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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission  
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FEB 10 2014

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COMMISSIONERS 2014 FEB 10 P 2:29

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

ARIZONA CORPORATION COMMISSION  
DOCKET CONTROL

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 MOTION TO CONTINUE FEBRUARY 18, 2014 HEARING**

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1 The Securities Division of the Arizona Corporation Commission (“the Division”) submits  
2 the following Response to Respondents’ Motion to Continue February 18, 2014 Hearing (“Motion  
3 to Continue”). The Motion to Continue should be rejected outright as yet another attempt to delay  
4 the proceedings.

5 First, Jason Mogler filed the Motion to Continue individually and as the representative for  
6 Respondents Tri-Core Companies, LLC and Tri-Core Business Development, LLC (hereafter,  
7 “Tri-Core Entities”). Mr. Mogler and the Tri-Core Entities ignore the fact that this Court has not  
8 yet granted their attorney, Bobby Thrasher’s, request to withdraw as counsel. Although the Notice  
9 of Withdrawal filed by Mr. Thrasher was filed with Mr. Mogler’s consent, as the Division pointed  
10 out in its Response to the Notice of Withdrawal, the Rules of Practice and Procedure Before the  
11 Commission allow the hearing officer to permit discretionary withdrawal; it is not automatic. *See*  
12 A.A.C. R14-3-104(E). No order has been issued granting withdrawal to Mr. Thrasher.

13 Second, the continuance requested by Mr. Mogler and the Tri-Core Entities is exactly the  
14 prejudice - further delay in the hearing – that the Division was concerned about when the Notice of  
15 Withdrawal was filed. The Notice of Withdrawal was purposefully vague regarding the nature of  
16 the conflicts necessitating withdrawal, citing “conflicts of interest that currently exist or have the  
17 potential to exist . . .” *See* Notice of Withdrawal, p. 2. Given that the Motion to Continue was  
18 filed six days later, the Division can only wonder if an actual conflict exists. Minimally, this  
19 appears to be yet another delay tactic to avoid hearing.

20 Mr. Mogler states that, “Respondents require more time to proceed in this matter *pro per*.”  
21 *See* Motion to Continue. Not only is this statement vague, but it is unsupported by the facts. As  
22 the client, Mr. Mogler is well aware of the facts and documents at issue in this action. This is not a  
23 case where a new attorney is attempting to get up to speed on the facts to represent a client. In  
24 fact, this is the opposite situation. As the client, Mr. Mogler has undoubtedly spent the last year  
25 getting his attorney up to speed on the facts of the case. Mr. Mogler produced the majority of  
26 documents that make up the Division’s hearing exhibits, both producing them individually and as

1 custodian of records for the Tri-Core Entities (and ERC Entities). *See* Hearing Exhibit S-32. Mr.  
2 Mogler has had access to the same information his counsel has had, including the Division's list of  
3 witnesses and exhibits, for months. It is hard to understand what Mr. Mogler needs to do to  
4 proceed to hearing since he and his attorney have been preparing for hearing for over a year.

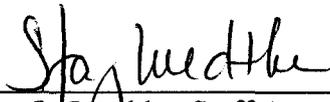
5 Third, Mr. Mogler and the ERC Entities should not get a "time out" between the Division's  
6 case in chief and presenting Respondents' case simply because they are *pro per*. Although the  
7 Motion to Continue is confusing at best, it appears that Mr. Mogler and the Tri-Core Entities are  
8 requesting that the February 18, 2014, hearing dates remain in place for purposes of the Division's  
9 case in chief only, and that Mr. Mogler and the Tri-Core Entities get a 45 day break to prepare and  
10 present their case. There is no basis for such a request. To allow such a delay in the proceedings  
11 would create an unfair tactical advantage. "It is well-established . . . that a party who conducts a  
12 case without an attorney is entitled to no more consideration from the court than a party  
13 represented by counsel, and is held to the same standards expected of a lawyer." *Kelly v.*  
14 *NationsBanc Mortgage Co.*, 199 Ariz. 284, 17 P.3d 790 (App. 2000) (citing *Higgins v. Higgins*,  
15 194 Ariz. 266, 270, 981 P.2d 134, 138 (App.1999); *Copper State Bank v. Saggio*, 139 Ariz. 438,  
16 441, 679 P.2d 84, 87 (App.1983)).

17 If this continuance is granted, it will be the fourth continuance granted to these  
18 Respondents. As the Division has indicated numerous times, each delay impacts the Division's  
19 ability to adequately prepare for hearing, results in duplicative preparation, and inconveniences  
20 witnesses who are scheduled to testify. Most importantly, it inconveniences investor witnesses,  
21 many of which are out of state and voluntarily testifying at hearing. All of the Division's  
22 witnesses, including investor witnesses, have been inconvenienced three separate times when they  
23 have had to prepare for, and clear their schedules in anticipation of, testifying at hearing.  
24 Undersigned counsel has prepared three separate times for hearing. Now, if the Motion to  
25 Continue is granted, it is possible that these witnesses will have to be ready during the portion of  
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1 the hearing scheduled to start on February 18<sup>th</sup>, and then again in 45 days when the hearing  
2 resumes.

3 The hearing scheduled for February 18, 2014 should not be continued. This may require  
4 Mr. Thrasher to continue representing Mr. Mogler, especially given that there has been no showing  
5 of a clear conflict of interest. Minimally, the hearing should not be bifurcated to the tactical  
6 advantage of Mr. Mogler and the ERC Entities, and should proceed as scheduled on February 18,  
7 2014, with no continuances so that inconvenience to investor witnesses is minimized.

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9 RESPECTFULLY SUBMITTED this 10th day of February, 2014.

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13 Stacy L. Luedtke, Staff Attorney for the Securities Division  
14

15 ORIGINAL and 9 copies of the foregoing  
16 filed this 10th day of February, 2014 with:

17 Docket Control  
18 Arizona Corporation Commission  
19 1200 W. Washington St.  
20 Phoenix, AZ 85007

21 COPY of the foregoing hand-delivered  
22 this 10th day of February, 2014, to:

23 The Honorable Marc E. Stern  
24 Administrative Law Judge  
25 Arizona Corporation Commission  
26 1200 W. Washington St.  
Phoenix, AZ 85007

COPY of the foregoing mailed  
this 10th day of February, 2014, to:

1 C&D Construction Services, Inc.  
2 Attn: Irma Huerta, President  
3 1520 Red Rock St.  
4 Las Vegas, NV 89146

4 Bobby Thrasher, Jr.  
5 530 E. McDowell Rd., Ste 107-495  
6 Phoenix, Arizona 85004  
7 *Attorney for Mogler, Tri-Core Companies, Tri-Core Business Dev.,*

7 Jason Mogler  
8 8800 E. Chaparral #270  
9 Scottsdale, AZ 85250

9 Guy Quinn  
10 1129 Stonegate Ct.  
11 Bartlett, IL 60103

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