

**ORIGINAL NEW APPLICATION**



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**BEFORE THE ARIZONA CORPORATION COMMISSION**

Arizona Corporation Commission

**DOCKETED**

JAN 30 2012

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AZ CORP COMMISSION  
DOCKET CONTROL

COMMISSIONERS

GARY PIERCE, Chairman  
BOB STUMP  
SANDRA D. KENNEDY  
PAUL NEWMAN  
BRENDA BURNS

DOCKETED BY *nr*

In the matter of:  
SOUTHWEST BIOFUELS, LLC, a Nevada  
limited liability company  
and  
RICK J. JIMENEZ and SUSAN C. JIMENEZ,  
husband and wife,  
Respondents.

DOCKET NO. S-20834A-12-0033

**TEMPORARY ORDER TO CEASE AND  
DESIST AND NOTICE OF  
OPPORTUNITY FOR HEARING**

**NOTICE: THIS ORDER IS EFFECTIVE IMMEDIATELY**

**EACH RESPONDENT HAS 20 DAYS TO REQUEST A HEARING**

**EACH RESPONDENT HAS 30 DAYS TO FILE AN ANSWER**

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that respondents SOUTHWEST BIOFUELS, LLC<sup>1</sup> and RICK J. JIMENEZ, are engaging in or are about to engage in acts and practices that constitute violations of A.R.S. § 44-1801, *et seq.*, the Arizona Securities Act ("Securities Act"), and that the public welfare requires immediate action.

The Division alleges RICK J. JIMENEZ controlled SOUTHWEST BIOFUELS, LLC, within the meaning of A.R.S. § 44-1999 so that he is jointly and severally liable under A.R.S. § 44-1999 to the same extent as SOUTHWEST BIOFUELS, LLC, for violations of section 1991 of the Securities Act.

<sup>1</sup> In November 2006, a Delaware limited liability company, Southwest Biofuels, LLC, filed with the Arizona Corporation Commission as a foreign limited liability company. The Delaware Southwest Biofuels, LLC appears to have no connection with the Nevada limited liability company, SouthWest BioFuels, LLC that is the subject of this Order.

1 **I.**

2 **JURISDICTION**

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

5 **II.**

6 **RESPONDENTS**

7 2. SOUTHWEST BIOFUELS, LLC ("SOUTHWEST") is a member managed  
8 limited liability company organized under the laws of the state of Nevada on January 22, 2010.  
9 Upon information and belief, SOUTHWEST is located in Mesa, Arizona with facilities in  
10 Tucson, Arizona.

11 3. RICK J. JIMENEZ ("JIMENEZ") is and was, at all relevant times, a married man  
12 and a resident of Mesa, Arizona. JIMENEZ is the president, Chief Operations Officer and Chief  
13 Executive Officer of SOUTHWEST. According to the records of the Nevada Secretary of State,  
14 JIMENEZ is also a manager of SOUTHWEST.

15 4. SOUTHWEST and JIMENEZ may be referred to collectively as "Respondents."

16 5. SUSAN JIMENEZ has been at all relevant times the spouse of JIMENEZ. SUSAN  
17 JIMENEZ may be referred to as "Respondent Spouse." Respondent Spouse is joined in this action  
18 under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital community  
19 of JIMENEZ.

20 6. At all relevant times, JIMENEZ has been acting for his own benefit and for the  
21 benefit or in furtherance of his marital community.

22 **III.**

23 **FACTS**

24 7. In December 2011, SOUTHWEST, through a salesman, placed an unsolicited  
25 telephone call ("cold-call") to a resident of Wisconsin offering him the opportunity to purchase  
26 Units in SOUTHWEST. The salesman represented that he was located in Tucson, Arizona.

1 According to the salesman, the Wisconsin resident had an opportunity to invest in a private  
2 company, SOUTHWEST, before it went "public." The Wisconsin resident stated that he had never  
3 invested a private company before and had limited investment experience. The salesman  
4 encouraged the Wisconsin resident to invest immediately because the SOUTHWEST had a "ticker"  
5 symbol and had submitted paperwork to the Securities and Exchange Commission ("SEC").

6 8. As of January 27, 2012, no documents have been filed with the SEC under the name  
7 of SOUTHWEST.

8 9. The salesman represented to the potential investor that he was a salesman for  
9 SOUTHWEST and received eight percent of the investment amount for any sales he makes. The  
10 salesman represented his title as being "Senior Project Manager" of SOUTHWEST.

11 10. The salesman represented to the Wisconsin offeree that SOUTHWEST already had  
12 investors who resided in Wisconsin, Nevada and Hawaii.

13 11. The salesman provided the Wisconsin offeree a copy of a subscription agreement  
14 and a Confidential Private Placement Memorandum ("PPM") dated May 15, 2010. The salesman  
15 also provided the Wisconsin offeree with access to the SOUTHWEST website.

16 12. According to the PPM, the Units offered by SOUTHWEST are for accredited  
17 investors only. When told that the Wisconsin offeree was not accredited, the salesman stated that  
18 SOUTHWEST could accept a limited number of non-accredited investors.

19 **FOR ACCREDITED INVESTORS ONLY**

20 SouthWest BioFuels, LLC (the "Company") is a Nevada corporation recently  
21 formed to develop and market biodiesel fuel formed from feedstock generated by  
22 the farming of algae. The Company plans to offer biodiesel fuel to distributors for  
23 blending with petroleum diesel fuel. The Company also plans to aggressively  
24 market biodiesel fuel to the general public through independent gasoline stations  
25 across the western United States. Further, the Company has contracted with  
26 several commercial trucking and construction concerns to provide and deliver our  
biodiesel fuel. The Company plans to use the net proceeds from this offering to  
purchase/lease land for the farming of algae, to build out the aforementioned land  
to produce algae, to build and maintain bio-reactors for the production of fuel,  
rent, salaries, management and consulting compensation, research and  
development, advertising and marketing costs, and for general working capital  
purposes. . . .



1 be deposited by the Company directly into its operating account for use as described in the  
2 Memorandum.”

3 16. The PPM describes the securities as follows:

4 **Preferred Stock**

5 The Company’s Board of Directors has the authority to issue up to 10,000,000  
6 shares of Series A Preferred Stock, no par value, with such rights, preferences and  
privileges as they may determine.

7 Holders of Series A Preferred Stock are entitled to dividends equal to ten percent  
8 (10%) of the net profit of the Company, paid quarterly. These dividends will be  
distributed equally among the issued outstanding shares of Preferred Stock.  
9 Dividends are cumulative and will be paid in full before any distributions to  
holders of Common Stock. . . . Holders of Preferred Stock are not entitled to any  
10 voting rights. Upon liquidation or dissolution, the holder of each outstanding  
share of Preferred Stock will be entitled to share equally in the funds legally  
11 available for distribution to such stockholders after payment of all liabilities.

12 **The Warrants**

13 The Units include a total of 1,500,000 Warrants to purchase 1,500,000 shares of  
the Company’s Common Stock for a purchase price of \$1.00 per share,  
14 exercisable at any time until December 31, 2012 unless extended by a vote of the  
Board of Directors and approved by the stockholders. The Warrants include  
15 customary anti-dilution provisions providing for price and amount adjustments in  
the event of stock splits, reverse stock splits, recapitalizations, stock dividends  
and similar transactions. No adjustments are made for the issuance of additional  
16 shares of capital stock by the Company. . . .

17 17. SOUTHWEST’s “success is substantially dependent on the performance of its  
18 executive officers and key employees.” SOUTHWEST “will generally be dependent upon  
19 [JIMENEZ] for the direction, management and daily supervision” of SOUTHWEST’s operation.

20 18. Upon information and belief, SOUTHWEST had previously issued a PPM dated  
21 March 1, 2010.

22 19. JIMENEZ has not been registered as a securities salesman or dealer.  
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1 **IV.**

2 **VIOLATION OF A.R.S. § 44-1841**

3 **(Offer and Sale of Unregistered Securities)**

4 20. From on or about May 15, 2010 to the present, Respondents have been offering or  
5 selling securities in the form of investment contracts, within or from Arizona.

6 21. The securities referred to above are not registered pursuant to Articles 6 or 7 of the  
7 Securities Act.

8 22. This conduct violates A.R.S. § 44-1841.

9 **V.**

10 **VIOLATION OF A.R.S. § 44-1842**

11 **(Transactions by Unregistered Dealers or Salesmen)**

12 23. Respondents are offering or selling securities within or from Arizona while not  
13 registered as dealers or salesmen pursuant to Article 9 of the Securities Act.

14 24. This conduct violates A.R.S. § 44-1842.

15 **VI.**

16 **VIOLATION OF A.R.S. § 44-1991**

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

18 25. In connection with the offer or sale of securities within or from Arizona,  
19 Respondents are, directly or indirectly: (i) employing a device, scheme, or artifice to defraud; (ii)  
20 making untrue statements of material fact or omitting to state material facts that are necessary in  
21 order to make the statements made not misleading in light of the circumstances under which they are  
22 made; or (iii) engaging in transactions, practices, or courses of business that operate or would  
23 operate as a fraud or deceit upon offerees and investors. Respondents' conduct includes, but is not  
24 limited to, the following:





1 If a request for hearing is not timely made, the Division will request that the Commission  
2 make permanent this Temporary Order, with written findings of fact and conclusions of law, which  
3 may include ordering restitution, assessing administrative penalties, or other relief.

4 Persons with a disability may request a reasonable accommodation such as a sign language  
5 interpreter, as well as request this document in an alternative format, by contacting Shaylin A.  
6 Bernal, ADA Coordinator, voice phone number 602/542-3931, e-mail [sabernal@azcc.gov](mailto:sabernal@azcc.gov).  
7 Requests should be made as early as possible to allow time to arrange the accommodation.

8 **X.**

9 **ANSWER REQUIREMENT**

10 Pursuant to A.A.C. R14-4-305, if a Respondent or Respondent Spouse requests a hearing,  
11 the requesting respondent must deliver or mail an Answer to this Temporary Order and Notice to  
12 Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona  
13 85007, within 30 calendar days after the date of service of this Temporary Order and Notice.  
14 Filing instructions may be obtained from Docket Control by calling (602) 542-3477 or on the  
15 Commission's Internet web site at [www.azcc.gov/divisions/hearings/docket.asp](http://www.azcc.gov/divisions/hearings/docket.asp).

16 Additionally, the answering respondent must serve the Answer upon the Division.  
17 Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-  
18 delivering a copy of the Answer to the Division at 1300 West Washington, 3<sup>rd</sup> Floor, Phoenix,  
19 Arizona, 85007, addressed to Wendy Coy.

20 The Answer shall contain an admission or denial of each allegation in this Temporary  
21 Order and Notice and the original signature of the answering respondent or the respondent's  
22 attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial  
23 of an allegation. An allegation not denied shall be considered admitted.

24 When the answering respondent intends in good faith to deny only a part or a qualification  
25 of an allegation, the respondent shall specify that part or qualification of the allegation and shall  
26 admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

1           The officer presiding over the hearing may grant relief from the requirement to file an  
2 Answer for good cause shown.

3           BY ORDER OF THE ARIZONA CORPORATION COMMISSION, this 30 day of  
4 January, 2012.

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7 Matthew J. Neubert  
8 Director of Securities  
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