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ARIZONA CORP COMMISSION  
DOCKET CONTROL

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10 *Attorneys for Respondents Tom Hirsch, Diane Rose Hirsch,  
11 Berta Walder, Howard Walder, Harish P. Shah, Madhavi H. Shah and Horizon Partners, LLC*

**BEFORE THE ARIZONA CORPORATION COMMISSION**

12 In the matter of:

**DOCKET NO. S-20660A-09-0107**

13 RADICAL BUNNY, L.L.C., an Arizona  
14 limited liability company,

15 HORIZON PARTNERS, L.L.C., an  
16 Arizona limited liability company,

**RESPONDENTS' MOTION TO  
SUPPLEMENT THE RECORD**

17 TOM HIRSCH (aka TOMAS N.  
18 HIRSCH)and DIANE ROSE HIRSCH,  
19 husband and wife;

20 BERTA FRIEDMAN. WALDER (aka  
21 BUNNY WALDER, a married person,

22 HOWARD EVAN WALDER, a  
23 married person,

24 HARISH PANNALAL SHAH and  
25 MADHAVI H. SHAH, husband and  
26 wife,

Respondents.

Arizona Corporation Commission  
**DOCKETED**

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27 This Motion is to supplement the record with settlement documents recently  
28 signed by Greenberg Traurig and Quarles and Brady.

1 Quarles and Brady has agreed to pay \$26.5 million and Greenberg Traurig  
2 to pay approximately \$62 million, both to settle claims brought by participants in  
3 Radical Bunny and others related to Mortgages, Ltd. The Commission should  
4 take judicial notice of these documents which have been filed in the Federal Court  
5 and make them a part the record in this case. They relate to offsets for any  
6 judgment that might be awarded, but more importantly they demonstrate that the  
7 testimony of Mr. Kant and Mr. Hoffman was not trustworthy enough for their law  
8 firms to take the risk of relying on that testimony. The Hearing Officer will recall  
9 that Mr. Hoffman claimed, without a single document being sent to Radical  
10 Bunny, that he instructed it to terminate operations.

11 Mr. Kant had a phantasmagorical story that had him saying people were  
12 violating criminal laws and warning that people would be sent to jail as his  
13 method of insulating himself and his law firm from possible liability. To be  
14 accurate, both of the settlements claim that the law firms are not admitting  
15 liability, but the fact of payments of these amounts is relevant to the  
16 Commission's analysis of the testimony of the lawyers from the law firms that  
17 have agreed to pay these huge sums.

18 The *Facciola* action was brought on behalf of a putative class of Mortgages  
19 Ltd. ("ML") investors and Radical Bunny participants against, *inter alia*, Quarles  
20 for legal advice it rendered and actions it took in its capacity as Radical Bunny's  
21 counsel during the period prior to ML's collapse. The documents at issue here—  
22 the Stipulation of Settlement between the *Facciola* plaintiffs and Quarles, and a  
23 similar stipulation with Greenberg Traurig, copies of which are attached hereto as  
24 Exhibits A and B—contain matters of fact that bear directly upon issues relevant  
25 to this appeal and that cannot be reasonably disputed.

26 Under Rules of Evidence §201, courts may take judicial notice at any stage  
27 of a proceeding so long as the facts at issue are "not subject to reasonable dispute"  
28 because they are "generally known within the trial court's territorial jurisdiction"

1 or they “can be accurately and readily determined from sources whose accuracy  
2 cannot reasonably be questioned.” In particular, the Hearing Officer ““may take  
3 notice of proceedings in other courts, both within and without the federal judicial  
4 system, if those proceedings have a direct relation to matters at issue.”” *Trigueros*  
5 *v. Adams*, 658 F.3d 983 (2011) (quoting *United States ex rel. Robinson Rancheria*  
6 *Citizens Counsel v. Borneo*, 971 F.2d 244, 248 (9th Cir. 1992)). Judicial notice  
7 can extend to particular court filings submitted in those proceedings, as well as  
8 other matters of public record. *Reyn’s Pasta Bella, LLC v. Visa USA, Inc.*, 442  
9 F.3d 741, 746 n. 6 (9th Cir. 2006) (citing *Burbank-Glendale-Pasadena Airport*  
10 *Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998)). Where the  
11 requesting party provides the Court with the “necessary information,” judicial  
12 notice must be taken. Fed. R. Evid. 201.

13 Both documents attached here are court filings that were submitted to the  
14 District Court presiding over the *Facciola* action, and they bear upon facts that are  
15 directly relevant to the instant appeal. Lead Plaintiffs in *Facciola* include former  
16 Radical Bunny participants who brought common law and statutory claims against  
17 Quarles, on behalf of a nationwide class, for actions Quarles allegedly took as  
18 Radical Bunny’s former counsel during the same period at issue in this appeal.  
19 According to allegations made in the *Facciola* Complaint, Quarles allegedly  
20 discovered Radical Bunny’s alleged securities violations but did not withdraw  
21 from representation; rather, Quarles allegedly continued to participate in, actively  
22 induce, and substantially assist Radical Bunny’s allegedly unlawful activities.

23 The supplemental hearing directly concerned documents which were  
24 inexplicably not produced by Quarles in discovery in the instant action, but which  
25 reflect Quarles’s continued representation of Radical Bunny and the legal advice it  
26 rendered to Radical Bunny regarding “interim step[s]” to be taken in connection  
27 with Radical Bunny’s *ongoing* loan participation program. In spite of Mr.  
28 Hoffman’s claimed admonition, Quarles has agreed to settle all claims brought

1 against it in *Facciola* in exchange for its payment to the plaintiff class of over  
2 \$26.5 million pursuant to the Stipulation of Settlement. Greenberg has agreed to  
3 pay over \$62 million.

4 Conclusion

5 Because Exhibits A and B have a direct relationship to matters at issue in  
6 the instant appeal and because they are not subject to reasonable dispute,  
7 Defendants respectfully request that they be judicially noticed.

8  
9 RESPECTFULLY SUBMITTED this 16 day of July, 2012.

10  
11 LAVELLE & LAVELLE, PLC

12  
13 By: 

14 Michael J. Lavelle

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16 Phoenix, Arizona 85016

17 *Attorneys for Respondents Tom Hirsch, Diane Rose Hirsch, Berta Walder,  
Howard Walder, Harish P. Shah, Madhavi H. Shah and Horizon Partners,  
LLC*

18 ORIGINAL and 13 COPIES filed this  
19 16 day of July, 2012 with:

20 ARIZONA CORPORATION COMMISSION

21 Securities Division

22 1300 West Washington, Third Floor

23 Phoenix, Arizona 85007

24 COPY of the foregoing MAILED this

25 16<sup>th</sup> day of ~~April~~ July, 2012 to:

26 Lyn Farmer

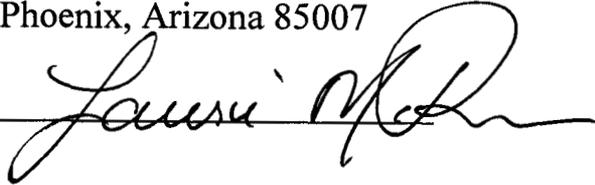
27 Chief Administrative Law Judge

28 ARIZONA CORPORATION COMMISSION

1200 West Washington

1 Phoenix, Arizona 85007  
2 COPY of the foregoing MAILED this  
3 16 day of July, 2012 to:

4 Julie Coleman  
5 ARIZONA CORPORATION COMMISSION  
6 Securities Division  
7 1300 West Washington, Third Floor  
8 Phoenix, Arizona 85007

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