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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

2013 FEB 15 P 1:09

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COMMISSIONERS

BOB STUMP, Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

AZ CORP COMMISSION  
DOCKET CONTROL

FEB 15 2013

DOCKETED BY *[Signature]*

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'  
MOTION TO CONTINUE HEARING  
CURRENTLY SET FOR FEBRUARY  
25, 2013**

**(Assigned to the Hon. Marc E. Stern)**

The Securities Division ("Division") of the Arizona Corporation Commission hereby requests that to Respondents' Motion to Continue Hearing Currently Set For February 25, 2013 ("Motion to Continue") be denied. The allegations against the Respondents have not changed since the Temporary Cease and Desist Order was filed in April of 2012. The Respondents have had a copy of the Amended Temporary Cease and Desist Order since November of 2012. The ruling on the Motion in Limine only affects the potential remedies in this matter. The Respondents have not provided a showing of good cause to support granting the continuance.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. PROCEDURAL HISTORY**

The Securities Division filed a Temporary Cease and Desist Order on April 6, 2012. Respondents filed a Request for Hearing on April 30, 2012, and an Answer on May 9, 2012. A hearing was set to begin on October 9, 2012. On September 20, 2012, Respondents filed a Motion

1 to Continue the October hearing. The Third Procedural Order granted the Motion to Continue and  
2 the Fourth Procedural Order rescheduled the hearing to February 25, 2013.

3 Respondents filed a Motion in Limine on October 2, 2012. The Securities Division filed a  
4 response on October 17, 2012. On November 6, 2012, an oral argument was held on the Motion in  
5 Limine. On November 16, 2012, the Securities Division filed a Motion to Amend the Temporary  
6 Cease and Desist Order (“Motion to Amend”). On February 5, 2013, the Fifth Procedural Order  
7 was issued denying the Respondents’ Motion in Limine and granting the Securities Division’s  
8 Motion to Amend the Temporary Cease and Desist Order.

## 9 **II. A CONTINUANCE IS ONLY GRANTED UPON A SHOWING OF GOOD CAUSE.**

10 A continuance is only granted upon a showing of good cause. *See* A.A.C R-14-3-109(Q).  
11 Respondents assert that they need additional time to prepare for hearing due to unfavorable rulings  
12 to their Motion in Limine and the filing of the Amended Temporary Cease and Desist Order. The  
13 Respondents claim that they must now present evidence of a larger number of transactions and  
14 “need additional time to identify witnesses and marshal evidence.” *See* Motion for Continue page 2  
15 lines 5-6. Further, the Respondents claim that the additional allegations in the Amended Temporary  
16 Cease and Desist Order “will require additional discovery and evaluation of evidence.” *See* Motion  
17 for Continue page 2 line 10. The Respondents assert that since the Securities Division continues to  
18 disclose additional exhibits they need more time to prepare for hearing.

### 18 **A. Motion in Limine**

19 The Respondents filed a Motion in Limine alleging that they did not offer and sell securities  
20 within or from Arizona. Respondents admitted that they offered and sold securities to at least two  
21 Arizona residents. *See* Motion in Limine. Respondents also admit that they are the issuer of the  
22 securities. *See* Motion in Limine. The only issue is whether any potential remedy would include  
23 more than the Arizona investors.

24 The Respondents have been aware of the scheduled hearing date since October 10, 2012.  
25 The Respondents were fully aware of the allegations against them since April of 2012. The  
26 Securities Division still alleges that the Respondents offered and sold unregistered securities,

1 through unregistered salesmen and made misrepresentations of material facts. The issues in the  
2 Motion in Limine affected the potential remedies in this case. The underlying allegations have not  
3 changed. The Respondents have had ample time to prepare for hearing. There has been no  
4 showing of good cause as required to continue this hearing.

5 **B. Amended Temporary Cease and Desist Order**

6 On November 16, 2012, the Securities Division filed a Motion to Amend. The Motion to  
7 Amend included a proposed copy of the Amended Temporary Cease and Desist Order. No  
8 response to the Motion to Amend was filed by the Respondents. The allegations in the Temporary  
9 Cease and Desist Order have not substantially changed. Only four new facts have been added. The  
10 new facts are all based upon information disclosed by Respondents in their Motion in Limine (such  
11 as the number of investors, the date of the investments and the amount raised). There were no new  
12 allegations that require “additional discovery and evaluation of evidence” since it was based upon  
13 information supplied by the Respondents. There has been no showing of good cause as required to  
14 continue this hearing.

15 **C. Additional Exhibits**

16 The last reason Respondents assert to support the Motion to Continue involves the  
17 production of additional exhibits by the Securities Division. The Securities Division provided four  
18 additional exhibits. Two of the exhibits were documents received by investors from the  
19 Respondents. The majority of those documents were exchanged by the parties through disclosure  
20 of the list of witnesses and exhibits in August of 2012. The remaining two documents were from  
21 the designated expert who recently provided the documents to the Securities Division. None of the  
22 documents are so complex as to require more than a minimal review. Again, the Respondents have  
23 not provided a basis to grant the continuance.

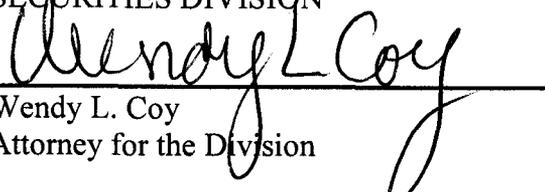
24 **III. CONCLUSION.**

25 The Respondents were fully aware of the possibility that their Motion in Limine would be  
26 denied. Even if granted, it would only affect the remedies in this case. Further, Respondents have  
been on notice as to the allegations in the Amended Temporary Cease and Desist Order since

1 November 16, 2012. The Respondents lack of preparation is not grounds to continue the scheduled  
2 hearing. Pursuant to agency rules, R-14-3-109(Q), a continuance is granted only on a showing of  
3 good cause. Respondents have not met their burden. For the reasons listed above, the Securities  
4 Division requests that the Respondents' Motion to Continue Hearing Currently Set for February 25,  
5 2013, be denied.

6 RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of February, 2013.

7  
8 ARIZONA CORPORATION COMMISSION,  
9 SECURITIES DIVISION

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11 Wendy L. Coy  
12 Attorney for the Division  
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1 SERVICE LIST FOR: ARIZONA GOLD PROCESSING, LLC, AZGO, LLC and CHARLES  
2 L. ROBERTSON

3 **ORIGINAL** and **8 COPIES** of the foregoing filed  
4 this 15<sup>th</sup> day of February, 2013 with:

5 Docket Control  
6 Arizona Corporation Commission  
7 1200 W. Washington St.  
8 Phoenix, AZ 85007

9 **COPY** of the foregoing mailed or emailed  
10 this 15<sup>th</sup> day of February, 2013 to:

11 The Honorable Marc E. Stern  
12 Hearing Division  
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