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Arizona Corporation Commission
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 MAR 27 2012

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15 Counsel for Respondents

BEFORE THE ARIZONA CORPORATION COMMISSION

18 In the matter of:

Docket No. S-20814A-11-0313

19 DAVID PAUL SMOOT,
 20 MARIE KATHLEEN SMOOT,
 21 NATIVE AMERICAN WATER, LLC, dba
 22 NATAWA, NATAWA CORPORATION,
 23 dba NATAWA AND AMERICAN INDIAN
 24 TECHNOLOGIES INTERNATIONAL, LLC,
 25 aka AITI,

**RESPONDENTS' REPLY IN
 SUPPORT OF THEIR MOTION TO
 STAY**

(Expedited Ruling Requested)

Respondents.

26 The Securities Division ("Division") of the Arizona Corporation Commission
 27 ("Commission")'s Response ("Resp.") opposing Respondent's David Paul Smoot, Marie Kathleen
 28

1 Smoot, Native American Water, LLC, Natawa Corporation and American Indian Technologies
2 International, LLC ("Respondents") Motion to Stay ("Motion") is an unfortunate attempt to draw
3 attention away from Respondents' meritorious request that the Commission Action be stayed to
4 preserve both Mr. Smoot's ability to defend himself in the Commission Action and to preserve his
5 constitutionally guaranteed Fifth Amendment rights. For all the reasons below, as well as those
6 cited in Respondents' initial Motion, the Commission Action should be temporarily stayed.

7
8 **I. RESPONDENTS ARE NOT IMPROPERLY ATTEMPTING TO DELAY THE CIVIL PROCEEDING.**

9 Contrary to the Division's implications, Respondents are not seeking to improperly delay the
10 Commission Action "yet again," nor are they attempting to do so for "an infinite duration." Resp. at
11 1. First, the Division takes issue with Respondents, after requesting a hearing on October 31, 2011,
12 seeking "to delay the first pre-hearing conference until January 18, 2010." Resp. at 2. After
13 Respondents requested a hearing on October 31, 2011, on November 1, 2011, Judge Stern set a pre-
14 hearing conference for November 29, 2011. Respondents' attorney, Timothy Galligan, however,
15 had a conflict and Respondents' counsel moved to have the first pre-hearing conference re-set. See
16 11-17-11 Notice of Mot. to Vacate and Reset Pre-Hr'g Conference Date ("Notice") and 11-17-11
17 Decl. of Timothy J. Galligan in Support of Mot., Mot. to Vacate and Reset Pre-Hr'g Conference
18 Date and Proposed Order ("Galligan Decl."). Mr. Galligan's conflict, which was brought to the
19 immediate attention of the Division after Respondents received notice of the initial hearing date of
20 November 29, 2011, was that he was going to be out of the country on other business. Galligan
21 Decl. at ¶¶ 3,5. What the Division fails to mention in its Response was that it, through Michael
22 Dailey via e-mail on November 8, 2011, consented to re-setting the first pre-hearing conference
23 date. Galligan Decl. at ¶ 4. The first pre-hearing conference eventually took place on January 18,
24 2012 – an eminently reasonable continuance of a mere 50 days, considering the calendars of
25 counsel involved, the calendar of Judge Stern, and the intervening holidays.

26 The Division also takes issue with Respondents at the January 18, 2012 pre-hearing
27 conference asking Judge Stern to set the evidentiary hearing in the Commission Action in or after
28

1 October 2012. This is a curious matter to take issue with as the Division's counsel himself admitted
2 during the January 18, 2012 hearing that the Commission Action was progressing slowly.
3 Respondents requested that the evidentiary hearing be set in or after October 2012 to allow for
4 approximately 5 months of discovery and several months to prepare this very document-intensive
5 case for a full evidentiary hearing, which is anticipated to last several weeks. However, after further
6 discussion, there was a general consensus at the January 18, 2012 hearing that the full evidentiary
7 hearing could possibly take place during the summer of 2012.

8 There have, therefore, been no prior improper attempts to delay the Commission Action in
9 the past, and Respondents' pending Motion to Stay is no different. Staying the Commission Action
10 only until the resolution of the Criminal Proceeding is the only way in which to avoid Mr. Smoot
11 facing the inequitable and unpalatable choice of: (1) invoking his constitutional Fifth Amendment
12 rights against self-incrimination, thereby leaving the Commission's allegations in the Commission
13 Action to go unchecked; or (2) defending himself in the Commission Action by testifying on his
14 own behalf on matters that are at issue in both the Commission Action and Criminal Proceeding,
15 thereby waiving his constitutional Fifth Amendment rights against self-incrimination and risking
16 that the State of Arizona will use his statements against him in the Criminal Proceeding, just as the
17 Division has promised to do in the Commission Proceeding. Resp. at 10. Additionally, despite the
18 Division's argument that Mr. Smoot will be able to assist his counsel with Respondents' defense in
19 the Commission Action notwithstanding the Criminal Proceeding, Resp. at 2, as Respondents
20 pointed out in their original Motion, Mr. Smoot's ability to take discovery, gather evidence,
21 interview witnesses and otherwise prepare for the contemplated hearing on the Commission Action
22 will be severely limited given the restrictions placed on Mr. Smoot by virtue of the Criminal
23 Proceeding from contacting or speaking with persons who have been designated as "victims" in the
24 Criminal Proceeding.

1 **II. THE COMMISSION ACTION AND THE CRIMINAL PROCEEDING ARE**
2 **BASED UPON THE SAME FACTS AND CIRCUMSTANCES.**

3 As the records in the Commission Action and the Criminal Proceeding show, both cases are
4 based upon the same underlying facts and circumstances. The Commission alleges that Mr. Smoot
5 offered and sold securities in his individual capacity and on behalf of the corporate Respondents
6 without being registered as a securities salesman or dealer, allegedly in violation of A.R.S. § 44-
7 1842, and without the securities themselves being registered with the Commission, allegedly in
8 violation of A.R.S. § 44-1841. *See* 10-20-11 Notice of Opp. for Hearing ("Notice"), at 2-6, 29.
9 Similarly, as is evident from the Maricopa County Criminal Docket, and the transcript of the
10 February 7, 2012 Grand Jury proceeding, Count 2 of Mr. Smoot's indictment is for allegedly selling
11 unregistered securities in Arizona in violation of A.R.S. § 44-1841, among other statutes, and Count
12 3 of Mr. Smoot's indictment is for allegedly selling securities without himself being registered in
13 Arizona in violation of A.R.S. § 44-1842. *See* Excerpts from 2-7-12 Grand Jury Transcript
14 ("Transcript") at 3, attached as Exhibit 1 hereto.

15 Further, the Commission alleges that Mr. Smoot committed fraud in connection with these
16 transactions. *See* Notice at 29-31. Similarly, Count 1 of Mr. Smoot's indictment is for allegedly
17 defrauding several individuals – individuals that were identified in the February 7, 2012 Grand Jury
18 proceeding by the Commission's investigator Gary Clapper as being alleged investors with Mr.
19 Smoot and the corporate Respondents in the Commission Action. *See* Ex. 1 at 13-14, 19-20.
20 Finally, the Commission alleges that Mr. Smoot engaged in the conduct at issue in the Commission
21 Action from March 2003 through October 2010. *See* Notice at 7, 29. The Criminal Proceeding
22 relates to the exact same time period. *See* Maricopa County Criminal Docket; Ex. 1 at 3, 21;
23 Excerpts from 3-12-12 State's Notice of Disclosure and Request for Disclosure, attached hereto as
24 Exhibit 2.

25 Therefore, the Division's argument that because the Grand Jury did not indict Mr. Smoot for
26 fraud specifically under A.R.S. § 44-1991 and that there is no criminal charge for a permanent
27 injunction currently pending in the Criminal Proceeding somehow shows that the underlying facts
28

1 and circumstances of the Commission Action and the Criminal Proceeding are not similar is simply
2 erroneous. The underlying facts and circumstances of the Commission Action and the Criminal
3 Proceeding are the same, and that is why a stay of the Commission Action is entirely appropriate
4 under these circumstances.¹

5
6 **III. THE DIVISION'S ATTEMPT TO DISTANCE ITSELF FROM THE**
7 **CRIMINAL PROCEEDING IS DISINGENUOUS.**

8 The Division goes on to attempt to distance itself from the Criminal Proceeding, in part by
9 indicating that they had to search the Maricopa County Clerk's online docket to determine the
10 charges brought against Mr. Smoot. Resp. at 2. This attempt to paint the Division as uninvolved in
11 the Criminal Proceeding is completely belied by the fact that the State's only witness at the February
12 7, 2012 Grand Jury proceedings was the Commission's investigator Gary Clapper, *see* Ex. 1 at 12-
13 13, and by the fact that Mr. Clapper is identified as a key witness in the State's case against Mr.
14 Smoot. *See* Ex. 2.

15 Respondents did not allege in their Motion that the Criminal Proceeding is being prosecuted
16 by the Division, that Mr. Clapper is employed by the Maricopa County Attorney's Office, is an
17 attorney, or a prosecutor. Resp. at 2. Nor did Respondents argue that the Division or Commission
18 is the same agency as the County Attorney. *Id.* Rather, Respondents pointed out that both are arms
19 of the State, and that in situations where a state is involved in both civil and criminal proceedings
20

21 ¹ The degree of overlap between the Commission Action and the Criminal Proceeding is a
22 critical factor. *See State v. Deal*, 740 N.W.2d 755, 766 (Minn. 2007) (in evaluating whether a stay
23 is appropriate courts should consider "the extent to which the evidentiary material in the civil and
24 criminal cases overlap"); *King v. Olympic Pipeline Co.*, 16 P.3d 45, 55 (Wash. Ct. App. 2000)
25 ("One of the most important factors in the balancing process is 'the degree to which the civil issues
26 overlap with the criminal issues,' because '[i]f there is no overlap, there would be no danger of self-
27 incrimination and accordingly no need for a stay.' Thus a stay is most appropriate where the subject
28 matter of the parallel civil and criminal proceeding or investigation is the same."); *Integrated
Generics, Inc. v. Bowen*, 678 F. Supp. 1004, 1009 (E.D.N.Y. 1988) (granting stay of civil
proceedings pending grand jury investigation when legal theories differed, "but the facts critical to
both proceedings are closely related and may be identical.").

1 against an individual, "special consideration must be given to the plight of the party asserting the
2 Fifth Amendment." SEC v. Graystone Nash, 25 F.3d 187, 193-94 (3rd Cir. 1994).

3 **IV. ALL FACTORS WEIGH IN FAVOR OF A STAY.**

4 The first factor to evaluate in determining whether a stay is appropriate is the extent to
5 which a defendant's Fifth Amendment rights are implicated. Fed. Sav. & Loan Ins. Corp. v.
6 Molinaro, 889 F.2d 899, 902 (9th Cir. 1989). In light of Mr. Smoot's recent indictment, the
7 Division has no choice but admit that Mr. "Smoot's Fifth Amendment rights are at issue in this case
8" Resp. at 4. The Division's citation to State ex rel. Corbin v. Goodrich, 151 Ariz. 118, 125,
9 726 P.2d 215, 222 (Ct. App. 1986), Resp. at 4, is inapposite as in Corbin, there was only a fear of
10 criminal prosecution at issue.² Unfortunately, that fear has become a reality for Mr. Smoot, and the
11 indictment seriously implicates his Fifth Amendment rights.³ The Division curiously argues that
12 "the mere fact that Smoot's Fifth Amendment rights are implicated is a distinction without a
13 difference," Resp. at 8; however, the implication of those rights is an explicit factor courts look to in
14 deciding whether a stay is appropriate, and the Division's own Response acknowledges the
15 importance of that factor. Resp. at 4. Therefore, this first factor clearly weighs in favor of a stay.⁴

16 The second factor to evaluate is the interest of a plaintiff/prosecuting party and the impact of
17 a delay. Molinaro, 889 F.2d at 902. In Respondents' Motion, it was stated that Mr. Smoot will not
18 be offering securities at this time, and thus a stay would not be prejudicial to the Division. Mot. at
19

20
21 ² The Division's citation to Landis v. N. Am. Co., 299 U.S. 248, 254-55 (1936) is also
22 inapposite as all the parties involved were corporations, and there was little to no risk of criminal
penalties being imposed. *Id.* at 251-52.

23 ³ The Division's attempt to box Mr. Smoot into a corner, and force him to make a decision
24 regarding his future testimony in the Commission Action and share that decision with the Division
at this time is an entirely improper attempt to limit Mr. Smoot's rights. Resp. at 8, n. 4.

25 ⁴ The Division's Response at 7:23 – 8:1 completely misrepresents Respondents' argument.
26 The argument in Respondents' Motion at 5:18-20 was that this case was very different from a case
27 where an individual is merely operating under a fear of criminal charges, and that is why Mr.
Smoot's Fifth Amendment rights are of such paramount importance. Additionally, the Division's
28 attempt to box Mr. Smoot into a corner, and force him to make a decision regarding his future
testimony in the Commission Action and share that decision with the Division at this time is an
entirely improper. Resp. at 8, n. 4.

1 6. The Division has no grounds upon which to call this representation "disingenuous." Resp. at 11.
2 Mr. Smoot is a sixty-five year old man in ill health, committed to vigorously defending himself in
3 the Commission Action and the Criminal Proceeding, and with a stay, defending them both
4 simultaneously. Involvement in any type of securities activities is in no way being contemplated by
5 Mr. Smoot, and unlike in Corbin, Mr. Smoot's circumstances do make it "clear the allegedly
6 wrongful behavior [is] not reasonably [] expected to recur." 151 Ariz. at 125-26, 726 P.2d at 222-
7 23. The Division attempts to state that such a promise is not a valid reason for denying the remedy
8 of a permanent injunction. Resp. at 11. However, again, the Division confuses the issue. A
9 determination on a permanent injunction will be made at the conclusion of the Commission Action.
10 The issue before Judge Stern presently is whether or not a stay is appropriate under various factors.
11 The Division will not be prejudiced by a stay because Mr. Smoot is promising not to engage in the
12 offer of securities.

13 The Division also disputes that a stay would be of minimal inconvenience by pointing out
14 that it can continue to prosecute actions even when an automatic bankruptcy stay is in effect. Resp.
15 at 12-13. Respondents point in referencing the various kinds of delays that exist in civil
16 proceedings was simply to illustrate that in some cases, certain considerations trump the desire for a
17 speedy process. In this case, it is the preservation of Mr. Smoot's right to defend himself in the
18 Commission Action and to preserve his Fifth Amendment rights given the existence of the Criminal
19 Proceeding. Respondents do not dispute the Division and Commission's authority to enforce the
20 Arizona Securities Act. However, in light of the fact that the Commission Action has been formally
21 proceeding for only five months and the gravity of the implication of Mr. Smoot's Fifth Amendment
22 rights, the right to enforcement should not be construed to mean a right to enforcement regardless of
23 the costs or effects on the integrity of a civil or criminal proceeding. In fact, in Keating v. OTS, 45
24 F.3d 322 (9th Cir. 1995), cited repeatedly in the Division's Response, *see* Resp. at 5, 6, 8, and 14,
25 the Ninth Circuit cautioned governmental agencies against the very position the Division is now
26 taking by stating that when dealing with matters of public importance, as the Division admits is the
27 case with respect to enforcement of the Arizona Securities Act, "it is especially necessary to guard
28

1 the rights of defendants, and concern for the public deterrence value of an enforcement proceeding
2 must not be allowed to override the individual defendant's due process rights." *Id.* at 326.
3 Therefore, this factor weighs in favor of a stay.

4 The third factor is the burden of civil proceedings on a defendant. Molinaro, 889 F.2d at
5 902. Despite the Division's argument that Mr. Smoot's ability to meaningfully defend himself in the
6 Commission Action is not impaired by the parallel Criminal Proceeding, nothing could be farther
7 from the truth.⁵ Again, Mr. Smoot's ability to take discovery, gather evidence, interview witnesses
8 and otherwise prepare for the contemplated hearing on the Commission Action will be severely
9 limited given the restrictions placed on Mr. Smoot by virtue of the Criminal Proceeding from
10 contacting or speaking with persons who have been designated as "victims" in the Criminal
11 Proceeding. Further, the Division's argument discussion regarding *res judicata*, collateral estoppel,
12 and issue preclusion, Resp. at 9-10, skirts the central issue here – in the absence of a stay, Mr.
13 Smoot will not be able to vigorously defend himself in the Commission Action without risking
14 waiver of his Fifth Amendment rights, and conversely, if he protects and preserves his Fifth
15 Amendment rights, he loses the ability to fully defend himself in the Commission Action. Finally,
16 just because the findings in the Commission Action may not be *binding* in the Criminal Proceeding
17 does not mean that the findings, if adverse to Respondents, will not be attempted to be introduced
18 into evidence by the State in the Criminal Proceeding. Therefore, this factor weighs in favor of a
19 stay.

20 The fourth factor is the interest of the court presiding over the civil litigation. Molinaro, 889
21 F.2d at 902. The preservation of the integrity of civil and criminal proceedings alike should be of
22 utmost importance to any judicial body. The integrity of both the Commission Action and the
23 Criminal Proceeding will be undermined if Mr. Smoot is forced to choose between vigorously
24 defending against the allegations of the Commission Action and his constitutionally protected Fifth
25

26 ⁵ Bonneville Auto. Ins. Co. v. Ins. Div., 632 P.2d 796, 800-801 (Or. App. 1981), cited by the
27 Division, Resp. at 9, is not remotely similar to this case as Bonneville involved parallel
28 administrative and civil proceedings – no criminal proceeding was in play.

1 Amendment rights. A stay will not unduly interfere with the Commission Action, but rather ensure
2 that when the Criminal Proceeding has concluded and focus is returned to the Commission Action,
3 that the matter of Mr. Smoot's Fifth Amendment rights will no longer be a factor, and the
4 Commission Action can be fully adjudicated on all of the merits. Therefore, this factor weighs in
5 favor of a stay.

6 The final factor is the interest of the public and/or third-parties to the pending civil and
7 criminal matters. Molinaro, 889 F.2d at 902. The impact of a stay on alleged victims in a
8 Commission Action is a generic one, present in every dispute over a stay. Nevertheless, stays are
9 granted, and granted with regularity when an individual has already been indicted based on the
10 same underlying facts and circumstances as a parallel civil proceeding. *See* Resp. at 4-5, 7.
11 Respondents are not, by requesting a stay, seeking to deny the allegedly damaged investors of the
12 Division's prosecution of the Commission Action, in part on their behalf. Nor will the allegedly
13 damaged investors be short on information, as the Criminal Proceeding is a matter of public record.
14 Respondents are simply asking that the Commission Action be stayed only until the disposition of
15 the Criminal Proceeding. The Division's comments lack any specificity and fail to demonstrate how
16 such concerns should trump Mr. Smoot's constitutional concerns.

17
18 **V. THE COMMISSION ACTION SHOULD BE STAYED WITH RESPECT TO ALL RESPONDENTS.**

19 The fact that the corporate Respondents have not been indicted is irrelevant. The NATAWA
20 corporate Respondents were extensively discussed during the February 7, 2012 Grand Jury
21 Proceedings, which resulted in Mr. Smoot's indictment. *See, e.g.*, Ex. 2 at 14-15. Mrs. Smoot is a
22 Respondent in this action solely to determine the liability of the Smoots' marital community. The
23 Division itself claims that Mr. Smoot is allegedly the "founder and sole managing member" of the
24 corporate Respondents, allegedly sold securities "in his individual capacity and on behalf of
25 Respondents," and allegedly "bore responsibility" for the corporate Respondents' activities. Notice
26 at ¶ 2. While Respondents dispute these allegations, using the Division's own logic, Mr. Smoot's
27 testimony related to the corporate Respondents would be of high importance in the future
28

1 evidentiary hearing – testimony that cannot be replaced by the introduction of documentary
2 evidence, the testimony of others, or the cross-examination of the Division's witnesses.⁶

3 Again, however, should Mr. Smoot testify in that future evidentiary hearing as part of
4 Respondents' vigorous defense against the Division's allegations, he would be waiving his
5 constitutional Fifth Amendment rights against self-incrimination and risking that the State of
6 Arizona will use his statements against him in the Criminal Proceeding. Mr. Smoot should not be
7 forced to choose between his participation in Respondents' defense of the Commission Action and
8 preserving his Fifth Amendment rights for the Criminal Proceeding. As Mr. Smoot's Fifth
9 Amendment rights in this context trump all other considerations and thus the Commission
10 Proceeding should be stayed with respect to him, it would be a waste of the resources of the parties
11 and the judiciary to stay the action with respect to Mr. Smoot, but not with respect to all
12 Respondents.

13 Further, although the Division claims that its case is not based upon any of Mr. Smoot's
14 personal records, there is no way for Respondents to know this for sure, as the Division has refused
15 to provide Respondents with disclosures under Ariz. R. Civ. P. 26.1. See 2-3-12 Resp'ts' Brief to
16 Compel the Exchange of Ariz. R. Civ. P. 26.1 Disclosure Statements; 2-3-12 Securities Division's
17 Opp'n to Resp'ts' Request for Disclosure Statement Issued by the Securities Division Under Rule
18 26.1 of the Ariz. Rules of Civil Procedure; 3-8-12 Securities Division's Response to Resp'ts' Brief to
19 Compel Exchange of Ariz. R. Civ. P. 26.1 Disclosure Statements.

20 **VI. CONCLUSION.**

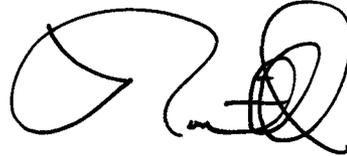
21 For all of the reasons set forth above, Respondents' respectfully request that their Motion to
22 Stay be granted.

23
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25
26 ⁶ The interests involved in United States v. Milligan, 371 F.Supp.2d 1127, 1129 (D. Ariz.
27 2005), cited to by the Division, are different than those here. In Milligan, there was no apparent
28 imminent threat of criminal charges, led alone an indictment. *Id.*

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RESPECTFULLY SUBMITTED this 27 day of March, 2012.

MITCHELL & ASSOCIATES
A Professional Corporation



By _____

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2 on or about this 27th day of March, 2012 with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, Arizona 85007

7 COPIES of the foregoing mailed
8 on or about 27th day of March, 2012 to:

9 The Honorable Marc E. Stern
10 Administrative Law Judge
11 Arizona Corporation Commission/Hearing Division
12 1200 West Washington Street
13 Phoenix, Arizona 85007

14 Michael Dailey, Esq.
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16 Securities Division
17 1300 W. Washington Street, Third Floor
18 Phoenix, Arizona 85007-2996

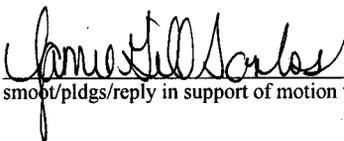
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20 smoot/pldgs/reply in support of motion to stay
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EXHIBIT 1

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

PROCEEDINGS BEFORE THE 549th)
MARICOPA COUNTY GRAND JURY)
IN RE:

DAVID SMOOT

GJ No. 408
CR 2012-005978-001

Phoenix, Arizona
February 7, 2012

12 MAR -6 PM 3:40
FILED
MICHAEL JEANES, CLERK
BY: *RJES*
DEP

REPORTER'S TRANSCRIPT OF PROCEEDINGS

ORIGINAL

Terry Lynn Masciola, RPR
Az. Cert. No. 50445

February 7, 2012

P R O C E E D I N G S

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3
4 MR. DIEKELMAN: This is 549 GJ 408. This is
5 the investigation of David, common spelling, Smoot,
6 S-M-O-O-T. This investigation involves one count of
7 fraudulent schemes and artifices, one count of sales of
8 unregistered securities, one count transactions by
9 unregistered dealers, and one count of taking the identity
10 of another. All of these counts are alleged to have been
11 committed between March 1st of 2003 and October 15th of
12 2010, within Maricopa County, Arizona.

13 To assist you in determining whether or not
14 probable cause exists in this matter, the following
15 statutes may be appropriate: 13-105, 13-2310, 13-2008,
16 and 44-1841, 44-1801, 44-1842, 44-1941, 44-1942, 44-1943,
17 44-1944, 44-1945, 44-1946 and 44-1947, 44-1948, and
18 44-1949.

19 Each of the statutes with the exception of
20 the title 44 statutes were previously read to the grand
21 jury panel with all members present on October -- sorry,
22 November 29th of 2011.

23 And copies of all of the statutes have been
24 provided to members of the jury.

25 I'm now going to read the title 44 statutes

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[REDACTED]

The witness who is going to testify is
Detective Klapper of the Arizona Corporation Commission.

MS. ROBY: He's an investigator.

MR. DIEKELMAN: Okay. Investigator with the
Arizona Corporation Commission.

[REDACTED]

REDACTED

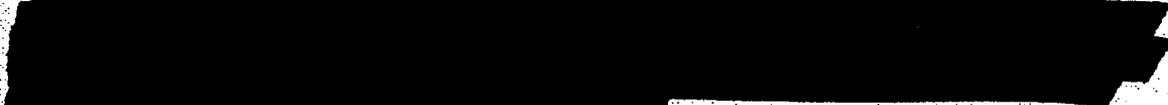
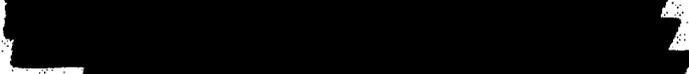
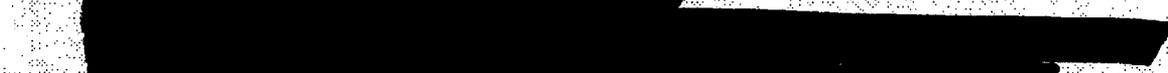
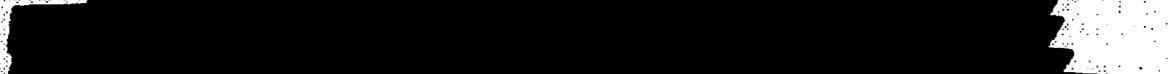
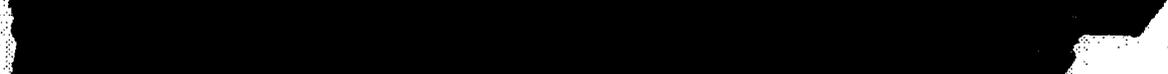
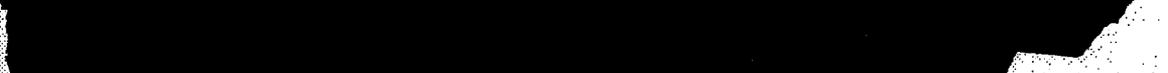
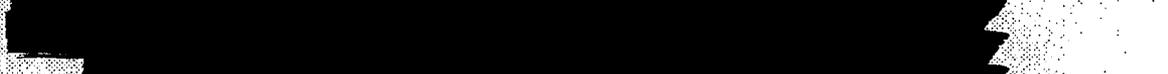
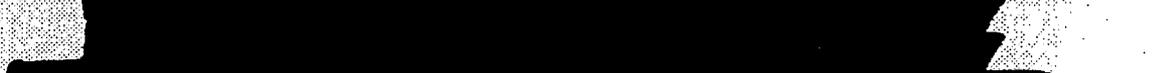
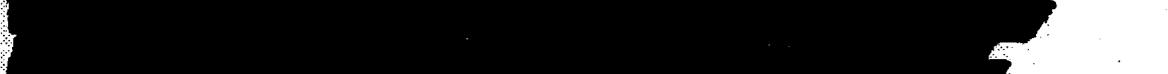
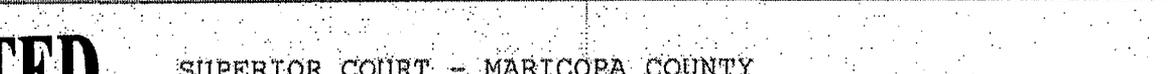
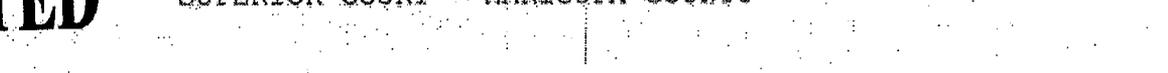
1 obtained for the prosecution of the case.

2 Q. Okay. In your capacity as an investigator for
3 the Arizona Corporation Commission, were you charged with
4 the investigation of a company, or was the company brought
5 to your attention, by the name of NATAWA?

6 A. Yes, I was.

7 Q. What is NATAWA?

8 A. NATAWA is short for an acronym of Native American
9 water 

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REDACTED

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[REDACTED]

went. But let's talk about, first, NATAWA stands for Native American Water, LLC. What was NATAWA's function? So as a business, what do they do?

A. They were supposed to be developing water, waste water and fiber optic communications for private developments for developers putting in single family and multifamily homes.

Q. Okay. So this is the fiber optics, waste water and clean water?

A. Correct.

[REDACTED]

REDACTED

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[REDACTED]

Q. Okay. So in the people that he approached, let's talk about some of the -- you've talked to several of these people?

A. Yes.

Q. Okay. And I want to include the people that you spoke with.

Did you speak with a Howard --

A. Gengerke.

Q. Yes.

A. Yes.

Q. And James Garrick?

A. Yes.

Q. Kevin Conroy?

A. Yes.

Q. Jeff Morse?

A. Yes.

Q. Edward Horner?

REDACTED

SUPERIOR COURT - MARICOPA COUNTY

- 1 A. Yes.
- 2 Q. Jamie Melgoza?
- 3 A. Yes.
- 4 Q. Bill Larson?
- 5 A. Yes.
- 6 Q. Tom Reid?
- 7 A. I believe so, yes.
- 8 Q. Rene Romero?
- 9 A. Yes.
- 10 Q. Dean Busk?
- 11 A. Yes.
- 12 Q. Patrick Lasota?
- 13 A. Yes.
- 14 Q. Elizabeth Sayre?
- 15 A. Yes.
- 16 Q. Frank Romero?
- 17 A. Yes.
- 18 Q. Lawrence Lynott?
- 19 A. Yes.
- 20 Q. Terry Kaskey?
- 21 A. Yes.
- 22 Q. Karen Mask?
- 23 A. Yes.
- 24 Q. And Ann Anderson?
- 25 A. Yes.

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[REDACTED]

Q. And did all of them tell you at some point between March 1st, 2003, and October 15, 2010, that they

[REDACTED]

REDACTED

EXHIBIT 2

