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BEFORE THE ARIZONA CORPORATION COMMISSION

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COMMISSIONERS

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

ORIGINAL

Arizona Corporation Commission

DOCKETED

FEB 03 2014

DOCKETED BY 

In the matter of:

TRI-CORE COMPANIES, LLC, an Arizona limited liability company,
TRI-CORE MEXICO LAND DEVELOPMENT, LLC, an Arizona limited liability company,
TRI-CORE BUSINESS DEVELOPMENT, LLC, an Arizona limited liability company,
ERC COMPACTORS, LLC, an Arizona limited liability company,
ERC INVESTMENTS, LLC, an Arizona limited liability company,
C&D CONSTRUCTION SERVICES, INC., a Nevada corporation;
PANGAEA INVESTMENT GROUP, LLC, an Arizona limited liability company, d/b/a Arizona Investment Center,
JASON TODD MOGLER, an Arizona resident,
BRIAN N. BUCKLEY and CHERYL BARRETT BUCKLEY, husband and wife,
CASIMER POLANCHEK, an Arizona resident,
NICOLE KORDOSKY, an Arizona resident,
Respondents.

DOCKET NO. S-20867A-12-0459

SECURITIES DIVISIONS' RESPONSE TO NOTICE OF WITHDRAW [SIC] OF COUNSEL OF RECORD FOR RESPONDENTS: (1) TRI-CORE COMPANIES, LLC (2) TRI-CORE BUSINESS DEVELOPMENT, LLC AND (3) JASON TODD MOGLER

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ARIZONA CORPORATION COMMISSION
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1 The Securities Division of the Arizona Corporation Commission (“the Division”) submits
2 the following Response to Notice of Withdraw [sic] of Counsel of Record for Respondents (1) Tri-
3 Core Companies, LLC (2) Tri-Core Business Development, LLC and (3) Jason Todd Mogler
4 (“Notice of Withdrawal”). As the Division pointed out in response to the C&D’s Motion to
5 Withdraw filed last month, the Division would ordinarily have no objection to such motion.
6 However, the timing of the Notice of Withdrawal as well as the actions of Jason Mogler, the Tri-
7 Core entities, and their counsel, Bobby Thrasher, leading up to this Notice have been suspect. To
8 the extent the Notice of Withdrawal may prejudice the judicial process and delay the hearing
9 scheduled to begin February 18, 2014, the Division objects to granting the withdrawal.

10 First, simply because Mr. Thrasher obtained consent from his client does not automatically
11 permit his withdrawal. The Rules of Practice and Procedure Before the Commission contain a rule
12 directly on point which permit the ALJ to allow an attorney to withdraw “upon written application
13 and good cause shown . . .” See A.A.C. R14-3-104(E). Here, counsel for the Tri-Core entities and
14 Mr. Mogler simply filed the Notice of Withdrawal, with the assumption that the hearing officer
15 does not have to approve a request to withdraw as counsel. The Commission Rule that governs
16 this request requires a showing of good cause and discretionary approval. The Notice of
17 Withdrawal gives no indication of the nature of the purported conflict of interest. Instead the
18 Notice of Withdrawal states that there are “conflicts of interest that currently exist or have the
19 potential to exist . . .” See Notice of Withdrawal, p. 2. Which is it – an actual or potential conflict
20 of interest? The failure to make an adequate showing of the existence of an actual conflict is
21 grounds for denial of a motion to withdraw. See *U.S. v. Multi-Management, Inc.*, 743 F.2d 1359,
22 1363-64 (9th Cir. 1984). Further, although Mr. Mogler signed the Notice of Withdrawal, there is
23 no indication that the Notice was served on Mr. Mogler, or that Mr. Thrasher informed him of the
24 new hearing dates later this month.¹

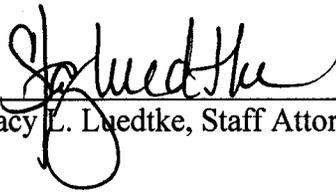
25
26 ¹ In fact, on February 3, 2014, the date that was previously scheduled for hearing, undersigned counsel ran into Mr. Mogler at the Commission’s Hearing Room #2, and was advised by Mr. Mogler that Mr. Mogler was unaware that the February 3, 2014 hearing date was continued. Undersigned counsel advised Mr. Mogler that hearing is scheduled to begin February 18, 2014.

1 Second, the timing of the Notice of Withdrawal is suspect at best, and potentially
2 prejudicial to the Division. Mr. Thrasher has represented the Tri-Core entities as well as Mr.
3 Mogler since November 2012, more than a year before the Notice of Withdrawal was filed. Now,
4 just a couple of weeks from the start of hearing – a hearing continued due to the unavailability of
5 Mr. Thrasher – a conflict of interest has suddenly arisen.

6 As the Court is well aware, this is not the first time Mr. Thrasher has raised a conflict of
7 interest. On October 23, 2013, in the middle of hearing, Mr. Thrasher requested and obtained a
8 continuance of the hearing due to what Mr. Thrasher represented as a newly identified conflict of
9 interest in his representation of the ERC entities. The hearing was continued to February 3, 2014.
10 On January 22, 2014, Mr. Mogler and the Tri-Core entities requested another continuance of the
11 hearing scheduled to begin on February 3, 2014 due to Mr. Thrasher's conflict with a criminal
12 trial. *See* Motion to Continue, filed January 22, 2014. Over objection by the Division, the Motion
13 to Continue was granted and the hearing reset to proceed for three weeks starting on February 18,
14 2014. *See* Ninth Procedural Order, entered January 28, 2014. Three days after the hearing officer
15 ruled on the Motion to Continue, and less than ten days after the Motion to Continue was filed, Mr.
16 Thrasher filed the Notice of Withdrawal. Notably absent from the Notice of Withdrawal is any
17 indication of why the purported conflict of interest was not raised before the Motion to Continue
18 was filed and ruled upon. It is difficult to believe that a conflict of interest arose in a period of
19 three days. The sequence of these recent filings appears to be no more than delay tactics.

20 The Notice of Withdrawal should be denied if it delays the proceedings scheduled to begin
21 on February 18th in any way. The Division has had its witnesses, including numerous investor
22 witnesses, scheduled to testify at hearing on three separate occasions, each time the hearing has
23 been rescheduled due to Mr. Thrasher's conflicts. Each delay impacts the Division's ability to
24 adequately prepare for hearing, results in duplicative preparation, and inconveniences witnesses
25 who are scheduled to testify. Minimally, Mr. Mogler and the Tri-Core entities should not be
26 allowed to continue any of the scheduled hearing dates whether represented or not.

1 RESPECTFULLY SUBMITTED this 3rd day of February, 2014.

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4 _____
5 Stacy L. Luedtke, Staff Attorney for the Securities Division
6

7 ORIGINAL and 9 copies of the foregoing
8 filed this 3rd day of February, 2014 with:

9 Docket Control
10 Arizona Corporation Commission
11 1200 W. Washington St.
12 Phoenix, AZ 85007

13 COPY of the foregoing hand-delivered
14 this 3rd day of February, 2014, to:

15 The Honorable Marc E. Stern
16 Administrative Law Judge
17 Arizona Corporation Commission
18 1200 W. Washington St.
19 Phoenix, AZ 85007

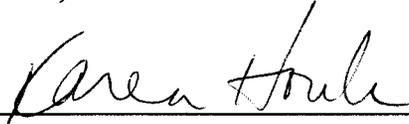
20 COPY of the foregoing mailed
21 this 3rd day of February, 2014, to:

22 C&D Construction Services, Inc.
23 Attn: Irma Huerta, President
24 1520 Red Rock St.
25 Las Vegas, NV 89146

26 Bobby Thrasher, Jr.
530 E. McDowell Rd., Ste 107-495
Phoenix, Arizona 85004
Attorney for Mogler, Tri-Core Companies, Tri-Core Business Dev.,

Jason Mogler
8800 E. Chaparral #270
Scottsdale, AZ 85250

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2 1129 Stonegate Ct.
3 Bartlett, IL 60103

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