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June 23, 2003

**Via Hand-Delivery**

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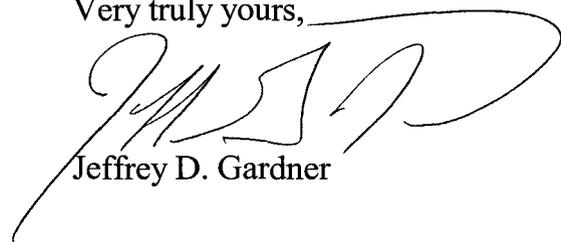
**Re: Arizona Securities Division Docket No: S-03539A-03-0000**

To Whom It May Concern:

Enclosed herewith please find an original and 13 copies of Respondents Yucatan Resorts, Inc., and Resort Holdings International, Inc.s', Motion to Dismiss for Lack of Personal Jurisdiction.

If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,



Jeffrey D. Gardner

JDG  
 Enclosures  
 cc: Joel Held, Esq.  
 Paul Roshka, Esq.

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BEFORE THE ARIZONA CORPORATION COMMISSION

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**COMMISSIONERS:**

- MARC SPITZER, Chairman**
- JIM IRVIN**
- WILLIAM A. MUNDELL**
- JEFF MATCH-MILLER**
- MIKE GLEASON**

ARIZONA CORPORATION COMMISSION  
DOCUMENT CONTROL

In the matter of:

**DOCKET NO. S-03539A-03-0000**

**YUCATAN RESORTS, INC., d/b/a  
YUCATAN RESORTS, S.A.,**  
3222 Mishawaka Avenue  
South Bend, IN 46615;  
P. O. Box 2661  
South Bend, IN 46680;  
Av. Coba #82 Lote 10, 3er. Piso  
Cancun, Q. Roo  
Mexico C.P. 77500

**RESPONDENTS YUCATAN RESORTS,  
INC., AND RESORT HOLDINGS  
INTERNATIONAL, INC.S', MOTION  
TO DISMISS FOR LACK OF  
PERSONAL JURISDICTION**

**RESORT HOLDINGS INTERNATIONAL,  
INC. d/b/a  
RESORT HOLDINGS INTERNATIONAL,  
S.A.,**  
3222 Mishawaka Avenue  
South Bend, IN 46615;  
P. O. Box 2661  
South Bend, IN 46680;  
Av. Coba #82 Lote 10, 3er. Piso  
Cancun, Q. Roo  
Mexico C.P. 77500

**WORLD PHANTASY TOURS, INC.  
a/k/a MAJESTY TRAVEL  
a/k/a VIAJES MAJESTY**  
Calle Eusebio A. Morales  
Edificio Atlantida, P Baja  
APDO, 8301 Zona 7 Panama

**MICHAEL E. KELLY and LORI KELLY,**  
husband and wife,  
3222 Mishawaka Avenue  
South Bend, IN 46615;  
P. O. Box 2661  
South Bend, IN 46680;

Respondents.

CAR

1                   **MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION AND**  
2                   **MEMORANDUM OF LAW IN SUPPORT THEREOF**

3                   Respondents YUCATAN RESORTS, INC. (hereinafter "Yucatan, Inc.") and  
4 RESORT HOLDINGS INTERNATIONAL, INC. (hereinafter "RHI, Inc.," and  
5 collectively referred to herein as "Respondents"), by and through their undersigned  
6 counsel, hereby submit their Motion to Dismiss the Arizona Securities Division's  
7 (hereinafter "Division") claims because there is no personal jurisdiction over these  
8 entities. This motion is accompanied by the annexed Memorandum of Points and  
9 Authorities.  
10

11   **MEMORANDUM OF POINTS AND AUTHORITIES**

12                   **I. Introduction.**

13                   This Motion to Dismiss for Lack of Personal Jurisdiction is in response to a  
14 Temporary Cease and Desist Order and Notice of Opportunity for Hearing (hereinafter  
15 "Temporary Order"), that was pursued by the Division and issued by the Arizona  
16 Corporation Commission (hereinafter "Commission"). As the alleged basis of support for  
17 the Temporary Order, the Division claimed that the Respondents and other named parties  
18 fraudulently offered and/or sold unregistered securities in Arizona and, further, that  
19 Respondents were not registered dealers or salesmen. (See Temporary Order, pages 10-  
20 12).  
21  
22  
23

24                   The Division now seeks to require RHI, Inc., and Yucatan, Inc., to defend this  
25 administrative proceeding in Arizona. There is, however, no evidence of conduct or  
26

1 contact with the State of Arizona sufficient to subject these two entities to personal  
2 jurisdiction in Arizona. Accordingly, the claims against these Respondents must be  
3 dismissed.

4  
5 **II. There Is No Personal Jurisdiction Over Yucatan, Inc., and RHI, Inc.,**  
6 **and The Claims Against These Entities Must Be Dismissed.**

7 **A. The Entities Have Had No Contact with Arizona.**

8 The Temporary Order alleges Yucatan Inc., and RHI, Inc., fraudulently offered and  
9 sold unregistered securities in Arizona, and that Respondents were not registered dealers  
10 or salesmen at the time said securities were offered and/or sold. *Id.* However, Yucatan,  
11 Inc., and RHI, Inc. have had no contact with Arizona.

12  
13 Neither Yucatan Resorts, Inc., nor RHI, Inc., have ever: (i) been incorporated in  
14 Arizona; (ii) had offices in Arizona; (iii) owned property in Arizona; (iv) had telephone  
15 numbers in Arizona; (v) had listings and/or kept files in Arizona; (vi) had employees in  
16 Arizona; and/or, (vii) transacted business in Arizona. (*See Declaration of Yucatan, Inc.,*  
17 *and RHI, Inc., hereinafter "Declaration," filed contemporaneously herewith at ¶ 9).*

18  
19 Yucatan, Inc., and RHI, Inc. have never offered or sold timeshare units known as  
20 "Universal Leases," in Arizona, or elsewhere. *Id.* at ¶¶ 4-6. Also, Yucatan, Inc., and RHI,  
21 Inc. have never employed any individual who sold timeshare units known as Universal  
22 Leases, in Arizona, or elsewhere. *Id.*

23  
24 Yucatan, Inc., and RHI, Inc. have never opened or maintained bank accounts in  
25 Arizona, have never drawn a check on an Arizona bank, and have never hired any agents,  
26

1 including a registered agent, in Arizona (with the exception of the attorneys defending the  
2 entities in this proceeding). Id. at ¶¶ 10 and 12. These entities have not filed corporate  
3 taxes or other tax returns in Arizona, and are not required to do so. Id. at ¶ 11.

4  
5 Moreover, Yucatan, Inc., and RHI, Inc., have not negotiated any agreements or  
6 contracts in which either party was to perform in whole or in part in Arizona. Id. at ¶ 13.  
7 Additionally, Yucatan, Inc., and RHI, Inc. previously have never been a party to a lawsuit  
8 in Arizona. Id. at ¶ 14. These two entities are located in the State of Indiana. Id. at ¶ 8.

9  
10 **B. The Securities Division Bears the Burden of Proving Personal  
11 Jurisdiction.**

12 In Arizona, the plaintiff and/or claimant bears the burden of establishing personal  
13 jurisdiction. Crowe v. Hickman's Egg Ranch, Inc., 202 Ariz. 113, 115, 41 P.3d 651, 653  
14 (App.Div.1, 2002); *citing* Switchtenberg v. Brimer, 171 Ariz. 77, 82, 828 P.2d 1218, 1223  
15 (App.Ct. 1991).

16  
17 Moreover, when a defendant and/or respondent challenges personal jurisdiction (as  
18 is the case here), the plaintiff cannot merely rest on the bare allegations in its complaint; it  
19 must present facts, by affidavit or otherwise, supporting personal jurisdiction. Armstrong  
20 v. Aramco Services, Co., 155 Ariz. 345, 348, 746 P.2d 917, 920 (App.Div.1, 1987); *citing*  
21 Amba Marketing Systems, Inc., v. Jobar Int'l, Inc., 551 F.2d 784, 787 (9<sup>th</sup> Cir. 1977).

22  
23 Thus, it is the Division's burden to prove personal jurisdiction is proper over Yucatan,  
24 Inc., and RHI, Inc.

1           **C.     There Is No General Jurisdiction Over Yucatan, Inc., or RHI, Inc.**

2           General jurisdiction subjects the defendant to suit on various claims, whether or not  
3 the claim for relief arises out of or relates to the defendant’s activities in the forum state.

4           See Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 416, 104 S. Ct.  
5 1868, 1872, 80 L.Ed.2d 404, 411 (1984). Under Arizona law, an individual is only subject  
6 to general jurisdiction if “the defendant has ‘substantial’ or ‘continuous and systematic’  
7 contacts with [Arizona].” Batton, 153 Ariz. at 270, 736 P.2d at 4.  
8

9           In this case, the Division has asserted securities fraud claims against Yucatan, Inc.,  
10 and RHI, Inc., in addition to other named parties. However, these two entities have had no  
11 contact whatsoever with the State of Arizona, let alone substantial, continuous and  
12 systematic contact. See Declaration, filed contemporaneously herewith. Therefore, the  
13 Commission has no general jurisdiction over Yucatan, Inc., and RHI, Inc.  
14

15           **D.     There Is No Specific Jurisdiction Over Yucatan, Inc., and RHI, Inc.**

16           Arizona’s long-arm statute is intended to allow Arizona to exert personal  
17 jurisdiction over a non-resident litigant to the maximum extent permitted by the United  
18 States Constitution. See, Houghton v. Piper Aircraft Corp., 112 Ariz. 365, 367, 542 P.2d  
19 24, 26 (1975); see also, Ariz. R. Civ. P. 4.2(a). As a result, this tribunal must consider the  
20 constitutional limitations of asserting specific jurisdiction under the Due Process Clause.  
21 See Batton v. Tennessee Farmers Mutual Ins. Co., 153 Ariz. 268, 270, 736 P.2d 2, 4  
22 (1987).  
23  
24  
25

26           In order for this Court to have specific jurisdiction over Yucatan, Inc., and RHI,

1 Inc., the Division must prove that: (i) Yucatan, Inc., and RHI, Inc. caused an event to  
2 occur in Arizona out of which the claim arose; (ii) Yucatan, Inc., and RHI, Inc. had  
3 sufficient minimum contacts with Arizona; and, (iii) the exercise of jurisdiction over the  
4 Respondents is reasonable under the circumstances. *See Williams v. Lakeview*, 199 Ariz.  
5 1, 3, 13 P.3d 280, 282 (2000); *Rollin v. William V. Frankel & Co.*, 196 Ariz. 350, 353-54,  
6 996 P.2d 1256-58 (Ct. App. 2000); *Cohen v. Barnard Vogler & Co.*, 199 Ariz. 16, 18, 13  
7 P.3d 758, 760 (Ct. App. 2000).

8  
9  
10 The requisite contacts for specific jurisdiction exist if the defendant “purposefully  
11 created contacts” with Arizona, or “purposefully directed [its] activities at Arizona  
12 residents.” *See Batton* 153 Ariz. at 271, 736 P.2d at 5; *Burger King Corp. v. Rudzewicz*,  
13 471 U.S. 462, 472, 105 S. Ct. 2174, 85 L.Ed.2d 528 (1985).

14  
15 In this case, there is no specific personal jurisdiction over Yucatan, Inc., and RHI,  
16 Inc. because: (i) Yucatan, Inc., and RHI, Inc. did not cause an event to occur in Arizona  
17 out of which the claims arose; (ii) Yucatan, Inc., and RHI, Inc. did not have the requisite  
18 “minimum contacts” with Arizona since the entities did not “purposefully create contacts”  
19 with Arizona or “purposefully direct activities at Arizona residents”; and, (iii) the exercise  
20 of personal jurisdiction over Yucatan, Inc., and RHI, Inc. would be unreasonable under the  
21 circumstances. *See Declaration*, filed contemporaneously herewith; *see also, Williams*,  
22 199 Ariz. at 3; *Rollin*, 196 Ariz. at 353-54; *Cohen*, 199 Ariz. at 18.  
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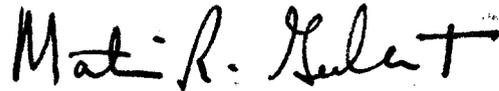
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**III. Conclusion.**

This tribunal has no personal jurisdiction over Yucatan, Inc., and RHI, Inc. There is no evidence that Yucatan, Inc., and RHI, Inc., had any contact with the State of Arizona. Thus, the Securities Division cannot establish contact by these entities sufficient to subject the entities to general jurisdiction in Arizona. Moreover, Yucatan, Inc., and RHI, Inc. did not cause an event to occur in Arizona that forms the basis of the Temporary Order, and Yucatan, Inc., and RHI, Inc. do not have the requisite minimum contacts with Arizona. As a result this tribunal should dismiss the claims against Yucatan, Inc., and RHI, Inc. for lack of personal jurisdiction.

**RESPECTFULLY SUBMITTED** this 23rd day of June, 2003.

GALBUT & HUNTER  
A Professional Corporation



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1 ORIGINAL and thirteen copies of the foregoing  
2 hand-delivered this 23rd day of June, 2003 to:

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 June, 2003 to:

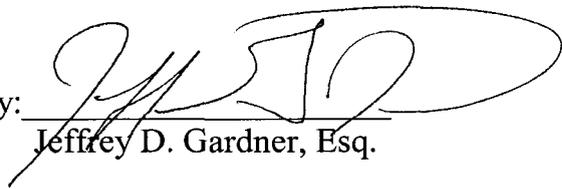
9 Hearing Officer  
10 Hearing Division  
11 Arizona Corporation Commission  
12 1200 West Washington Street  
13 Phoenix, Arizona 85007

14 Jaime Palfai, Esq.  
15 W. Mark Sendrow, Esq.  
16 Securities Division  
17 Arizona Corporation Commission  
18 1300 West Washington Street, 3rd Floor  
19 Phoenix, Arizona 85007

20 COPY of the foregoing sent *via* U.S. Mail  
21 this 23rd day of June, 2003 to:

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6  
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