laws. To fulfill its
4 mandate, the Commission is authorized to investigate as it deems necessary. Secure seeks to
5 enjoin the investigation or, alternatively, Secure requests that the Court supervise the investigation
6 and remove the Corporation Commission's investigator, Guy Phillips, from the investigation.
7 Arizona law neither authorizes injunctive relief against the Commission in the performance of its
8 duties nor authorizes the Court to supervise the Commission's investigation. Secure has not
9 demonstrated by sufficient facts or evidence that Secure is entitled to its requested relief.

10 The Defendants request that the Court deny the Application for Temporary Restraining
11 Order, Order to Show Cause, Preliminary Injunction, and Permanent Injunction and dismiss
12 Secure's Complaint for failure to state a claim upon which relief can be granted. The Defendants'
13 motion is supported by the following memorandum of points and authorities.

14 Respectfully submitted this 29th day of July, 2008.

15
16 TERRY GODDARD
17 ARIZONA ATTORNEY GENERAL

18 By 
19 Julie Coleman
20 Special Assistant Attorney General
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EXHIBIT "A"

AFFIDAVIT OF ARIZONA CORPORATION COMMISSION/SECURITIES
DIVISION SPECIAL INVESTIGATOR GUY PHILLIPS

STATE OF ARIZONA)
) ss.
County of Maricopa)

I, GUY PHILLIPS, being over the age of eighteen, do certify the following:

1. On June 5, 2008, I spoke to Alan Ford via telephone, at 714-390-3105. This telephone call was initiated by me in response to a voice message left for me by Mr. Ford. The message was in relation to Secure Resolutions, and stated in part "...me and my family are really concerned, please call me at 714-390-3105, as soon as possible."

2. When I contacted Mr. Ford, he asked why was I investigating Secure Resolutions (SRI). I advised him the Securities Division had received a couple of complaints in reference to SRI and the Securities Division was looking into the complaints to see if there were any violations of the Arizona Securities Act.

3. Mr. Ford asked how I had obtained his name. I advised him his name had come from an investors list the Securities Division had received in response to a subpoena of Secure Resolutions, Inc. company records. I asked Mr. Ford if he had invested with SRI and he advised yes he had invested \$50,000.00 in 2004 and \$20,000.00 in 2005. Mr. Ford advised he had mailed the questionnaire back, the one he had received from the Corporation Commission. The questionnaire was received in the Securities Division on June 9, 2008. Mr. Ford asked if he could get a copy of the information we had received from SRI. I advised Mr. Ford the information was not public record at this time and could not be released.

4. Mr. Ford asked when this information became public record, could he obtain a copy of the information. Mr. Ford asked how would information become public record. I

advised him if the investigation went to a hearing with the Corporation Commission, the record could possibly become public record then.

5. Mr. Ford asked when would this hearing be. I told him it could be in a couple weeks or a couple of months, or never, it depended on the outcome of the investigation. Mr. Ford asked if I could keep in touch with him, and let him know what was going on with SRL. I told him as an investor with SRL, he would be kept aware of what occurs.

6. This telephone conversation lasted approx. 20 minutes.

7. At no time during the telephone conversation did I tell Mr. Ford that "Secure Resolutions is being sued by the investors of the company."

8. At no time during the telephone conversation did I tell Mr. Ford that "Upon auditing the books of Secure Resolutions, I find information that is not favorable and looks bad."

9. At no time during the telephone conversation did I tell Mr. Ford "This important news will go public in the next few weeks."


Guy Phillips, Special Investigator

SUBSCRIBED and SWORN to before me in the County of Maricopa, State of Arizona, this 29th day of July, 2008.


NOTARY PUBLIC

My Commission Expires:

