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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS:

- KRISTIN K. MAYES, Chairman
- GARY PIERCE
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ARIZONA CORPORATION 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. SARGENT
AND PEGGY L. SARGENT'S**

**REPLY IN SUPPORT OF
MOTION TO SEVER**

ARIZONA CORPORATION COMMISSION
DOCKETED

MAY 13 2008

BY [Signature]

Respondents Michael J. Sargent ("Mr. Sargent") and Peggy L. Sargent (collectively, the "Sargents") respectfully reply in support of their motion to sever the hearing concerning them from the hearing concerning Mr. Mark A. Bosworth, Lisa A. Bosworth, Mark Bosworth & Associates, LLC and 3 Gringos Mexican Investments, LLC (collectively, the "Bosworth Respondents"). The Securities Division's ("Division") response rests on unproven factual assertions. When asked for specific proof, the Division supplies only vague references to all the evidence. Severance will promote judicial or administrative economy, present a clearer record, and preserve the Sargents' ability to present a defense.

The Sargents' motion explained that the issues involving the Sargents are different from the issues concerning the Bosworth Respondents. It explained that the Division has not provided any

1 evidence that Mr. Sargent offered or sold securities within or from Arizona; thus the Division's
2 case must rest on some sort of participant liability theory. In response, the Division does not point
3 to a single piece of evidence showing Mr. Sargent offered or sold securities within or from Arizona.
4 Rather, the Division vaguely claims that the testimony of every single witness, as well as "the
5 majority (if not all) of the documentary evidence will show" that Mr. Sargent "directly and/or
6 indirectly" violated the Arizona Securities Act (Act). The wording of this sentence is telling; the
7 Division very carefully avoids stating that it has evidence that Mr. Sargent offered or sold securities
8 within or from Arizona. Rather, the Division asserts that it can prove Mr. Sargent violated the Act
9 "directly and/or indirectly."

10 The Division does not explain what an "indirect" violation is, or what jurisdiction (if any)
11 the Commission has over such a violation. It did not allege an "indirect" violation in its Notice of
12 Opportunity, nor does it explain what legal authorities (if any) support Commission authority over
13 supposed "indirect" violations. The term "indirect" violation is nowhere to be found in the Act.
14 The Act gives the Commission enforcement authority over "any person [that] has engaged in, is
15 engaging in or is about to engage in any act, practice or transaction that constitutes a violation of
16 this chapter, or any rule or order of the commission under [the Act]". A.R.S. § 44-2032. Thus, the
17 Commission may only act against those who actually "engage" in an "act, practice or transaction
18 that constitutes a violation." It is difficult to square the "engage" requirement with the Division's
19 new and unexplained "indirect" violation theory.

20 Again, the Division has not pointed to any specific evidence – not an iota – that Mr. Sargent
21 offered or sold securities from or within Arizona. Surely, if "the majority" of the Division's
22 documents show such an offer or sale, it would be easy to provide at least one example. The
23 Division does not do so; its argument amounts to "trust us, it's in there somewhere."

24 Judicial or administrative economy certainly is not served by forcing the ALJ to wade
25 through all of the Division's evidence, in search of something, somewhere, that might support the
26 Division's case. Rather, it is the Division's obligation to present a coherent and organized case.
27 That will be much easier if the Sargents are severed from the Bosworth Respondents.

1 Remarkably, the Division asserts that the “cost and effectiveness of Sargent’s defense are
2 not grounds for severance.”¹ The Division cites no authority for this breathtaking position. In fact,
3 the severance rule specifically refers to “expedition and economy.”² Does the Division really
4 believe that only the government’s “economy” counts, while the economy of the citizens of that
5 government count for nothing? That is the attitude of Louis XIV; it bears no resemblance to the
6 founding principles of Arizona’s government. Controlling the cost of defense is vital to the
7 Sargents’ ability to mount an effective defense. The Commission has a long tradition of concern
8 for the fairness of its proceedings and the ability of all concerned to participate. That tradition
9 supports severance in this case; if the Division wins, it should be “fair and square” due to the merit
10 of its case (if any), not because the Sargents were unable to effectively defend.

11 The Division claims that the Notice “clearly spells out what Sargent and the Bosworth
12 Respondents did that violates the Act.”³ But the Act does not distinguish between Sargent and the
13 Bosworth Respondents; nor does it attribute any specific acts to Mr. Sargent. And as noted above,
14 the Division’s last-minute “indirect” liability claim was not alleged in the Notice.

15 The Division argues that severance would be “duplicative and wasteful” because the
16 Division “would be forced” to present “the same evidence at two, virtually identical hearings.”⁴
17 But the Division does not explain why it would have to present the same witnesses and documents
18 all over again. Indeed, the Division has not explained how any of this evidence shows an offer or
19 sale by Mr. Sargent within or from Arizona.

20 We understand that Mr. Bosworth intends to vigorously contest the Division’s case and that
21 he contemplates a very lengthy hearing. Indeed, Mr. Bosworth has listed 38 witnesses in his list of
22 witnesses and exhibits. When combined with the Division’s numerous witnesses and exhibits, it is
23 clear that any hearing involving the Bosworth Respondents will take many, many days. Without
24 any clear view of the Division’s theory or the evidence it intends to use against Mr. Sargent, the

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26 ¹ Division Response at 2:16.

27 ² Rule 42(b), Arizona Rules of Civil Procedure.

³ Division Response at 2:20-22.

⁴ Division Response at 1:23-25.

1 Sargents' counsel would be forced to cross-examine every witness and to attack all of the
2 Division's exhibits if Mr. Sargent is forced to participate in a joint hearing. That would only
3 further lengthen the hearing. A separate hearing against the Sargents would be much shorter. The
4 Division's case against Mr. Sargent appears to rest on an "indirect" liability theory; thus the issues
5 in severed hearings would be different. The Sargents' have every incentive to present a highly
6 focused defense and to limit the length of hearing. With reasonable cooperation from the Division,
7 we anticipate that a Sargent-only hearing could be completed in as little as two or three days.

8 Moreover, the Division has not shown that the public interest requires a hearing against
9 Sargent now, rather than later. There are no ongoing acts for Sargent to "cease and desist" from.
10 Nor is immediate action against Sargent needed to provide remedies to the investors. As evidenced
11 by Mr. May's letter, the investors have no quarrel with Mr. Sargent, and they seek no restitution or
12 damages from him.

13 The Division dismisses the Commission precedents cited in the Sargents' motion as "a
14 handful of cases throughout history."⁵ But the Division cites no contrary decisions or procedural
15 orders. The Division attempts to distinguish the *Holliday Securities* decision⁶ by claiming that the
16 Sargents are more like the non-severed respondents in that case. The Division had no evidence
17 showing that the severed respondents in *Holliday Securities* offered or sold securities from or
18 within Arizona; the same is true of Mr. Sargent. Moreover, the Division's new "indirect" violation
19 theory distinguishes Mr. Sargent from the Bosworth Respondents. As in *Holliday Securities*, a
20 combined hearing would "cloud the issues."⁷

21 **III. Conclusion.**

22 The Sargents have challenged the Division to provide any evidence that Mr. Sargent offered
23 or sold securities to investors from or within Arizona. The Division has yet to provide a single
24 example. And in response to this challenge, the Division has introduced a new "indirect violation"
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26 ⁵ Division Response at 3:3-4.

27 ⁶ Decision No. 56449 (April 5, 1989).

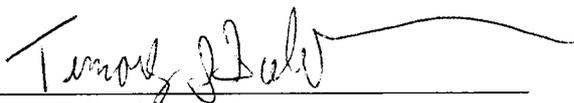
⁷ *Id.* at 4.

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1 theory into this case – a theory not alleged in the Division’s Notice. Thus, the case against the
2 Sargents will involve very different issues than the case against the Bosworth Respondents.
3 Moreover, given the Division’s lengthy parade of witnesses and mountain of documents pertaining
4 to the Bosworth Respondents, and Mr. Bosworth’s plans for a lengthy and active hearing, a
5 separate hearing will be critical to the Sargents ability to present a defense. Separate hearings will:
6 (1) provide a clearer record; (2) serve judicial or administrative economy; (3) promote access to
7 counsel; (4) preserve the Sargents’ resources; (5) and enable the Sargents to present a more
8 effective and efficient defense.

9
10 RESPECTFULLY SUBMITTED this 13th day of May, 2010.

11 ROSHKA DeWULF & PATTEN, PLC

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23 ORIGINAL and thirteen copies of the foregoing
24 filed this 13th day of May, 2010 with:

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1 Copy of the foregoing hand-delivered
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9 Copy of the foregoing mailed
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