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AZ CORP COMMISSION
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OPEN MEETING ITEM 4/25/02

Memorandum

NEW

DATE: April 4, 2002

TO: Nancy Cole
Docket Control

FROM: Kathleen Coughenour DeLaRosa
Securities Division

RE: Eternal Presence, Inc. and Jeffrey Wilcox
Docket No. S-03459A-02-0000
Assigned Staff

CC: Mabel Aldridge

This is to notify you that the following individuals have been assigned to the above-mentioned case.

- Mark Sendrow
- LeRoy Johnson
- Matthew Neubert

Kathleen Coughenour DeLaRosa (Staff Attorney)

David Leifer (Staff Investigator)

Sharon Fox Assistant Director

Note: The Assistant Attorney General assigned to this matter is: Moira McCarthy.

WILLIAM A. MUNDELL
CHAIRMAN

JIM IRVIN
COMMISSIONER

MARC SPITZER
COMMISSIONER



BRIAN C. McNEIL
EXECUTIVE SECRETARY

MARK SENDROW
DIRECTOR

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007-2996
TELEPHONE: (602) 542-4242
FAX: (602) 594-7470
E-MAIL: accsec@ccsd.cc.state.az.us

ARIZONA CORPORATION COMMISSION

MEMORANDUM

TO: Chairman William A. Mundell
Commissioner Jim Irvin
Commissioner Marc Spitzer

FROM: Mark Sendrow
Director of Securities

DATE: April 4, 2002

RE: Proposed Consent Order Against Respondents Eternal Presence, Inc. and Jeffrey Wilcox; *In the matter of Eternal Presence, Inc., et al.* (Docket No. S-03459A-02-0000)

CC: Brian C. McNeil, Executive Secretary

Attached is a proposed Order to Cease and Desist, Order for Administrative Penalties, and Consent to Same By Respondent Eternal Presence, Inc. ("EP"), and Respondent Jeffrey Wilcox ("Wilcox"). The Order requires EP and Wilcox to cease and desist from violations of the Securities Act of Arizona, to pay restitution to Arizona investors in the amount of \$37,780.00, and to pay administrative penalties in the total amount of \$10,000.00.

Beginning on or about July 1, 1999, and continuing through July, 2000, Respondents offered or sold, within or from Arizona, securities in the form of promissory notes (the "EP Notes") to at least ten persons who are Arizona residents. The EP Notes promised to pay each investor principal and interest at a rate of 12% per annum, and had a term of one year. EP was formed to implement a concept Wilcox had developed to provide a permanent memorial of a departed loved one or a departed pet. The desktop size memorials were to have a laser-etched portrait of the departed. Some were conceived with a compartment for ashes resulting from a cremation.

Prior to beginning his fundraising for EP, Wilcox consulted with a friend who is a registered securities salesperson, and stated that he believed what he was doing fell within the law. He initially sold promissory notes only to family and friends who had expressed a desire to assist him with the project. He later sold notes, which were intended to be convertible into interests in the company, to friends and family members of his initial investors. The sales took place both in

Arizona and in Wisconsin. Wisconsin has been engaged in a parallel investigation, and we are informed they intend to continue with their investigation and may take separate action with respect to Wisconsin investors.

The proposed Order finds that EP and Wilcox have offered or sold unregistered securities within or from Arizona, in the form of promissory notes. The proposed Order also finds that the Respondents have offered or sold securities without being properly registered to make such sales. Finally, the proposed Order finds that Respondents directly or indirectly (i) employed a device, scheme, or artifice to defraud; (ii) made untrue statements of material fact or omitted to state material facts which were necessary in order to make the statements made not misleading in light of the circumstances under which they were made; and (iii) engaged in transactions, process, or courses of business that operated or would operate as a fraud or deceit upon offerees and investors, including (a) failing to provide potential investors with complete and accurate information regarding the risks of investing in the EP Notes, (b) representing to potential investors that Respondents already had financial backing for EP and its proposed products, in addition to funds provided by investors, when in fact it did not have such backing, (c) representing EP had significant business purchasers for its products, and that products would be in full production and delivered to those business purchasers to enable repayment of investor funds, when in fact EP had only a limited number of orders for any of its products and was not capable of producing any product in sufficient numbers for high-volume delivery to business purchasers, and (d) representing that investors would be repaid, with interest, at the end of a one-year term, when in fact no investor received any return on the investment.

The proposed Order requires EP and Wilcox to cease and desist from any further violations of the Securities Act, to pay restitution to Arizona investors in the amount of \$38,780.00, and to pay an administrative penalty in the total amount of \$10,000.

The Division recommends this proposed Order on the following grounds: Respondents have fully cooperated with the Division's investigation. The Division has found no evidence of any improper use of the funds invested in EP; it appears all such funds were utilized for business-related product development, manufacturing, and marketing activities. Wilcox also is cooperating with the Division in an inquiry into whether there was any improper activity on the part of the registered salesperson who advised him in connection with his fundraising activities.

Originator: Kathleen Coughenour DeLaRosa

AG Assigned: Moira McCarthy

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL
3 Chairman
4 JIM IRVIN
5 Commissioner
6 MARC SPITZER
7 Commissioner

8 In the matter of)
9 ETERNAL PRESENCE, INC.)
8190 West Deer Valley Road PMB 104)
10 Peoria, Arizona 85382)
11 JEFFREY WILCOX)
8190 West Deer Valley Road PMB 104)
12 Peoria, Arizona 85382)
Respondents.)

DOCKET NO. S-03459A-01-0000
DECISION NO. _____
**ORDER TO CEASE AND DESIST,
ORDER OF RESTITUTION, ORDER
FOR ADMINISTRATIVE PENALTIES
AND CONSENT TO SAME
BY: RESPONDENT ETERNAL
PRESENCE, INC. and RESPONDENT
JEFFREY WILCOX**

13 RESPONDENT ETERNAL PRESENCE, INC. ("EP") and RESPONDENT JEFFREY
14 WILCOX ("WILCOX") [collectively "RESPONDENTS"] elect to permanently waive their right
15 to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-
16 1801, *et seq.* ("Securities Act") with respect to this Order To Cease And Desist, Order for
17 Administrative Penalties, and Consent to Same by Respondent Eternal Presence, Inc. And
18 Respondent Jeffrey Wilcox ("Order"). RESPONDENTS admit the jurisdiction of the Arizona
19 Corporation Commission ("Commission"); admit for purposes of this proceeding only the Findings
20 of Fact and Conclusions of Law contained in this Order; and consent to the entry of this Order by
21 the Commission.

22 **I.**

23 **FINDINGS OF FACT**

24 1. EP is a Nevada corporation authorized to do business in Arizona and, at all times
25 relevant hereto, doing business within and from the State of Arizona.

26

1 2. WILCOX is an individual and, at all times relevant hereto, was a resident of
2 Arizona, doing business within and from Arizona. WILCOX is the President and CEO of EP.

3 3. From on or about July 1, 1999, and continuing through July of 2000,
4 RESPONDENTS offered and sold securities in the form of promissory notes (the "EP Notes") to at
5 least ten persons who are residents of Arizona (the "Arizona investors"). The EP Notes promised
6 to pay each investor principal and interest at a rate of 12% per annum, and had a term of one year.

7 4. The securities referred to in paragraph 3 above were neither registered nor exempt
8 from registration pursuant to the provisions of Articles 6 or 7 of the Securities Act.

9 5. RESPONDENTS offered or sold securities within or from Arizona, while not
10 registered as dealers or salesmen pursuant to the provisions of Article 9 of the Securities Act.

11 6. In connection with the offer or sale of securities within or from Arizona,
12 RESPONDENTS directly or indirectly: (i) employed a device, scheme or artifice to defraud; (ii) made
13 untrue statements of material fact or omitted to state material facts which were necessary in order to
14 make the statements made not misleading in light of the circumstances under which they were made;
15 and (iii) engaged in transactions, practices or courses of business which operated or would operate as
16 a fraud or deceit upon offerees and investors. RESPONDENTS' conduct includes, but is not limited
17 to, the following:

18 a) RESPONDENTS failed to provide potential investors with complete and
19 accurate information regarding the risks of investing in the EP Notes;

20 b) RESPONDENTS represented to potential investors RESPONDENTS
21 already had financial backing for EP and its proposed product(s), in addition to the funds
22 provided by investors, when in fact this representation was false;

23 c) RESPONDENTS represented EP had significant business purchasers for its
24 products, and products would be in full production and delivered to those business
25 purchasers to enable repayment of investor funds, when in fact EP had only a limited
26 number of orders for any product and was not capable of producing any product in

1 significant numbers for high-volume delivery to business purchasers;

2 d) RESPONDENTS represented investors would be repaid, with interest, at the
3 end of a one-year term, when in fact no investor received any return on investment.

4 7. At least ten Arizona investors have invested a total of \$38,780.00 in the EP Notes
5 offered and sold by RESPONDENTS.

6 II.

7 CONCLUSIONS OF LAW

8 1. The Commission has jurisdiction over this matter pursuant to Article XV of the
9 Arizona Constitution and the Securities Act.

10 2. RESPONDENTS offered or sold securities within or from Arizona, within the
11 meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

12 3. RESPONDENTS violated A.R.S. § 44-1841 by offering or selling securities that
13 were neither registered nor exempt from registration.

14 4. RESPONDENTS violated A.R.S. § 44-1842 by offering or selling securities while
15 neither registered as dealers or salesmen nor exempt from registration.

16 5. RESPONDENTS violated A.R.S. § 44-1991 by offering or selling securities within
17 or from Arizona by (a) employing a device, scheme or artifice to defraud, (b) making untrue
18 statements or misleading omissions of material facts, and (c) engaging in transactions, practices or
19 courses of business which operate or would operate as a fraud or deceit.

20 6. RESPONDENTS' conduct is grounds for a cease and desist order pursuant to
21 A.R.S. § 44-2032.

22 7. RESPONDENTS' conduct is grounds for an order of restitution pursuant to A.R.S.
23 § 44-2032.

24 8. RESPONDENTS' conduct is grounds for administrative penalties under A.R.S.
25 § 44-2036.

26

III.

ORDER

THEREFORE, on the basis of the Findings of Fact, Conclusions of Law, and the RESPONDENTS' consent to the entry of this Order, the Commission finds that the following relief is appropriate, in the public interest, and necessary for the protection of investors:

IT IS ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS, their agents, employees, successors and assigns, permanently cease and desist from violating the Securities Act.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2032, that RESPONDENTS shall, jointly and severally, pay restitution to Arizona resident investors shown on the records of the Commission in the amount of Thirty Seven Thousand Seven Hundred Eighty Dollars (\$37,780.00), plus interest at the rate of 10% per annum from the date of each investment until paid in full. Payment shall be made by cashier's check or money order payable to the "State of Arizona" to be placed in an interest-bearing account maintained and controlled by the Arizona Attorney General. The Arizona Attorney General shall disburse the funds on a pro rata basis to investors. If all investors are paid in full, any excess funds shall revert to the state of Arizona.

IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-2036, that RESPONDENTS shall each pay an administrative penalty in the amount of Ten Thousand Dollars (\$10,000.00), payable to the "State of Arizona." Payment shall be made in full by cashier's check or money order on the date of this Order. If RESPONDENTS do not comply with this order for administrative penalties, any outstanding balance may be deemed in default and shall be immediately due and payable.

IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

CHAIRMAN

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL,
Executive Secretary of the Arizona Corporation

1 Commission, have hereunto set my hand and caused the
2 official seal of the Commission to be affixed at the
3 Capitol, in the City of Phoenix, this _____ day of
4 _____, 2001.

5 _____
6 BRIAN C. McNEIL
7 Executive Secretary

8 _____
9 DISSENT

10 This document is available in alternative formats by contacting Shelly M. Hood, ADA Coordinator,
11 voice phone number 602-542-3931, E-mail shood@cc.state.az.us.

12 (kcd)

CONSENT TO ENTRY OF ORDER

1
2 1. ETERNAL PRESENCE, INC. ("EP"), a Nevada corporation authorized to do
3 business in Arizona, admits the jurisdiction of the Commission over the subject matter of this
4 proceeding. EP acknowledges that it has been fully advised of its right to a hearing to present
5 evidence and call witnesses and EP knowingly and voluntarily waives any and all rights to a
6 hearing before the Commission and all other rights otherwise available under Article 11 of the
7 Securities Act and Title 14 of the Arizona Administrative Code. EP acknowledges that this Order
8 To Cease And Desist, Order for Administrative Penalties, and Consent to Same by Respondent
9 Eternal Presence, Inc. And Respondent Jeffrey Wilcox ("Order") constitutes a valid final order of
10 the Commission.

11 2. EP knowingly and voluntarily waives any right it may have under Article 12 of the
12 Securities Act to judicial review by any court by way of suit, appeal, or extraordinary relief
13 resulting from the entry of this Order.

14 3. EP acknowledges and agrees that this Order is entered into freely and voluntarily
15 and that no promise was made or coercion used to induce such entry.

16 4. EP acknowledges that it has chosen not to be represented by counsel in this matter,
17 has reviewed this Order and understands all terms it contains.

18 5. EP admits the Findings of Fact and Conclusions of Law contained in this Order.

19 6. By consenting to the entry of this Order, EP agrees not to take any action or to
20 make, or permit to be made, any public statement denying, directly or indirectly, any Finding of
21 Fact or Conclusion of Law in this Order or creating the impression that this Order is without
22 factual basis. EP will undertake steps necessary to assure that all of its agents and employees
23 understand and comply with this agreement.

24 7. While this Order settles this administrative matter between EP and the Commission,
25 EP understands that this Order does not preclude the Commission from instituting other
26 administrative proceedings based on violations that are not addressed by this Order.

1 8. EP understands that this Order does not preclude the Commission from referring
2 this matter to any governmental agency for administrative, civil, or criminal proceedings that may
3 be related to the matters addressed by this Order.

4 9. EP understands that this Order does not preclude any other agency or officer of the
5 state of Arizona or its subdivisions from instituting administrative, civil or criminal proceedings
6 that may be related to matters addressed by this Order.

7 10. EP agrees it will not apply to the state of Arizona for registration as a securities
8 dealer or salesman or for licensure as an investment adviser or investment adviser representative
9 until such time as all restitution and penalties under this Order are paid in full.

10 11. EP agrees that it will not exercise any control over any entity that offers or sells
11 securities or provides investment advisory services within or from Arizona until such time as all
12 restitution and penalties under this Order are paid in full.

13 12. EP agrees that until restitution and penalties are paid in full, EP will notify the
14 Director of the Securities Division within 30 days of any change in address or any change in EP's
15 ability to pay amounts due under this Order.

16 13. EP understands that default shall render it liable to the Commission for its costs of
17 collection and interest at the maximum legal rate.

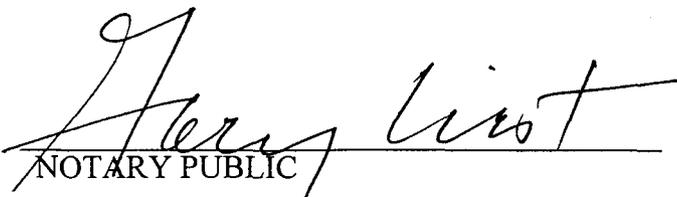
18 14. EP consents to the entry of this Order and agrees to be fully bound by its terms and
19 conditions. If EP breaches any provision of this Order, the Commission may vacate this Order and
20 restore this case to its active docket.

21 ETERNAL PRESENCE, INC., a Nevada
22 corporation

23 By 
24 Jeffrey Wilcox
25 Its President and CEO

26 SUBSCRIBED AND SWORN TO BEFORE me this 7th day of February, 20012.

1 by Jeffrey Wilcox, President and CEO, on behalf of Eternal Presence, Inc., a Nevada corporation
2 authorized to do business in Arizona.

3
4 
NOTARY PUBLIC

5 My Commission Expires:



Notary Public State of Arizona
Maricopa County
Gary J Kirst
Expires September 10, 2004

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CONSENT TO ENTRY OF ORDER

1
2 15. JEFFREY WILCOX ("WILCOX"), an individual, admits the jurisdiction of the
3 Commission over the subject matter of this proceeding. WILCOX acknowledges that he has been
4 fully advised of his right to a hearing to present evidence and call witnesses and WILCOX
5 knowingly and voluntarily waives any and all rights to a hearing before the Commission and all
6 other rights otherwise available under Article 11 of the Securities Act and Title 14 of the Arizona
7 Administrative Code. WILCOX acknowledges that this Order To Cease And Desist, Order for
8 Administrative Penalties, and Consent to Same by Respondent Eternal Presence, Inc. And
9 Respondent Jeffrey Wilcox ("Order") constitutes a valid final order of the Commission.

10 16. WILCOX knowingly and voluntarily waives any right he may have under Article
11 12 of the Securities Act to judicial review by any court by way of suit, appeal, or extraordinary
12 relief resulting from the entry of this Order.

13 17. WILCOX acknowledges and agrees that this Order is entered into freely and
14 voluntarily and that no promise was made or coercion used to induce such entry.

15 18. WILCOX acknowledges that he has chosen not to be represented by counsel in this
16 matter, he has reviewed this Order and understands all terms it contains.

17 19. WILCOX admits the Findings of Fact and Conclusions of Law contained in this
18 Order.

19 20. By consenting to the entry of this Order, WILCOX agrees not to take any action or
20 to make, or permit to be made, any public statement denying, directly or indirectly, any Finding of
21 Fact or Conclusion of Law in this Order or creating the impression that this Order is without
22 factual basis. WILCOX will undertake steps necessary to assure that all of his agents and
23 employees understand and comply with this agreement.

24 21. While this Order settles this administrative matter between WILCOX and the
25 Commission, WILCOX understands that this Order does not preclude the Commission from
26 instituting other administrative proceedings based on violations that are not addressed by this

1 Order.

2 22. WILCOX understands that this Order does not preclude the Commission from
3 referring this matter to any governmental agency for administrative, civil, or criminal proceedings
4 that may be related to the matters addressed by this Order.

5 23. WILCOX understands that this Order does not preclude any other agency or officer
6 of the state of Arizona or its subdivisions from instituting administrative, civil or criminal
7 proceedings that may be related to matters addressed by this Order.

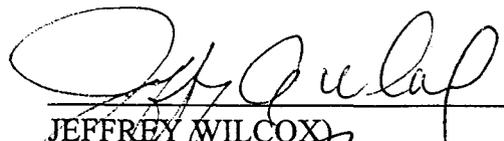
8 24. WILCOX agrees that he will not apply to the state of Arizona for registration as a
9 securities dealer or salesman or for licensure as an investment adviser or investment adviser
10 representative until such time as all restitution (rescission) and penalties under this Order are paid
11 in full.

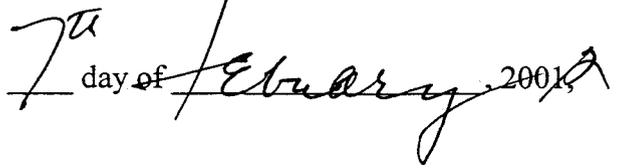
12 25. WILCOX agrees that he will not exercise any control over any entity that offers or
13 sells securities or provides investment advisory services, within or from Arizona.

14 26. WILCOX agrees that until restitution and penalties are paid in full, WILCOX will
15 notify the Director of the Securities Division within 30 days of any change in home address or any
16 change in WILCOX's ability to pay amounts due under this Order.

17 27. WILCOX understands that default shall render him liable to the Commission for its
18 costs of collection and interest at the maximum legal rate.

19 28. WILCOX consents to the entry of this Order and agrees to be fully bound by its
20 terms and conditions. If WILCOX breaches any provision of this Order, the Commission may
21 vacate this Order and restore this case to its active docket.

22
23 
24 JEFFREY WILCOX

25 SUBSCRIBED AND SWORN TO BEFORE me this 7th day of February, 2001.
26 

1 by JEFFREY WILCOX.

2

3

Gary Kirst
NOTARY PUBLIC

4 My Commission Expires:

5



Notary Public State of Arizona
Maricopa County
Gary J Kirst
Expires September 10, 2004

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