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BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

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

FEB 24 2012

DOCKETED BY nr

In the matter of)
GEORGE ALEXANDER KARDARAS,)
CRD# 3184384, a married man,)
BRIAN MATTHEW BORAKOWSKI,)
CRD# 4093679, and NATALYA)
BORAKOWSKI, husband and wife,)
and)
ECHO CANYON LLC, an Arizona limited)
liability company,)
Respondents.)

DOCKET NO. S-20835A-12-0042

DECISION NO. 72900

ORDER TO CEASE AND DESIST, ORDER OF REVOCATION, ORDER FOR RESTITUTION, ORDER FOR ADMINISTRATIVE PENALTIES, AND CONSENT TO SAME

BY: RESPONDENTS BRIAN MATTHEW BORAKOWSKI, NATALYA BORAKOWSKI, and ECHO CANYON LLC

Respondents BRIAN MATTHEW BORAKOWSKI, NATALYA BORAKOWSKI, and ECHO CANYON LLC elect to permanently waive any right to a hearing and appeal under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this Order to Cease And Desist, Order of Revocation, Order for Restitution, Order for Administrative Penalties, and Consent to Same ("Order"). BRIAN MATTHEW BORAKOWSKI, NATALYA BORAKOWSKI, and ECHO CANYON LLC admit the jurisdiction of the Arizona Corporation Commission ("Commission"); admit only for purposes of this proceeding and any other proceeding in which the Commission is a party the Findings of Fact and Conclusions of Law contained in this Order; and consent to the entry of this Order by the Commission.

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I.

FINDINGS OF FACT

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3 1. BRIAN MATTHEW BORAKOWSKI ("BORAKOWSKI"), CRD# 4093679, was, at
4 all relevant times, a resident of Arizona.

5 2. BORAKOWSKI was registered as a securities salesman in Arizona in association
6 with American Capital Partners, LLC, from August 31, 2007, until September 8, 2009.

7 3. From August 11, 2009, until March 8, 2011, BORAKOWSKI was registered as a
8 securities salesman in Arizona in association with Berthel, Fisher & Company Financial Services,
9 Inc. (American Capital Partners, L.L.C. and Berthel, Fisher & Company Financial Services, Inc.
10 may be collectively referred to as "dealers").

11 4. At the time BORAKOWSKI terminated his association with Berthel, Fisher &
12 Company Financial Services, Inc. his registration as a securities salesman, pursuant to Arizona
13 Revised Statute § 44-1949, was automatically suspended.¹ Since his termination, BORAKOWSKI
14 has not associated with any dealer.

15 5. ECHO CANYON LLC ("ECHO CANYON") is an Arizona limited liability company
16 organized on October 12, 2006. At all times relevant, ECHO CANYON had its principal place of
17 business in Scottsdale, Arizona. At all relevant times, ECHO CANYON was not registered as a
18 securities dealer.

19 6. ECHO CANYON is a member-managed limited liability company. BORAKOWSKI
20 is the sole member of ECHO CANYON and at all relevant times, acted on behalf of ECHO
21 CANYON.

22 7. NATALYA BORAKOWSKI ("N. BORAKOWSKI") is the spouse of
23 BORAKOWSKI, and may be referred to as "Respondent Spouse." Respondent Spouse is joined in this

24 ¹ Arizona Revised Statute § 44-1949: "Each registered dealer shall promptly notify the director of the termination of
25 the employment of a registered salesman. The registration of the salesman shall automatically be suspended from the
26 time of termination of the employment until the salesman is again employed by a registered dealer and the director is
notified by the dealer in writing or by the CRD system, and the registered dealer is notified of approval of the
registration by the director or the CRD system or the salesman has complied with all requirements in accordance with a
temporary transfer program utilized by the CRD system and the commission."

1 action under A.R.S. § 44-2031(C) solely for purposes of determining the liability of the marital
2 community.

3 8. At all times relevant, BORAKOWSKI was acting for his own benefit and for the
4 benefit or in furtherance of his marital community.

5 9. BORAKOWSKI and ECHO CANYON may be referred to as "Respondents."

6 10. In or around October 2006, BORAKOWSKI organized ECHO CANYON for the
7 purpose of purchasing vehicles at Arizona vehicle auctions and then exporting the vehicles to
8 Russia. BORAKOWSKI's brother-in-law lived in Russia and would be the contact person to find
9 buyers for the vehicles. BORAKOWSKI planned to find vehicle buyers first before
10 BORAKOWSKI would purchase the vehicles at an Arizona vehicle auction. To purchase the
11 vehicles, BORAKOWSKI intended to solicit investors for funds to invest with ECHO CANYON.

12 11. BORAKOWSKI spoke to George Alexander Kardaras² ("Kardaras") about ECHO
13 CANYON and BORAKOWSKI's need for capital to purchase the vehicles. BORAKOWSKI and
14 Kardaras have known each other since approximately 2001 when they worked together at the same
15 dealer.

16 12. Beginning in 2007 through approximately March 2011, BORAKOWSKI solicited
17 investors from his existing client base of his brokerage business to invest with ECHO CANYON.
18 Kardaras also solicited investors from his client base of his brokerage business.

19 13. From 2007 until March 2011, BORAKOWSKI, individually, offered and sold to
20 each of seven investors a promissory note ("Note(s)") issued by ECHO CANYON and raised a
21 total of \$224,500. ECHO CANYON, through BORAKOWSKI and Kardaras, offered and sold to
22 each of 13 investors³ a Note issued by ECHO CANYON. The total amount raised from the 13
23 investors was \$760,400. The total principal amount owed to these investors is \$443,709.

24
25 ² George Alexander Kardaras, CRD# 3184384, ("Kardaras") is registered as a securities salesman in Arizona.
26 Currently, Kardaras' registration is in suspension, pursuant to Arizona Revised Statute § 44-1949, because he is not
associated with a dealer.

³ All of the investors were BORAKOWSKI's or Kardaras' clients.

1 14. Each Note was titled, "PROMISSORY NOTE IN CONSIDERATION OF
2 INVESTMENT." Depending on the Note, the promised interest rate varied from 10 percent to 20
3 percent, the due dates varied from four months to one year from the date of purchase, and the dates
4 interest was due varied from quarterly, semiannually, or on the Note due date. Each Note
5 contained a signature block for BORAKOWSKI to sign on behalf of ECHO CANYON.

6 15. The Notes are not secured. The investors own no interest in the vehicles purchased
7 and no other provision exists in the Notes to secure repayment of the Notes.

8 16. BORAKOWSKI, individually, and ECHO CANYON, through BORAKOWSKI
9 (hereinafter "BORAKOWSKI and ECHO CANYON") verbally represented to the investors that all
10 of their funds invested with him and ECHO CANYON would be used to purchase the vehicles for
11 export to Russia.

12 17. BORAKOWSKI directed the investors to deposit their funds into the ECHO
13 CANYON bank accounts. Twelve investors deposited their funds into one of the ECHO
14 CANYON bank accounts. BORAKOWSKI was the sole signatory on the ECHO CANYON bank
15 accounts.

16 18. In 2007, BORAKOWSKI and ECHO CANYON purchased two vehicles from an
17 Arizona auction for approximately \$30,855 and exported those vehicles to Russia, earning "a
18 couple hundred dollar profit on each" vehicle.

19 19. In 2008, according to BORAKOWSKI, the worldwide economic problems caused a
20 lack of buyers in Russia. Therefore, BORAKOWSKI and ECHO CANYON did not purchase any
21 additional vehicles, however, BORAKOWSKI and ECHO CANYON continued to receive funds
22 by selling the Notes to his clients.

23 20. Because BORAKOWSKI had the investors' funds and needed to pay the interest on
24 the Notes, BORAKOWSKI decided to invest those funds in something else. BORAKOWSKI
25 diverted the investor funds to invest in Kardaras' brokerage business by paying Kardaras' business
26

1 expenses, including but not limited to, costs for marketing, operations, and employees. None of the
2 investors were told their funds would be used in this manner.

3 21. Furthermore, BORAKOWSKI and ECHO CANYON used some of the investor
4 funds to pay other investors the principal and interest due on the Notes.

5 22. BORAKOWSKI never notified either of his dealers that he sold the Notes to the
6 dealers' clients through ECHO CANYON. Furthermore, these Notes were not recorded on the
7 books and records of BORAKOWSKI's dealers.

8 **II.**

9 **CONCLUSIONS OF LAW**

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

12 2. BORAKOWSKI and ECHO CANYON offered or sold securities within or from
13 Arizona, within the meaning of A.R.S. §§ 44-1801(15), 44-1801(21), and 44-1801(26).

14 3. ECHO CANYON violated A.R.S. § 44-1842 by offering and selling Notes within or
15 from Arizona while not registered as a dealer.

16 4. BORAKOWSKI and ECHO CANYON violated A.R.S. § 44-1991 by representing
17 that the investor funds would only be used to purchase vehicles when in fact investor funds were
18 used to pay other investors and to invest in Kardaras' brokerage business.

19 5. BORAKOWSKI is subject to an order of revocation of his securities salesman
20 registration, pursuant to A.R.S. § 44-1962, specifically,

21 a) Pursuant to A.R.S. § 44-1962(A)(2), by violating A.R.S. § 44-1991; and

22 b) Pursuant to A.R.S. § 44-1962(A)(10), engaging in dishonest and unethical
23 conduct within the meaning of R14-4-130(17), by effecting securities transactions that were not
24 recorded on the records of the dealer with whom he was registered at the time of the transactions.

25 6. BORAKOWSKI's conduct is grounds for a cease and desist order pursuant to
26 A.R.S. §§ 44-1962 and 44-2032.

1 IT IS FURTHER ORDERED that Respondents and Respondent Spouse comply with the
2 attached Consent to Entry of Order.

3 IT IS FURTHER ORDERED, pursuant to A.R.S. §§ 44-1962 and 44-2032, that
4 Respondents, individually, shall jointly and severally with any respondent against whom an order is
5 entered under Docket No. S-20835A-12-0042, pay restitution in the principal amount of \$443,709.
6 Of this amount, \$214,911 shall, jointly and severally with Respondents and any other respondent
7 against whom an order is entered under Docket No. S-20835A-12-0042, be paid by the marital
8 community of BORAKOWSKI and N. BORAKOWSKI. Payment is due in full on the date of this
9 Order. The marital community of BORAKOWSKI and N. BORAKOWSKI's restitution obligation
10 under this Order will be paid in full upon the earlier of: (a) payment(s) by the marital community of
11 BORAKOWSKI and N. BORAKOWSKI totaling \$214,911 plus interest; or (b) payment(s) by any
12 Respondent(s) totaling \$443,709. Payment shall be made to the "State of Arizona" to be placed in
13 an interest-bearing account controlled by the Commission. Any amount outstanding shall accrue
14 interest from the date judgment is entered at the rate of five percent per annum.

15 The Commission shall disburse the funds on a pro-rata basis to investors shown on the
16 records of the Commission. Any restitution funds that the Commission cannot disburse because an
17 investor refuses to accept such payment, or any restitution funds that cannot be disbursed to an
18 investor because the investor is deceased and the Commission cannot reasonably identify and
19 locate the deceased investor's spouse or natural children surviving at the time of the distribution,
20 shall be disbursed on a pro-rata basis to the remaining investors shown on the records of the
21 Commission. Any funds that the Commission determines it is unable to or cannot feasibly disburse
22 shall be transferred to the general fund of the state of Arizona.

23 IT IS FURTHER ORDERED, pursuant to A.R.S. §§ 44-1962 and 44-2036, that
24 Respondents, individually, and the marital community of BORAKOWSKI and N.
25 BORAKOWSKI, jointly and severally, pay an administrative penalty in the amount of \$25,000.
26 Payment is due in full on the date of this Order. Payment shall be made to the "State of Arizona."

1 Any amount outstanding shall accrue interest from the date of this Order at the rate of five percent
2 per annum.

3 IT IS FURTHER ORDERED that payments received by the state of Arizona shall first be
4 applied to the restitution obligation. Upon payment in full of the restitution obligation, payments
5 shall be applied to the penalty obligation.

6 IT IS FURTHER ORDERED, pursuant to A.R.S. § 44-1962, that BORAKOWSKI's
7 securities salesman registration is revoked.

8 IT IS FURTHER ORDERED, that if any Respondent and Respondent Spouse fail to
9 comply with this order, the Commission may bring further legal proceedings against that
10 Respondent or Respondent Spouse, including application to the superior court for an order of
11 contempt.

12 IT IS FURTHER ORDERED that no finding of fact or conclusion of law contained in this
13 Order shall be deemed binding against any Respondent under this Docket Number who has not
14 consented to the entry of this Order.

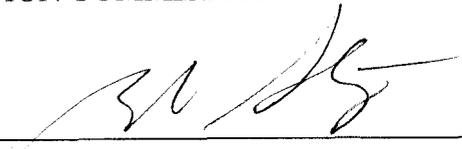
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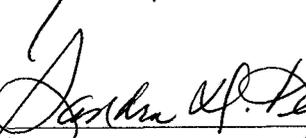
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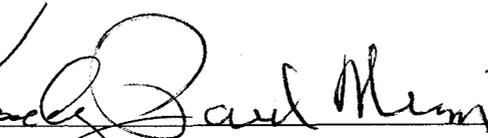
IT IS FURTHER ORDERED that this Order shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

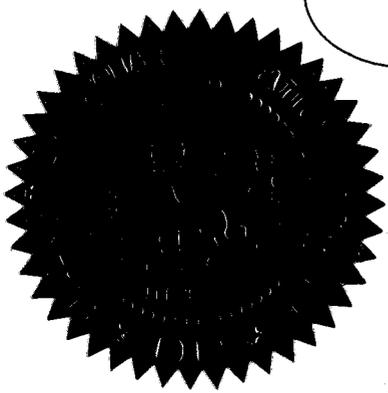

CHAIRMAN


COMMISSIONER


COMMISSIONER


COMMISSIONER


COMMISSIONER



IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 24th day of FEBRUARY, 2012.


ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT

DISSENT

This document is available in alternative formats by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

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CONSENT TO ENTRY OF ORDER

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2 1. BRIAN MATTHEW BORAKOWSKI, NATALYA BORAKOWSKI, and ECHO
3 CANYON LLC admit the jurisdiction of the Commission over the subject matter of this
4 proceeding. BRIAN MATTHEW BORAKOWSKI, NATALYA BORAKOWSKI, and ECHO
5 CANYON LLC acknowledge that they have been fully advised of their right to a hearing to present
6 evidence and call witnesses and that they knowingly and voluntarily waive any and all rights to a
7 hearing before the Commission and all other rights otherwise available under Article 11 of the
8 Securities Act and Title 14 of the Arizona Administrative Code. BRIAN MATTHEW
9 BORAKOWSKI, NATALYA BORAKOWSKI, and ECHO CANYON LLC acknowledge that this
10 Order to Cease and Desist, Order of Revocation, Order for Restitution, Order for Administrative
11 Penalties and Consent to Same by: Respondents BRIAN MATTHEW BORAKOWSKI,
12 NATALYA BORAKOWSKI, and ECHO CANYON LLC (“Order”) constitutes a valid final order
13 of the Commission.

14 2. BRIAN MATTHEW BORAKOWSKI, NATALYA BORAKOWSKI, and ECHO
15 CANYON LLC knowingly and voluntarily waive any right under Article 12 of the Securities Act
16 to judicial review by any court by way of suit, appeal, or extraordinary relief resulting from the
17 entry of this Order.

18 3. BRIAN MATTHEW BORAKOWSKI, NATALYA BORAKOWSKI, and ECHO
19 CANYON LLC acknowledge and agree that this Order is entered into freely and voluntarily and
20 that no promise was made or coercion used to induce such entry.

21 4. BRIAN MATTHEW BORAKOWSKI, NATALYA BORAKOWSKI, and ECHO
22 CANYON LLC understand and acknowledge that they have a right to seek counsel regarding this
23 Order, and that they had the opportunity to seek counsel prior to signing this Order. BRIAN
24 MATTHEW BORAKOWSKI, NATALYA BORAKOWSKI, and ECHO CANYON LLC
25 acknowledge and agree that, despite the foregoing, they freely and voluntarily waive any and all
26 right to consult or obtain counsel prior to signing this Order.

1 5. BRIAN MATTHEW BORAKOWSKI, NATALYA BORAKOWSKI, and ECHO
2 CANYON LLC admit only for purposes of this proceeding and any other proceeding in which the
3 Commission is a party the Findings of Fact and Conclusions of Law contained in this Order.
4 BRIAN MATTHEW BORAKOWSKI, NATALYA BORAKOWSKI, and ECHO CANYON LLC
5 agree that they shall not contest the validity of the Findings of Fact and Conclusions of Law
6 contained in this Order in any present or future proceeding in which the Commission is a party.

7 6. By consenting to the entry of this Order, BRIAN MATTHEW BORAKOWSKI,
8 NATALYA BORAKOWSKI, and ECHO CANYON LLC agree not to take any action or to make,
9 or permit to be made, any public statement denying, directly or indirectly, any Finding of Fact or
10 Conclusion of Law in this Order or creating the impression that this Order is without factual basis.
11 BRIAN MATTHEW BORAKOWSKI, NATALYA BORAKOWSKI, and ECHO CANYON LLC
12 will undertake steps necessary to assure that all of their agents and employees understand and
13 comply with this agreement.

14 7. While this Order settles this administrative matter between BRIAN MATTHEW
15 BORAKOWSKI, NATALYA BORAKOWSKI, and ECHO CANYON LLC and the Commission,
16 they understand that this Order does not preclude the Commission from instituting other
17 administrative or civil proceedings based on violations that are not addressed by this Order.

18 8. BRIAN MATTHEW BORAKOWSKI, NATALYA BORAKOWSKI, and ECHO
19 CANYON LLC understand that this Order does not preclude the Commission from referring this
20 matter to any governmental agency for administrative, civil, or criminal proceedings that may be
21 related to the matters addressed by this Order.

22 9. BRIAN MATTHEW BORAKOWSKI, NATALYA BORAKOWSKI, and ECHO
23 CANYON LLC understand that this Order does not preclude any other agency or officer of the
24 state of Arizona or its subdivisions from instituting administrative, civil, or criminal proceedings
25 that may be related to matters addressed by this Order.

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1 10. BRIAN MATTHEW BORAKOWSKI and ECHO CANYON LLC agree that they
2 will not apply to the state of Arizona for registration as a securities dealer or salesman or for
3 licensure as an investment adviser or investment adviser representative until such time as all
4 restitution and penalties under this Order are paid in full.

5 11. BRIAN MATTHEW BORAKOWSKI agrees that he will not exercise any control
6 over any entity that offers or sells securities or provides investment advisory services within or
7 from Arizona until such time as all restitution and penalties under this Order are paid in full.

8 12. BRIAN MATTHEW BORAKOWSKI and NATALYA BORAKOWSKI
9 acknowledge that any restitution or penalties imposed by this Order are obligations of BRIAN
10 MATTHEW BORAKOWSKI as well as the marital community.

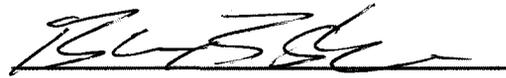
11 13. BRIAN MATTHEW BORAKOWSKI, NATALYA BORAKOWSKI, and ECHO
12 CANYON LLC consent to the entry of this Order and agree to be fully bound by its terms and
13 conditions.

14 14. BRIAN MATTHEW BORAKOWSKI, NATALYA BORAKOWSKI, and ECHO
15 CANYON LLC acknowledge and understand that if they fail to comply with the provisions of the
16 order and this consent, the Commission may bring further legal proceedings against them,
17 including application to the superior court for an order of contempt.

18 15. BRIAN MATTHEW BORAKOWSKI, NATALYA BORAKOWSKI, and ECHO
19 CANYON LLC understand that default shall render them liable to the Commission for its costs of
20 collection and interest at the maximum legal rate.

21 16. BRIAN MATTHEW BORAKOWSKI, NATALYA BORAKOWSKI, and ECHO
22 CANYON LLC agree and understand that if they fail to make any payment as required in the
23 Order, any outstanding balance shall be in default and shall be immediately due and payable
24 without notice or demand. BRIAN MATTHEW BORAKOWSKI, NATALYA BORAKOWSKI,
25 and ECHO CANYON LLC agree and understand that acceptance of any partial or late payment by
26 the Commission is not a waiver of default by the Commission.

1 17. BRIAN MATTHEW BORAKOWSKI represents that he is the sole member of
2 ECHO CANYON LLC and has been authorized by ECHO CANYON LLC to enter into this Order
3 for and on behalf of it.

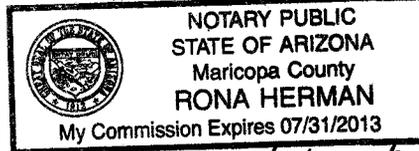
4 
5 BRIAN MATTHEW BORAKOWSKI

6 STATE OF ARIZONA)
7) ss
8 County of MARICOPA)

9 SUBSCRIBED AND SWORN TO BEFORE me this 7th day of FEBRUARY, 2012.

10 
11 NOTARY PUBLIC

12 My commission expires:
13 JULY 31, 2013



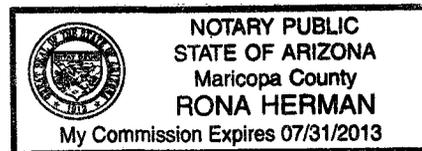
14 
15 NATALYA BORAKOWSKI

16 STATE OF ARIZONA)
17) ss
18 County of ARIZONA)

19 SUBSCRIBED AND SWORN TO BEFORE me this 8th day of FEBRUARY, 2012.

20 
21 NOTARY PUBLIC

22 My commission expires:
23 JULY 31, 2013



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ECHO CANYON LLC, an Arizona limited liability company

[Handwritten Signature]

By: BRIAN MATTHEW BORAKOWSKI
Its: Member

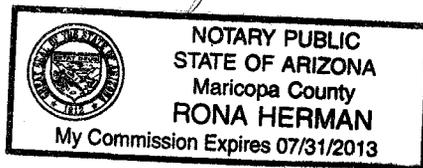
STATE OF ARIZONA)
) ss
County of MARICOPA)

SUBSCRIBED AND SWORN TO BEFORE me this 7th day of FEBRUARY, ²⁰¹²~~2011~~.

[Handwritten Signature]
NOTARY PUBLIC

My commission expires:

JULY 31, 2013



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SERVICE LIST FOR: Kardaras, et al.

Brian Matthew Borakowski
10034 East Evans Drive
Scottsdale, AZ 85260

Natalya Borakowski
10034 East Evans Drive
Scottsdale, AZ 85260

ECHO CANYON LLC
936 N. 87th Place
Scottsdale, AZ 85257

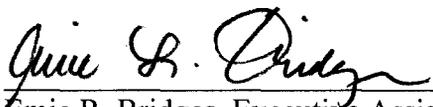
George Alexander Kardaras
7500 East Deer Valley Road, #193
Scottsdale, AZ 85255

1 Natalya Borakowski
2 10034 East Evans Drive
3 Scottsdale, AZ 85260

4 ECHO CANYON LLC
5 936 N. 87th Place
6 Scottsdale, AZ 85257

7 George Alexander Kardaras
8 7500 East Deer Valley Road, #193
9 Scottsdale, AZ 85255

10 Dated: 2/13/12

11 By: 
12 Emie R. Bridges, Executive Assistant

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