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**ORIGINAL**

**BEFORE THE ARIZONA CORPORATION COMMISSION**

Arizona Corporation Commission

**DOCKETED**

FEB 13 2014

DOCKETED BY 

**COMMISSIONERS**

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

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

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

(Assigned to Administrative Law Judge  
Marc E. Stern)

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2           Undersigned counsel does hereby file its Reply to the Security Divisions' Response  
3 to the Notice of Withdraw filed on or about February 3, 2014.

4           Pursuant to ER 1.7 – Conflict of Interest : Current Clients

5  
6           (a)    Except as provided in paragraph (b), a lawyer shall not represent a client if the  
7 representation involves a concurrent conflict of interest exists if:

8                   (1) the representation of one client will be directly adverse to another client; or

9  
10                   (2) there is a significant risk that the representation of one or more clients will be  
11 materially limited by the lawyer's responsibility to another client, a former  
12 client or a third person or by a personal interest of the lawyer.

13           (b)    Notwithstanding the existence of a concurrent conflict of interest under  
14 paragraph (a), a lawyer may represent a client if each affected client gives  
15 informed consent, confirmed in writing, and:

16  
17                   (1) the lawyer reasonably believes that the lawyer will be able to provide  
18 competent and diligent representation to each affected client;

19                   (2) the representation is not prohibited by law; and

20  
21                   (3) the representation does not involve the assertion of a claim by one client  
22 against another client represented by the lawyer in the same litigation or other  
23 proceeding before a tribunal.

1 Immediately, following the conclusion of the hearing in October, 2013 undersigned  
2 counsel contacted independent counsel as well as Arizona State Bar ethics counsel to  
3 discuss the conflict of interest issues regarding the above matter. Because of the problems  
4 encountered with the conflict of interest issues during the October, 2013 hearing  
5 undersigned counsel felt it appropriate to seek independent consultation regarding the of Mr.  
6 Mogler, Tri-Core Companies, LLC and Tri-Core Business Development, LLC (the "Tri-  
7 Core Entities") given that each of the Tri-Core Entities had three separate members.

8 Following discussions with outside counsel, undersigned counsel met with Jason  
9 Mogler and Jim Hinkelday on October 29, 2013 to discuss further representation of the Tri-  
10 Core entities and Mr. Mogler. During this meeting undersigned counsel explained the  
11 requirements of ER 1.7. Counsel also presented Mr. Mogler and Mr. Hinkelday with a Joint  
12 Representation Agreement and required that each of the three respective members of Tri-  
13 Core Companies, LLC and Tri-Core Business Development, LLC sign the Joint  
14 Representation Agreement authorizing joint representation of all parties in order to ensure  
15 compliance with ER 1.7(b) in the event future issues regarding conflict of interests arose.

16 Mr. Mogler had previously authorized joint representation of himself as well as Tri-  
17 Core Companies, LLC and Tri-Core Business Development, LLC as the managing member  
18 of each limited liability company; however, after discussions with ethics counsel  
19 undersigned counsel felt it wise to make sure that all members of the Tri-Core Entities  
20 approved joint representation given the possibility of a conflict of interest should Mr.  
21 Mogler and the Tri-Core Entities be found liable in this administrative action. Mr. Mogler  
22 and Mr. Hinkelday understood undersigned counsel's requirement. After meeting with Mr.  
23 Mogler and Mr. Hinkelday undersigned counsel followed up via email with Mr. Mogler and  
24 Mr. Hinkelday on November 6, 2013, December 21, 2013, December 24, 2013 and January  
25 24, 2014. In addition, undersigned counsel had numerous phone calls with Mr. Mogler  
26 explaining the necessity of the signed Joint Representation Agreement as well as another  
27 meeting with Mr. Mogler and Mr. Hinkelday.  
28

1 Despite requests undersigned counsel did not receive the signed Joint Representation  
2 Agreements, nor have the other members of the Tri-Core Entities contacted undersigned  
3 counsel as requested. In an abundance of caution before filing his Notice to Withdraw  
4 undersigned counsel again spoke with Arizona State Bar ethics counsel. Based on this  
5 conversation both ethics counsel and undersigned counsel agreed it inadvisable to continue  
6 with representation of any party in this matter given the potential for conflicts of interests if  
7 undersigned counsel continued with such representation. As such, undersigned counsel  
8 filed his Notice to Withdraw.

9 Despite counsel for the Division's personal attacks, and assertions that undersigned  
10 counsel is attempting to delay this matter, quite the contrary is true. Since October, 2013  
11 undersigned counsel has been diligent in attempting to resolve all conflict of interests issues  
12 in this matter. Only after it was clear that these issues could not be resolved did undersigned  
13 counsel file his Notice to Withdraw.

14 Dated this 5<sup>th</sup> day of February, 2014.

15 **THRASHER JEMSEK, PLLC**

16  
17  
18 By   
19 Bobby O. Thrasher, Jr.  
20 518 East Willetta Street  
21 Phoenix, Arizona 85004  
22 *Attorney for Respondents*

23 ORIGINAL AND 13 COPIES of the foregoing filed February 15<sup>th</sup>, 2014, with:

24 Docket Control  
25 Arizona Corporation Commission  
26 1200 West Washington Street  
27 Phoenix, Arizona 85007  
28

COPIES of the foregoing mailed February <sup>13<sup>th</sup></sup> 2014, to:

1  
2 Honorable Marc E. Stern  
3 Administrative Law Judge  
4 Arizona Corporation Commission / Hearing Division  
5 1200 West Washington Street  
6 Phoenix, Arizona 85007

7 Stacey L. Luedtke  
8 Arizona Corporation Commission  
9 Securities Division  
10 1300 W. Washington, 3<sup>rd</sup> Floor  
11 Phoenix, Arizona 85007

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18 *Attorney for ERC Compactors and*  
19 *ERC Investments*

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