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Arizona Corporation Commission
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10 Attorneys for Respondents: Arizona Gold
 Processing, LLC, formerly an Arizona limited
 11 liability company; AZGO, LLC, formerly an
 Arizona limited liability company; and Charles
 12 L. Robertson, an individual

BEFORE THE ARIZONA CORPORATION COMMISSION

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

**RESPONDENTS' OBJECTION TO
SUBPOENA; MOTION TO QUASH
SUBPOENA; AND MOTION FOR
PROTECTIVE ORDER**

24 Pursuant to Rule 45(c), Respondents hereby submit their objection to the
 25 subpoena issued by the Securities Division ("Division") to Respondent Arizona Gold
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1 Processing LLC (the "Company") on August 31, 2012 (the "Subpoena"). Respondents
2 also move to quash the Subpoena; and additionally, Respondents hereby move for a
3 Protective Order denying the Division's discovery request. Respondents are entitled to
4 the relief requested herein because the Division improperly seeks production of
5 Company documents and information relating to offers and sales of securities that were
6 not made within or from the State of Arizona.

7 As discussed in Respondents' Motion in Limine, filed October 2, 2012, which is
8 incorporated herein by this reference, there cannot be any violation of Arizona's
9 securities laws in a situation involving an offer or sale of securities that did not take place
10 "within or from" Arizona.¹ Securities are deemed under the law to have been offered
11 "from" Arizona only if the issuer performed more than "ministerial actions" from an
12 actual "base of operations" located in Arizona. *See Arizona Corp. Comm. v. Media*
13 *Products, Inc.*, 158 Ariz. 463, 465, 763 P.2d 527, 529 (App. 1988); *Chrysler Capital*
14 *Corp. v. Century Power Corp.*, 800 F. Supp. 1189, 1193 (S.D.N.Y. 1992) (stating "[o]nly
15 a transaction which occurs entirely inside the state can be said to occur 'within' Arizona.
16 Therefore, the words 'from this state' must apply to transactions which do not occur
17 entirely inside Arizona.").

18 It is well established law that the State of Arizona would have no jurisdiction or
19 authority to regulate an offer or sale of securities to a non-Arizona person by a business
20 enterprise that has no base of operations in Arizona. Indeed, any attempt by the State of
21 Arizona to regulate such a transaction would be in clear violation of the Commerce
22 Clause and the Supremacy Clause of the United States Constitution. *See Arizona Corp.*
23 *Comm. v. Media Products, Inc.*, 158 Ariz. 463, 465, 763 P.2d 527, 529 (App. 1988).

24
25 ¹ *See, e.g.*, Section 44-1841(A) of the Arizona Revised Statutes, which states: "[i]t is
26 unlawful to sell or offer for sale within or from the state any securities unless the
securities have been registered" ARS § 44-1841(A) (emphasis supplied).

1 Stated another way, allowing Arizona to regulate a securities transaction that did not
2 occur “within or from” Arizona would interfere with, and would place a direct and
3 excessive burden upon, interstate commerce, which is to be regulated by the United
4 States Congress--not the Division.

5 Respondents presume that the Division will respond to the present Motion by
6 arguing that the Company’s base of operation or principal place of business was in
7 Arizona, and therefore, that the Division has jurisdiction and authority to regulate all
8 offers and sales of securities made by the Company nationwide. That argument fails as a
9 matter of law; the facts of the instant matter *do not* satisfy the Constitutional requirement
10 that more than simply ministerial acts must have occurred inside the borders of Arizona
11 in order for Arizona to be considered the Company’s base of operation.

12 From the time the Company was organized (December 15, 2011) through the date
13 on which it ceased to exist (July 23, 2012)², the Company had no physical presence in
14 Arizona. The following list summarizes the only acts taken by the Company in Arizona:

- 15 • The Company’s organizational minutes listed an organizational “meeting”
16 of the Company’s managers as having taken place in Arizona; however, in
17 reality, there was no such “meeting”--there was only a conference call
18 among the Managers, and none of the Managers was physically present in
19 Arizona. No Company meetings ever occurred in Arizona.
- 20 • The Company had an Arizona mailing address--in effect, a post office box
21 associated with an “executive suite”; but all mail directed to the Company
22 was forwarded to the Company’s Utah address, where it was handled by
23 Company personnel who resided in either Texas or Utah.

24 ² On July 23, 2012, each of the Respondent issuer (the Company) and the former
25 manager of the issuer (Respondent AZGO LLC, an Arizona limited liability company)
26 merged into one of two newly formed Nevada limited liability companies. The legal
effect of these mergers was that the two Respondent entities’ “separate existence . . .
cease[d].” ARS § 29-757(A)(1). See Exhibit 2 attached to Respondents’ Motion in
Limine.

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- The Company obtained a Phoenix area-coded telephone number, but any calls were answered by a receptionist employed by the executive suites service--not by the Company--and all telephone messages were forwarded to the Company's Managers in either Texas or Utah.
 - On May 21, 2012, the Company entered into a commercial lease for property located in Arizona, which the Company had thought to use as its ore processing plant; however, the Company was merged out of existence, (into a Nevada limited liability company operating outside Arizona) before the leased property could be used by the Company.
 - **The Company raised only US \$16,750.00 of capital from persons residing or domiciled in Arizona.** The Company raised approximately US \$1,125,525.50 of capital from persons NOT residing or domiciled in Arizona.

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Clearly the foregoing acts by the Company were merely ministerial; and therefore, the Company had no base of operations in Arizona. This fact becomes clearer when viewed through the perspective that all of the Company's business was conducted from outside of Arizona. The following undisputed facts establish that the Company's base of operation or primary place of business was in Utah or Texas--not Arizona:

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- None of the Company's Managers were residents of Arizona.
 - All Management decisions were made outside Arizona.
 - The Company's bank account was located in Utah.
 - The Company's corporate counsel resided in Utah.
 - The Company's accountant resided in Utah.
 - All of the Company's corporate records were located in Utah.
 - Papers to be executed by potential investors instructed them to send their executed Subscription Agreements and their investment funds to the Company in Utah.
 - All Subscription Agreements were received and processed in Utah.
 - All investment funds were received in Utah and then deposited into the

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corporate bank account in Utah.

- All Company mail was handled in Utah by Company personnel.
- All telephone messages taken by a temporary receptionist at the executive suite in Arizona were forwarded to the Company's Managers in either Texas or Utah.
- While it existed, the Company never used the commercial property it signed up to lease in Arizona. In fact, the electrostatic equipment to be used at the property had not even been purchased.

While it is true that the Company contemplated that Arizona might eventually become the Company's principal place of business, that never occurred. Surely the Company's thought of someday, possibly, moving its principal place of business to Arizona is insufficient as a matter of law to confer jurisdiction in Arizona to regulate each and every securities transaction made by the Company *nationwide.*

The undisputed evidence establishes that all meaningful corporate activities by the Company took place outside Arizona; and therefore, the Division only has jurisdiction and authority to regulate the securities transactions in this matter that involved Arizona residents and domiciliaries. Accordingly, the Division is not entitled to compel this Company to produce documents and information relating to securities transactions that occurred entirely outside Arizona.

For the foregoing reasons, Respondents respectfully request that the Subpoena be quashed insofar as it may relate to transactions outside Arizona, and Respondents request that a Protective Order be issued to confirm that the Company has no obligation to produce documents or other information relating to securities transactions made by the Company to non-Arizona residents and domiciliaries.

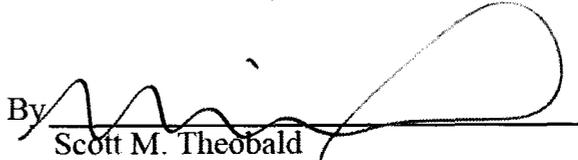
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RESPECTFULLY SUBMITTED this 2nd day of November, 2012.

THEOBALD LAW, PLC

By


Scott M. Theobald
Mark A. Nickel
Attorneys for Respondents and on
behalf of Darin H. Mangum

ORIGINAL and thirteen (13) copies of the
foregoing filed this 2nd day of November, 2012 with:

Arizona Corporation Commission
Docket Control
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Phoenix, Arizona 85007

COPY of the foregoing emailed
this 2nd day of November, 2012 to:

Wendy L. Coy, Esq.
Arizona Corporation Commission
Securities Division
1300 West Washington Street, 3rd Floor
Phoenix, Arizona 85007

COPY of the foregoing delivered
this 2nd day of November, 2012 to:

Marc E. Stern
Administrative Law Judge
1200 West Washington Street
Phoenix, Arizona 85007

