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BEFORE THE ARIZONA CORPORATION COMMISSION

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 In the matter of: )  
 )  
 ARIZONA GOLD PROCESSING LLC, an )  
 Arizona limited liability company, )  
 )  
 AZGO LLC, an Arizona limited liability )  
 company, )  
 )  
 and )  
 )  
 CHARLES L. ROBERTSON, a married man )  
 )  
 )  
 )  
 Respondents. )  
 \_\_\_\_\_

DOCKET NO: S-20846A-12-0135

ANSWER

Arizona Corporation Commission

DOCKETED

MAY 09 2012

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ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

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Pursuant to A.A.C. R14-4-305, the above-referenced Respondents hereby answer the allegations of the Securities Division (the "Division") of the Arizona Corporation Commission (the "Commission") as set forth in its Temporary Order To Cease And Desist And Notice Of Opportunity For Hearing dated April 6, 2012 (the "Temporary C&D"), as follows:

1. Answering the general allegations of the Division on page one and elsewhere of the Temporary C&D, each of the same are denied.
2. Answering the allegations of the Division in Paragraph 1, Respondents submit to the jurisdiction of the Commission in this matter only for the limited purpose of answering the allegations of the Division and reserve the balance of all other rights available to them under applicable law.
3. Answering the allegations of the Division in Paragraph 2, 3, 4, 5, 6, 7, 8, 10, 11, 15, 16, 17, and 18 Respondents admit the same only to the extent the Division has construed the facts correctly and/or in accordance with Respondents' intentions.

4. Answering the allegations of the Division in Paragraphs 9, 19, 21, and 22, Respondents deny each and every allegation therein and contend that the Division has misconstrued or misunderstood the facts surrounding such events.

5. Answering the allegations of the Division in Paragraphs 12, 13, 14, and 20, the Respondents state they have no information or belief sufficient to enable them to answer and, therefore, deny each and every allegation thereof.

6. Answering the allegations of the Division in Paragraph 23, 24, 25, 26, 27, 28, and 29, Respondents deny each and every allegation therein and deny that the Division is entitled to the relief sought therein.

7. Answering the balance of the Division's allegations, Respondents deny the same.

8. Respondents reserve the right to amend the foregoing answers.

#### **AFFIRMATIVE DEFENSES**

9. The statement of any defense hereinafter does not assume the burden of proof for any issue as to which applicable law places the burden upon the Division. Respondents expressly reserve the right to amend and/or supplement their affirmative defenses.

10. By way of separate affirmative defenses to the Division's Temporary C&D, the Respondents hereby allege and aver as follows:

#### **FIRST AFFIRMATIVE DEFENSE**

11. The Division has failed to provide Respondents, in accordance with their rights of due process under federal and/or state law and/or other applicable laws or rules, the identity of the Division's purported complainant(s), copies of the alleged e-mail(s) giving rise to the Division's allegations in the Temporary C&D, and/or other tangible proof that any alleged wrongdoing occurred on the part of Respondents.

**SECOND AFFIRMATIVE DEFENSE**

12. The purported Arizona resident(s) referenced in the Division's Temporary C&D are agents of the Division and engaged in a scheme to lure, induce, entice and/or entrap Respondents into committing the alleged acts set forth in the Division's Temporary C&D and but for such entrapment Respondents would not have committed such alleged acts.

**THIRD AFFIRMATIVE DEFENSE**

13. Prior to any alleged offer being made to the purported Arizona resident(s) referenced in the Division's Temporary C&D, such persons represented themselves to Respondents as accredited and/or sophisticated investors, having high net worth.

**FOURTH AFFIRMATIVE DEFENSE**

14. The purported Arizona resident(s) referenced in the Division's Temporary C&D had established a relationship with Respondents and/or made contact with, reached out to or solicited Respondents prior to the alleged acts of Respondents described in the Division's Temporary C&D.

**FIFTH AFFIRMATIVE DEFENSE**

15. Prior to the alleged acts of Respondents described in the Division's Temporary C&D, the purported Arizona resident(s) referenced therein represented themselves to Respondents that they were willing to accept the risks associated with an investment in a new business enterprise as outlined in Respondent Arizona Gold Processing LLC's private placement memorandum ("PPM").

**SIXTH AFFIRMATIVE DEFENSE**

16. In connection with any alleged representations and disclosures made by Respondents to the purported Arizona resident(s) referenced in the Division's Temporary C&D,

to the extent they occurred at all, Respondents had reasonable grounds to believe and did believe, that such alleged representations and disclosures made were qualified in their entirety by the PPM (which was the only means or instrument whereby an offer could be made by Respondents) and, at the time the PPM was delivered to such persons, that the statements contained therein were true, or that there was no omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and that the PPM fairly represented the risks associated with the terms, business plan, structure, and objectives of Respondent Arizona Gold Processing LLC.

#### **SEVENTH AFFIRMATIVE DEFENSE**

17. While Respondents deny any wrongdoing or fault of any kind whatsoever, and that neither the purported Arizona resident(s) referenced in the Temporary C&D, the Division, the Commission, the State of Arizona, nor its citizens, incurred any harm, damages or losses as a result of any conduct by Respondents, in the event that any of the Respondents are found liable for any of the acts described in the Temporary C&D, Respondents are not jointly and severally liable for the conduct of any other Respondent or for damages caused by any other Respondent.

#### **EIGHTH AFFIRMATIVE DEFENSE**

18. While Respondents deny any wrongdoing or fault of any kind whatsoever, and that neither the purported Arizona resident(s) referenced in the Temporary C&D, the Division, the Commission, the State of Arizona, nor its citizens, incurred any harm, damages or losses as a result of any conduct by Respondents, in the event that any of the Respondents are found liable for any of the acts described in the Temporary C&D, the other Respondents are entitled to have their liability, if any, eliminated or diminished due to the culpable conduct of persons or entities or circumstances other than such Respondents.

**NINTH AFFIRMATIVE DEFENSE**

19. The interests described in the PPM are not “investment contracts”. Therefore, the Division’s claims are barred, in whole or in part, to the extent that it lacks jurisdiction and/or standing to pursue any claim against Respondents.

**TENTH AFFIRMATIVE DEFENSE**

20. The interests described in the PPM are not “securities”. Therefore, the Division’s claims are barred, in whole or in part, to the extent that it lacks jurisdiction and/or standing to pursue any claim against Respondents.

**ELEVENTH AFFIRMATIVE DEFENSE**

21. To the extent the purported Arizona resident(s) referenced in the Temporary C&D, the Division, the Commission, the State of Arizona, or its citizens claim to have relied on information, representations or belief not disclosed or described in the PPM, such reliance was negligent, reckless and unjustified.

**TWELFTH AFFIRMATIVE DEFENSE**

22. The Division’s claims against Respondents are barred, in whole or in part, because the PPM did not contain any material misrepresentations or omissions or because the misrepresentations or omissions allegedly relied upon by the purported Arizona resident(s) referenced in the Temporary C&D, the Division, the Commission, the State of Arizona, or its citizens, were not material.

**THIRTEENTH AFFIRMATIVE DEFENSE**

23. The Division’s claims against Respondents are barred, in whole or in part, to the extent the PPM qualified all other information provided to the purported Arizona resident(s)

referenced in the Temporary C&D and set forth true facts the Division contends were concealed from them or misrepresented to them elsewhere.

**FOURTEENTH AFFIRMATIVE DEFENSE**

24. The Division's claims are barred because Respondents at all times acted with reasonable care and diligence to comply with established securities laws and rules and exemptions therefrom.

**FIFTEENTH AFFIRMATIVE DEFENSE**

25. The actions or inactions of Respondents were not the source or cause, in whole or in part, of any damages, losses or harm to the purported Arizona resident(s) referenced in the Temporary C&D, the Division, the Commission, the State of Arizona, or its citizens.

**SIXTEENTH AFFIRMATIVE DEFENSE**

26. The actions or inactions of Respondents were not the sole proximate cause or joint proximate cause of any damages, losses or harm to the purported Arizona resident(s) referenced in the Temporary C&D, the Division, the Commission, the State of Arizona, or its citizens.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

27. The actions or inactions of Respondents were not the sole or partial cause of any decision by the purported Arizona resident(s) referenced in the Temporary C&D, the Division, the Commission, the State of Arizona, or its citizens to deal with Respondents.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

28. Any injuries, harm, or damages, to the extent they exist, to the purported Arizona resident(s) referenced in the Temporary C&D, the Division, the Commission, the State of

Arizona, or its citizens, were caused by intervening or superseding events unconnected to Respondents.

**NINETEENTH AFFIRMATIVE DEFENSE**

29. The Division's claims against Respondents are barred because the injuries, harm, or damages sustained, if any, by the purported Arizona resident(s) referenced in the Temporary C&D, the Division, the Commission, the State of Arizona, or its citizens, were not caused by Respondents but instead were caused by the actions or inactions of other persons and/or entities over whom Respondents had no control. These actions, inactions and events were intervening or superseding causes of the Division's alleged injuries, harm, or damages.

**TWENTIETH AFFIRMATIVE DEFENSE**

30. Scientific fact proves the truth of the information the Division contends in its Temporary C&D is false or misleading.

**TWENTY-FIRST AFFIRMATIVE DEFENSE**

31. The Division's claims are barred to the extent that the alleged offer described in its Temporary C&D is exempt from registration under federal and state securities laws and any applicable rule or regulation promulgated thereunder.

**TWENTY-SECOND AFFIRMATIVE DEFENSE**

32. The Division's claims are barred to the extent they fail to plead and prove reliance upon the alleged misrepresentations or omissions.

**TWENTY-THIRD AFFIRMATIVE DEFENSE**

33. The Division's claims are bared, in whole or in part, to the extent that the relief sought exceeds that which is permitted under federal or state securities laws or any other applicable rule or regulation promulgated thereunder.

**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

34. The Division's claims are barred because each of the Respondents was not at any time a controlling person.

**TWENTY-FIFTH AFFIRMATIVE DEFENSE**

35. The Division's claims are barred because each of the Respondents did not have knowledge of, or reasonable ground to believe in the existence of any facts by reason of which the liability of the control person may be alleged to exist.

**TWENTY-SIXTH AFFIRMATIVE DEFENSE**

36. The Division's claim is barred because Respondents acted in good faith and did not directly or indirectly induce the act or acts constituting the alleged violations.

**TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

37. The Division's claims are barred, in whole or in part, to the extent that any alleged statements made by Respondents were forward-looking statements.

**TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

38. The Division's claims are barred, in whole or in part, to the extent that any alleged statements by Respondents are protected by the bespeaks caution doctrine.

**TWENTY-NINTH AFFIRMATIVE DEFENSE**

39. The Division is not entitled to attorneys fees or costs under any act or theory making the basis of the Division's claims.

**THIRTIETH AFFIRMATIVE DEFENSE**

40. The Division's Temporary C&D, and each purported claim therein, is barred by provisions of the statute of frauds.

**THIRTY-FIRST AFFIRMATIVE DEFENSE**

41. The Division's Temporary C&D, and each and every allegation therein, fails to allege facts sufficient to constitute any legally recognizable relief against Respondents.

**THIRTY-SECOND AFFIRMATIVE DEFENSE**

42. The Division's Temporary C&D, and each purported allegation therein, are uncertain, ambiguous, and unintelligible and the Division is consequently barred from the relief sought therein.

**THIRTY-THIRD AFFIRMATIVE DEFENSE**

43. The Division's Temporary C&D fails to state a claim upon which relief can be granted against Respondents.

**THIRTY-FOURTH AFFIRMATIVE DEFENSE**

44. The Division's claims are barred, in whole or in part, by applicable statutes of limitations.

**THIRTY-FIFTH AFFIRMATIVE DEFENSE**

45. Respondents cannot be held liable for any alleged acts made by any person or entity other than Respondents (and Respondents deny they committed any acts for which they may be held liable).

**THIRTY-SIXTH AFFIRMATIVE DEFENSE**

46. Respondents cannot be held liable as an aider and abettor of, or as a conspirator with, any person or entity who allegedly committed the acts the Division is claiming occurred.

**THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

47. The Division's claims against Respondents are barred, in whole or in part, by the Division's own fault, unclean hands, laches, undue delay, waiver or estoppel.

**THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

48. The Division's claims against Respondents are barred in whole or part by the doctrines of justification, privilege, release, res judicata and/or collateral estoppel.

**THIRTY-NINTH AFFIRMATIVE DEFENSE**

49. Respondents are not responsible for any alleged injury, harm, or damages incurred by the purported Arizona resident(s) referenced in the Temporary C&D, the Division, the Commission, the State of Arizona, or its citizens, by reasons of impossibility, unforeseeability, and unforeseeable intervening acts.

**FORTIETH AFFIRMATIVE DEFENSE**

50. The Division, by asserting the claims as set forth in the Temporary C&D against Respondents, has failed to act with good faith and fair dealing and with honesty in fact in its dealings toward Respondents and has breached its duty of good faith and fair dealing entitling Respondents to a set off for damages and costs.

**FORTY-FIRST AFFIRMATIVE DEFENSE**

51. Insofar as the Division's allegations purport to be based on any oral representations allegedly made by Respondents, such are barred by the parol evidence rule.

**FORTY-SECOND AFFIRMATIVE DEFENSE**

52. By reason of their statements and conduct, the purported Arizona resident(s) referenced in the Temporary C&D is estopped from filing a complaint with the Division against Respondents, thus the Division is barred from using such in support of its Temporary C&D.

**FORTY-THIRD AFFIRMATIVE DEFENSE**

53. The Division is barred by the equitable principle of unclean hands and is thus estopped by its own actions from making the allegations and seeking the relief as described in the Temporary C&D.

**FORTY-FORTH AFFIRMATIVE DEFENSE**

54. Respondents are entitled to an offset and full discharge of any relief by reason of the fraud and misrepresentations of the purported Arizona resident(s) referenced in the

Temporary C&D.

**FORTY-FIFTH AFFIRMATIVE DEFENSE**

55. The purported Arizona resident(s) referenced in the Temporary C&D solicited Respondents' conduct, and thus the Division is therefore estopped from asserting any claim based thereon.

**FORTY-SIXTH AFFIRMATIVE DEFENSE**

56. The sole legal cause of the violations, if any, of Arizona law or rules promulgated thereunder, by Respondents were due to the acts and omissions of the purported Arizona resident(s) referenced in the Division's Temporary C&D.

**FORTY-SEVENTH AFFIRMATIVE DEFENSE**

57. Any harm, injury, or damages suffered by the purported Arizona resident(s) referenced in the Temporary C&D, the Division, the Commission, the State of Arizona, or its citizens, were the proximate result of the acts, torts, breaches, negligence, negligence per se, violations of law and/or omissions of persons other than the Respondents, and the Division is thereby barred from recovery against Respondents in whole or in part.

**FORTY-EIGHTH AFFIRMATIVE DEFENSE**

58. The legal cause of any harm, injury, or damages suffered by the purported Arizona resident(s) referenced in the Temporary C&D, the Division, the Commission, the State of Arizona, or its citizens, were due to the acts or omissions of persons not yet party to this matter.

**FORTY-NINTH AFFIRMATIVE DEFENSE**

59. The purported Arizona resident(s) referenced in the Temporary C&D, the Division, the Commission, the State of Arizona, and/or its citizens, has waived any claims against the Respondents, thus the Division is thereby barred from recovery herein.

**FIFTIETH AFFIRMATIVE DEFENSE**

60. The alleged offer described in the Division's Temporary C&D was made by an officer, director, or manager of the Respondents who received no compensation in connection

with such alleged actions.

**FIFTY-FIRST AFFIRMATIVE DEFENSE**

61. Respondents reserve the right to raise any additional defenses, counter-claims, cross-claims, and third-party claims not asserted herein of which they may become aware through discovery or other investigation.

**FIFTY-SECOND AFFIRMATIVE DEFENSE**

62. Respondents hereby adopt and incorporate by reference any and all other affirmative defenses asserted or to be asserted by any of other Respondents to the extent that Respondents may share in such a defense.

WHEREFORE, Respondents pray for judgment as follows:

1. That the Division's Temporary C&D be vacated and dismissed with prejudice;
2. That Respondents be awarded their attorney's fees and costs for responding in this matter; and
3. For such other and further relief as the Commission deems just and proper.

Dated: May 6, 2012



Charles L. Robertson  
individually and as manager of Arizona Gold Processing LLC and AZGO LLC

BEFORE THE ARIZONA CORPORATION COMMISSION

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In the matter of: ) DOCKET NO: S-20846A-12-0135  
)  
ARIZONA GOLD PROCESSING LLC, an ) **CERTIFICATE OF SERVICE**  
Arizona limited liability company, )  
)  
AZGO LLC, an Arizona limited liability )  
company, )  
)  
and )  
)  
CHARLES L. ROBERTSON, a married man )  
)  
)  
\_\_\_\_\_  
Respondents. )

The undersigned hereby certifies that on May 6, 2012, that I caused the foregoing ANSWER to be delivered and served via commercial courier to the following recipient(s):

13 copies to:

Docket Control  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, AZ 85007

1 copy to:

Ms. Wendy Coy, Esq.  
Arizona Securities Division  
1300 West Washington, 3<sup>rd</sup> Floor  
Phoenix, AZ 85007



\_\_\_\_\_  
Charles L. Robertson