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

13 **BEFORE THE ARIZONA CORPORATION COMMISSION**

15 In the matter of:

16 ARIZONA GOLD PROCESSING,  
17 LLC, an Arizona limited liability  
18 company,

19 AZGO, LLC, an Arizona limited  
20 liability company,

20 and

21 CHARLES L. ROBERTSON, a  
22 married man

23 Respondents.

DOCKET NO. S-20846A-12-0135

**RESPONDENTS' REPLY IN SUPPORT OF  
THEIR OBJECTION TO SUBPOENA;  
MOTION TO QUASH SUBPOENA; AND  
MOTION FOR PROTECTIVE ORDER**

24 Respondents hereby submit their Reply in support of their Objection to Subpoena;  
25 Motion To Quash Subpoena; and Motion for Protective Order (the "Motion").  
26

1           The Division's Subpoena is unreasonable because it seeks the production of  
2 documents and information relating to offers and sales of securities beyond those made  
3 "within or from" the State of Arizona. The Division cites *Carrington v. Arizona Corp.*  
4 *Comm'n* in support of the (supposed) proposition that the Commission has almost  
5 unfettered power to issue any subpoena the Division believes to be "necessary and  
6 proper." (See Response at p. 2.) The *Carrington* court, however, expressly limited the  
7 Commission's subpoena power, holding that:

8                   [T]he Commission may not act unreasonably and may not use  
9 its investigatory powers to 'harass, intimidate, or defame' a  
10 business. [] Accordingly, a party may resist the Commission's  
11 subpoena on grounds that the inquiry is not within its scope of  
12 authority, the order is too vague, the subpoena seeks  
irrelevant information, or the investigation is being used for  
an improper purpose, such as to harass.

13 *Carrington v. Arizona Corp. Comm'n*, 199 Ariz. 303, 305, 18 P.3d 97, 99 (App. 2000)  
14 (citations omitted). Addressing this same point in a different matter, the Supreme Court  
15 of Arizona held that the Arizona Corporation Commission does not have unchecked or  
16 unfettered power to investigate or to issue a subpoena merely because it might find it  
17 desirable to do so, writing:

18                   Courts must have the power to curb administrative  
19 investigations in appropriate instances. The great freedom  
20 provided by our democratic system is possible only because  
21 our federal and state constitutions have created a government  
22 controlled by checks and balances. We have vested our  
23 officials with extensive powers to enable them to govern us,  
24 but we have also designed the system so that no branch of  
25 government has unlimited powers. Neither the federal nor  
26 state executive branch and its administrative agencies can  
expand their powers beyond their constitutional or statutory  
limits and begin an untrammelled interference with our liberties  
because our constitutions allow the legislature and the  
judiciary to check the executive exercise of power.

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When an Arizona administrative agency unreasonably infringes on the liberties of a corporation, its officers, and its shareholders, it is the Arizona courts who must be able to curb the abuse of power. The Corporation Commission has been treated as a fourth branch of government in Arizona. [] However, the system of checks and balances does not rely solely on one branch to restrain its own agents within the proper constitutional limits. The legislature deals with broad issues effecting large segments of the population, and it may not enact a local or specific law. [] It is the courts that have the function of protecting our constitutional liberties by upholding them in individual cases or controversies. Being receptive to an individual's claim of unfair treatment by the state or federal government is part of the American judiciary's heritage. Thus, if an administrative agency's investigation becomes a tool of harassment and intimidation rather than a means to gather appropriate information, the appropriate court may intrude and stop the incursion into the constitutional liberties of the parties under investigation.

*Polaris Int'l Metals Corp. v. Arizona Corp. Comm'n*, 133 Ariz. 500, 506-07, 652 P.2d 1023, 1029-30 (1982) (citations omitted).

In the instant matter, Respondents have established that the vast bulk of the documents sought by the Division through its subpoena are irrelevant because they deal with transactions that are not within the scope of the Division's authority to regulate. For the subject transactions and corresponding documents to be subject to Arizona law, the transactions necessarily would have had to have been executed "within or from" Arizona. The vast bulk of the transactions sought to be investigated occurred entirely outside Arizona and were effected by an issuer that had no base of operations in Arizona; therefore, such transactions and documents are not subject to review by the Division.

The mere fact that two sales of securities in this matter (with an aggregate value of less than \$17,000, representing less than 2% of the total value of the securities issued

1 by the Respondent issuer) did occur in Arizona should not empower the Division to  
2 subpoena every document relating to every securities transaction that the Respondents  
3 were involved in nationwide. To say that such a result would be “unreasonable” is to  
4 grossly understate the undue burden such a ruling would impose upon securities issuers  
5 with barely any connection at all to Arizona (such as the Respondent issuer).  
6 Authorizing the Commission to investigate transactions it clearly has no authority to  
7 regulate would serve no purpose other than to foster a climate of harassment and  
8 intimidation by the regulator. If the Commission were to be armed with unfettered  
9 investigatory powers--the very powers the Arizona Supreme Court warned of in *Polaris*  
10 *Int'l Metals*--the Commission would be emboldened to overreach and wield such powers  
11 like a blunt instrument of destruction. This is precisely what the Respondents assert they  
12 are to be protected from and against, through the checks and balances inherent in the  
13 judicial branch of government.

14         The Division must not be permitted to conduct a nationwide “witch hunt” in this  
15 matter based merely on the Division’s claim that it seeks only to confirm that the issuer’s  
16 extraterritorial transactions did not result in a violation of the Arizona Securities Act.  
17 This is doubly true in this case, where the Division already has received all documents  
18 relating to the issuer’s transactions involving Arizona residents; and the Division already  
19 has received documentation permitting it to conclude definitively that the non-Arizona  
20 transactions were not subject to Arizona law. Indeed, Respondents already provided the  
21 Division with a list of each and every sale of securities ever effected by the Respondent  
22 issuer. From that list, the Division could have, and already should have, easily  
23 determined that only two transactions involved Arizona residents. It is unduly  
24 burdensome, it is unreasonable, it is irrelevant, and it is simply wrong, that the Division  
25 should continue to harass the Respondents with the oppressive Subpoena that has been  
26 issued in this matter.



1 ORIGINAL and thirteen (13) copies of the  
2 foregoing filed this 30<sup>th</sup> day of November, 2012 with:

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

7 COPY of the foregoing emailed  
8 this 30<sup>th</sup> day of November, 2012 to:

9 Wendy L. Coy, Esq.  
10 Arizona Corporation Commission  
11 Securities Division  
12 1300 West Washington Street, 3<sup>rd</sup> Floor  
13 Phoenix, Arizona 85007

14 COPY of the foregoing delivered  
15 this 30<sup>th</sup> day of November, 2012 to:

16 Marc E. Stern  
17 Administrative Law Judge  
18 1200 West Washington Street  
19 Phoenix, Arizona 85007

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