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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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AZ CORP COMMISSION
DOCKET CONTROL

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COMMISSIONERS

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

IN THE MATTER OF:

DAVID SHOREY AND MARY JANE SHOREY,
husband and wife,

WESTCAP ENERGY, INC., an Arizona
corporation, dba Westcap Solar,

RESPONDENTS.

DOCKET NO. S-20790A-11-0104

PROCEDURAL ORDER

BY THE COMMISSION:

On March 8, 2011, the Securities Division (“Division”) of the Arizona Corporation Commission (“Commission”) filed a Notice of Opportunity for Hearing (“Notice”) against David Shorey and Mary Jane Shorey, husband and wife, and Westcap Energy, Inc., an Arizona corporation dba Westcap Solar (“WEI”), (collectively “Respondents”) in which the Division alleged multiple violations of the Arizona Securities Act (“Act”) in connection with the offer and sale of securities in the form of stock. The spouse (“Respondent Spouse”) of Respondent David Shorey was joined in the action pursuant to A.R.S. § 44-2031(C) solely for the purpose of determining the liability of the marital community.

On March 11, 2011, the Division filed an amended Notice.

The Respondents were duly served with copies of the amended Notice.

On March 25, 2011, a request for hearing was filed on behalf of David and Mary Jane Shorey and WEI.

On April 7, 2011, by Procedural Order, a pre-hearing conference was scheduled on May 5, 2011.

On May 5, 2011, at the pre-hearing conference, the Division and Respondents appeared through counsel. The parties were discussing a possible resolution of the issues raised by the Notice, but in the interim agreed to a status conference being scheduled in approximately 60 days.

1 On May 13, 2011, a status conference was scheduled on July 28, 2011.

2 On July 28, 2011, at the status conference, the Division appeared with counsel and counsel for
3 the Respondents appeared telephonically. Although the parties were continuing to discuss a
4 resolution of the proceeding, the Division requested that a hearing be scheduled in approximately 120
5 days in the event a Consent Order was not approved by the Commission.

6 On August 3, 2011, by Procedural Order, a hearing was scheduled to commence on December
7 5, 2011.

8 On October 19, 2011, Respondents filed a Motion to Accelerate the hearing due to conflicts
9 which had arisen with the scheduled administrative proceeding due to the subsequent scheduling of
10 matters in federal court in California.

11 On October 20, 2011, the Division filed its response which raised conflicts to the schedule
12 proposed by Respondents, if the proceeding was to be accelerated.

13 On October 25, 2011, during a brief teleconference with counsel for the Division and the
14 Respondents, the parties agreed that the proceeding should be continued to avoid potential conflicts.
15 Subsequently, the hearing was continued to January 23, 2012.

16 On January 23, 2012, a full public hearing was commenced before a duly authorized
17 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Division and
18 Respondents appeared with counsel. During the course of the proceeding, Respondents' Exhibit RS-
19 10, signature pages for 8% Series A-Convertible Preferred Stock Secured Agreement, was admitted
20 into evidence. However, other investors' signature pages which were not provided with Exhibit RS-
21 10 were to be submitted as a late-filed exhibit, and captioned as Exhibit RS-11 either by stipulation of
22 counsel or by subsequent Procedural Order.

23 On February 21, 2012, Respondents filed "Motion to Admit RS-11" stating that the
24 Division's counsel had not signed the stipulation.

25 On February 22, 2012, the Division filed a response to the Respondent's Motion to Admit
26 RS-11, and objected to its admission. The Division requested, at a minimum, an affidavit by the
27 person who gathered the documents confirming that each document submitted by Respondents was
28 received by mail, email and/or fax by Respondents in response to the WEI preferred stock offering.

1 On February 27, 2012, Respondents filed a reply to the Division's response in opposition to
2 Exhibit RS-11.

3 Under the circumstances, Exhibit RS-11 should be admitted into evidence.

4 IT IS THEREFORE ORDERED that Exhibit RS-11 shall be admitted into evidence conditioned
5 upon Respondents filing by April 16, 2012, an affidavit which conforms to the minimal requirements as set
6 forth in the Division's response filed on February 22, 2012.

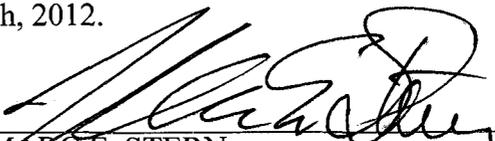
7 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
8 Communications) applies to this proceeding as the matter is now set for public hearing.

9 IT IS FURTHER ORDERED that withdrawal or representation must be made in compliance
10 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
11 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances
12 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is
13 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the
14 Administrative Law Judge or the Commission.

15 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
16 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to practice of law and admission
17 *pro hac vice*.

18 IT IS FURTHER ORDERED that the Presiding Officer may rescind, alter, amend, or waive
19 any portion of this Procedural Order either by subsequent Procedural Order or by ruling at hearing.

20 DATED this 22nd day of March, 2012.

21
22 
23 MARC E. STERN
ADMINISTRATIVE LAW JUDGE

24 Copies of the foregoing mailed/delivered
25 this 22nd day of March, 2012 to:

26 Bruce R. Heurlin
27 Devin M. Sherlock
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Attorney for Respondents

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2 ARIZONA CORPORATION COMMISSION
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4
5 By: 
Debra Broyles
6 Secretary to Marc E. Stern

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