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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

AZ CORP COMMISSION
DOCKET CONTROL

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
SECURITIES DIVISION'S
RESPONSE TO RESPONDENTS'
OBJECTION TO SUBPOENA;
MOTION TO QUASH SUBPOENA;
AND MOTION FOR PROTECTIVE
ORDER

(Assigned to the Hon. Marc E. Stern)

The Securities Division ("Division") of the Arizona Corporation Commission hereby requests that Respondents' Objection to Subpoena; Motion to Quash Subpoena; and Motion For Protective Order ("Motion to Quash") be denied. The Division has the power to require testimony and production of records when, in the "opinion of the commission, [it is] necessary and proper for the enforcement of [the Arizona Securities Act]."¹ The subpoena duces tecum is valid and should not be quashed.

The Arizona Rules of Civil Procedure ("ARCP") do not apply to the subpoena duces tecum issued in this case. The filing of Respondents Motion to Quash, is a veiled attempt to circumvent the ARCP by essentially filing a Reply to the Division's Response to Respondents' Motion in Limine which is specifically prohibited under the ARCP.²

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¹ A.R.S. §44-1823(A).

² Arizona Rules of Civil Procedure, Rule 7.2(c).

Arizona Corporation Commission
DOCKETED

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Arizona Gold Processing LLC, AZGO LLC and Charles Robertson (hereinafter
3 “ARIZONA GOLD”), admit to offering and selling securities. Further, ARIZONA GOLD admits
4 that they are issuers of those securities. ARIZONA GOLD also admits to continuing to offer and
5 sell after a Temporary Order to Cease and Desist and Notice of Opportunity for Hearing
6 (“TC&D”) was filed against ARIZONA GOLD alleging violations of the Arizona Securities Act.³
7 By ARIZONA GOLD’S own admission, it continued to offer and sell interests in Arizona Gold
8 Processing LLC providing the basis for the issuance of the subpoena duces tecum.⁴

9 **I. THE COMMISSION HAS BROAD AUTHORITY TO TAKE TESTIMONY AND**
10 **SUBPOENA DOCUMENTS IF, IN ITS OPINION, VIOLATIONS OF THE**
11 **ARIZONA SECURITIES ACT MAYBE OCCURRING.**

12 The Arizona Securities Act authorizes the Commission to investigate possible violations of
13 the Securities Act and to take testimony and request documents.⁵ The Arizona legislature has given
14 the Commission broad investigative powers to “investigate and examine into the affairs of any
15 person issuing or dealing in or selling or buying or intending to issue, deal in or sell or buy
16 securities.”⁶ The Commission may issue subpoenas that, “in the opinion of the commission, are
17 necessary and proper for the enforcement” of the Arizona Securities Act.⁷ Courts “give the
18 Commission ‘wide berth’ when they review the validity of Commission investigations.”⁸
19 Moreover, an appropriately empowered agency can investigate merely on suspicion that the law is
20 being violated, or even if it wants assurance that it is not.⁹ “In other words, ‘[t]he Commission
21 must be free without undue interference or delay to conduct an investigation which will adequately
22

23 ³ See Motion in Limine, Exhibit 14, paragraph 7, Exhibit 14, exhibit C; and See Securities Division’s Response to
24 Respondents’ Motion in Limine, Exhibit K, Affidavit of William Santee..

⁴ Id.

⁵ See A.R.S. §44-1822 and 44-1823.

⁶ See A.R.S. §44-1822.

⁷ See A.R.S. §44-1823.

⁸ See *Carrington v. Arizona Corp. Comm’n*, 199 Ariz. 303, 305, 18 P.3d 97, 99 (App. 2000).

⁹ Id.

1 develop a factual basis for a determination as to whether particular activities come with the
2 Commission's regulatory authority."¹⁰

3 The Commission has the ability to seek testimony and documents to determine whether
4 there are violations of the Arizona Securities Act or not.¹¹ ARIZONA GOLD asserts that no offers
5 and sales took place from Arizona; however supporting documentation is necessary to confirm its
6 assertion. The Commission has the obligation to determine for itself whether ARIZONA GOLD
7 has fully and accurately described the activities of its business.¹²

8 The Commission has a right to obtain all information it needs to make a determination
9 whether there has been a violation of the Arizona Securities Act. The Motion to Quash should be
10 denied.

11 **II. RULES OF CIVIL PROCEDURE DO NOT APPLY TO SUBPOENA DUCES
12 TECUM ISSUED BY THE SECURITIES DIVISION.**

13 On August 31, 2012, the Division issued a subpoena duces tecum to the Custodian of
14 Records for Arizona Gold Processing LLC. The subpoena duces tecum requested that the
15 Custodian of Records produce by September 17, 2012, documents related to any offer or sale of
16 securities between June 26, 2012 and July 23, 2012.¹³ ARIZONA GOLD has produced no
17 documents in response to the August 31, 2012, subpoena duces tecum. In fact, no response was
18 received until the Motion to Quash was filed on November 2, 2012.

19 ARIZONA GOLD bases its objection to the subpoena duces tecum on ARCP 45(c). The
20 ARCP do not apply to the matter at hand. Rule R14-3-101(A) of the Arizona Administrative Code
21 ("A.A.C.") states the Commission Rules of Practice and Procedure govern in all cases before the
22 Corporation Commission, including cases arising out of Title 44. Further, A.A.C. R14-3-101(A)
23 goes on to state the ARCP apply *only if* procedures are not otherwise set forth by law, the A.A.C.

24
25 ¹⁰ Id. Quoting *SEC v. Brigadoon Scotch Distrib. Co.*, 480 F.2d 1047, 1052-53 (2nd Cir.1973).

26 ¹¹ Id. at 305, 99.

¹² Id. at 306, 100.

¹³ See attached Exhibit A.

1 or by regulations or orders of the Commission. Thus, there is absolutely no reason to look to the
2 ARCP.

3 Pursuant to A.A.C. R14-3-109(O), the only basis to quash a subpoena is if it is
4 “unreasonable or oppressive.” ARIZONA GOLD provides no allegations or authority that the
5 Division’s subpoena duces tecum is “unreasonable or oppressive.” Instead, ARIZONA GOLD
6 disguises a Reply to the Division’s Response to the Motion in Limine as a Motion to Quash by
7 alleging that the Division does not have jurisdiction to issue the subpoena¹⁴ which goes to the heart
8 of its Motion in Limine and the upcoming oral argument.¹⁵

9 The Motion to Quash should be denied.

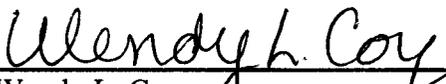
10 **III. CONCLUSION**

11 ARIZONA GOLD’s Objection to Subpoena; Motion to Quash Subpoena; and Motion For
12 Protective Order should be denied because there is no authority to support its position. The
13 Commission has broad authority to gather the facts necessary to determine if violations of the
14 Arizona Securities Act are taking place or have taken place. Respondents’ Objection to Subpoena;
15 Motion to Quash Subpoena; and Motion For Protective Order is just an attempt to file a reply to
16 the Division’s Response to Respondents’ Motion in Limine contrary to ARCP 7.2(c).

17 ARIZONA GOLD’s Objection to Subpoena; Motion to Quash Subpoena; and Motion For
18 Protective Order should be denied.

19 RESPECTFULLY SUBMITTED this 6th day of November, 2012.

20
21 ARIZONA CORPORATION COMMISSION,
SECURITIES DIVISION

22 
23 Wendy L. Coy
24 Attorney for the Division

25
26 ¹⁴ See Motion to Quash page 2, lines 4 – 6.

¹⁵ Even if ARCP 45(c) applied, ARIZONA GOLD did not comply with the time requirements specified in the Rule.

1 SERVICE LIST FOR: ARIZONA GOLD PROCESSING, LLC, AZGO, LLC and CHARLES
L. ROBERTSON

2 **ORIGINAL** and **8 COPIES** of the foregoing filed
3 this 6th day of November with:

4 Docket Control
Arizona Corporation Commission
5 1200 W. Washington St.
Phoenix, AZ 85007

6 **COPY** of the foregoing mailed or emailed
7 this 6th day of November to:

8 The Honorable Marc E. Stern
Hearing Division
9 Arizona Corporation Commission
1200 W. Washington St.
10 Phoenix, AZ 85007

11 Scott M. Theobald, Esq.
Mark A. Nickel, Esq.
12 Theobald Law, PLC
3219 East Camelback RD, #350
13 Phoenix, Arizona 85018
Attorneys for Respondents

14
15 Darin H. Mangum (*Pro Hac Vice*)
Darin H. Mangum, PLLC
16 4692 N. 300 West, Suite 210
Provo, UT 84604
17 Attorneys for Respondents

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EXHIBIT A

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

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR



MATTHEW J. NEUBERT
DIRECTOR

SECURITIES DIVISION
1300 West Washington, Third Floor
Phoenix, AZ 85007
TELEPHONE: (602) 542-4242
FAX: (602) 594-7470
E-MAIL: securitiesdiv@azcc.gov

ARIZONA CORPORATION COMMISSION

August 31, 2012

Custodian of Records
Arizona Gold Processing LLC
c/o Scott M. Theobald
Theobald Law, PLC
3219 East Camelback Road, #350
Phoenix, Arizona 85018

Re: Arizona Gold Processing

File No. 8331

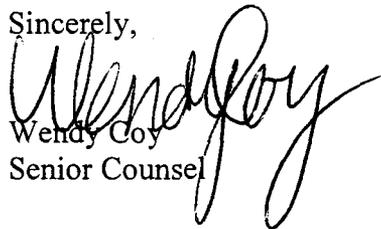
Dear Custodian of Records:

Enclosed you will find a Subpoena Duces Tecum which requires your appearance before the Securities Division on September 17, 2012. In lieu of personal appearance, you may provide the requested documents along with the enclosed Affidavit of Custodian of Records by the due date by mailing them to Special Investigator W.H. (Bill) Santee, Securities Division, Arizona Corporation Commission, 1300 West Washington Street, Third Floor, Phoenix, Arizona 85007. Testimony concerning the documents will be scheduled at a later time, if necessary.

Should your institution not have any documents responsive to the subpoena, please provide written confirmation to that effect.

Should you have any questions regarding this subpoena, please feel free to contact me at (602) 542-0633 or (602) 542-4242.

Sincerely,



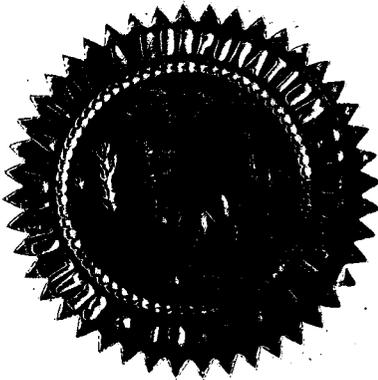
Wendy Coy
Senior Counsel

SUBPOENA
SECURITIES DIVISION
ARIZONA CORPORATION COMMISSION

TO Custodian of Records
Arizona Gold Processing LLC
c/o Scott M. Theobald
Theobald Law, PLC
3219 East Camelback Road, #350
Phoenix, Arizona 85018

In the matter of
Arizona Gold Processing file number 8331
involving possible violations of the Securities Act
and/or Investment Management Act of Arizona.

PURSUANT TO A.R.S. § 44-1823 AND A.R.S. § 44-3133, YOU ARE HEREBY REQUIRED to appear before Wendy Coy of the Securities Division of the Arizona Corporation Commission at 1300 West Washington, Third Floor, Phoenix, Arizona 85007, on the 17th day of September, 2012 at 9:00 a.m., to PRODUCE THE DOCUMENTS SPECIFIED IN EXHIBIT "A", which is attached and incorporated by reference.



The seal of the Arizona Corporation Commission is affixed hereto, and the undersigned, a member of said Arizona Corporation Commission, or an officer designated by it, has set his hand at Phoenix, Arizona this 31st day of August, 2012.

A handwritten signature in black ink, appearing to read "Mark Dinell", is written over a horizontal line.

Mark Dinell
Securities Division

Information and documents obtained by the Securities Division in the course of an investigation are confidential, unless made a matter of public record. The Securities Division may disclose the information or documents to a county attorney, the attorney general, a United States Attorney, or to law enforcement or regulatory officials to be used in any administrative, civil, or criminal proceeding. You may, in accordance with the rights guaranteed to you by the Fifth Amendment of the Constitution of the United States, refuse to give any information that might establish a direct link in a chain of evidence leading to your criminal conviction.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal, Executive Assistant to the Executive Director, voice phone number 602/542-3931, e-mail sabernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation.

Pursuant to A.R.S. § 44-1825 and A.R.S. § 44-3134, failure to comply with this subpoena may result in the application for a finding of contempt.

Pursuant to A.A.C. R14-4-304, any person required to appear at a formal interview may be represented by legal counsel.

AFFIDAVIT OF SERVICE (INDIVIDUAL)

AFFIDAVIT OF SERVICE (BUSINESS ENTITY)

State of Arizona)
County of _____) ss.:

State of Arizona)
County of MARICOPA) ss.:

_____ , being duly sworn, deposes and says:

W.H. SANTEE , being duly sworn, deposes and says:

I, for the Securities Division of the Arizona Corporation Commission, Phoenix, Arizona, served an original of this subpoena by:

I, for the Securities Division of the Arizona Corporation Commission, Phoenix, Arizona, served an original of this subpoena by:

_____ Personal Service on the person named in the subpoena.

_____ Leaving a copy at the dwelling house of the person named in the subpoena with a person of suitable age (not less than 16 years of age) and discretion, then residing there.

_____ Leaving a copy at the usual place of business or employment of the person named in the subpoena with an employee, express or implied agent, supervisor, owner, officer, partner, or other similar person of suitable age and discretion (not less than 16 years of age).

_____ Leaving a copy with an agent authorized by express or implied appointment or by law to receive process for the person named in the subpoena.

_____ Mailing a copy, by certified mail with return receipt requested, in an envelope addressed to the last known dwelling house or usual place of abode or last known business address, postage prepaid.

Name of Person Served: _____

Relationship to Person Named: _____

Place of Service: _____

Time and Date of Service: _____

Service Performed by: _____

Title: _____

Signature of Affiant: _____

Sworn to before me this _____ day of _____, _____.

Notary Public

Commission Expires

✓ Leaving a copy with an employee, of suitable age and discretion, (not less than 16 years of age) at any place of business of the corporation, partnership, trust, limited liability company, association, or other business entity.

_____ Leaving a copy with any officer or director of a corporation, managing or general partner of a partnership, trustee of a trust, member of a member-managed limited liability company, manager of a manager-managed limited liability company or any authorized representative of an association or other business entity.

_____ Leaving a copy with an agent authorized by express or implied appointment or by law to receive process for the entity named in the subpoena.

_____ Mailing a copy, by certified mail with return receipt requested, in an envelope addressed to the last known business address, postage prepaid.

Name of Person Served: MARK NICKEL

Relationship to Entity Served: ATTORNEY OF THE FIRM

Place of Service: 1300 W. WASHINGTON ST, PHOENIX AZ

Time and Date of Service: 5:00 p.m. 8/31/12

Service Performed by: W.H. SANTEE

Title: SPECIAL INVESTIGATOR

Signature of Affiant: W.H. Santee

Sworn to before me this 4 day of September, 2012.

Notary Public

Commission Expires

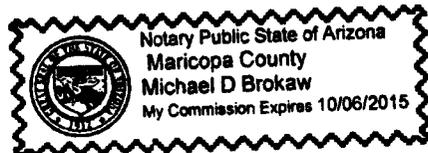


Exhibit "A"

From the period beginning June 26, 2012 to July 23, 2012, all documents, records, books, and any other papers, whether stored on electronic media or otherwise, incident or relating to Arizona Gold Processing, LLC, including, but not limited to:

1. Names, addresses, and telephone numbers of all individuals or entities that have been offered or sold investments in Arizona Gold Processing, LLC;
2. Documents relating to each individual or entity listed in paragraph 1 including any contracts, forms, subscriptions, agreements, notes, questionnaires, records of investment status, checks, wire transfers, receipts, account statements, tax information, and any correspondence, updates, or other communications;
3. The amounts and dates of each investment for each individual or entity listed in paragraph 1; and
4. The amounts and dates of any interest, earnings, distributions, dividends, stock splits, spin-offs, rescission, refund, or any other form of returns to each individual or entity listed in paragraph 1.

AFFIDAVIT OF CUSTODIAN OF RECORDS

STATE OF _____)
County of _____) ss.

The undersigned hereby declares, under oath, that the following statements are true:

1. I am over the age of eighteen, have personal knowledge of the facts set forth below, and am competent to testify.

2. I am the duly authorized Custodian of Records of _____
_____.

3. I have the authority to certify said records.

4. The records submitted herewith are true copies of all records under my possession or control responsive to the Subpoena directed to the Custodian of Records of the entity identified in paragraph 2 above.

5. The records were prepared or obtained by personnel or representatives of the entity or persons acting under the control of personnel or representatives of the entity identified in paragraph 2 above in the ordinary course of business at or near the time of the act, condition, or event in said records.

6. The records are kept in the course of regularly conducted business pursuant to the regular practice of the entity identified in paragraph 2 above.

Custodian of Records

SUBSCRIBED and SWORN to before me this ____ day of _____, 2012, by _____
_____.

My Commission Expires:

NOTARY PUBLIC

(seal)