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BEFORE THE ARIZONA CORPORATION COMMISSION

REGISTERED
AZ CORP COMMISSION
DOCKET CONTROL

2014 JAN 24 PM 2 32

COMMISSIONERS

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

ORIGINAL

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 3, 2014 HEARING

Arizona Corporation Commission

DOCKETED

JAN 24 2014

DOCKETED BY

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1 The Securities Division of the Arizona Corporation Commission (“the Division”) submits
2 the following Response to Jason Mogler, Tri-Core Companies, LLC, and Tri-Core Business
3 Development, LLC’s Motion to Continue February 3, 2014 Hearing (“Motion to Continue”).
4 Although the Division understands that conflicts arise, this is the third time that a conflict by
5 Moving Respondents has impacted the Division’s ability to conclude this hearing.

6 This matter was originally set for hearing beginning October 21, 2013, to continue through
7 November 21, 2013. *See* Fifth Procedural Order dated April 24, 2013. In September 2013,
8 Moving Respondents’ counsel advised the Division that the scheduled hearing conflicted with a
9 criminal case in which the criminal judge refused to continue the criminal trial after being advised
10 of the conflict. As such, the Division agreed to partially continue the hearing and submitted a
11 stipulation. *See* September 20, 2013 Stipulation to Partially Continue Hearing Dates. As a result
12 of the stipulation, on October 4, 2013, this Court continued three weeks of the hearing to begin on
13 February 3, 2014. *See* Sixth Procedural Order dated October 4, 2013.

14 The hearing in this matter began on October 21, 2013, and was scheduled to proceed for
15 two weeks. The hearing proceeded on October 21-23, 2013. On October 23, 2013, Moving
16 Respondents’ counsel represented to the court a newly identified conflict of interest in his
17 representation.¹ This again required a continuance of the proceedings until the previously
18 scheduled three week hearing dates scheduled to start on February 3, 2014.

19 This is not a hearing that is easily rescheduled given the three week duration.
20 Notwithstanding, nowhere in the Motion to Continue does it state that counsel advised the criminal
21 court that there was a scheduling conflict with this proceeding. Based on the Minute Entries from
22 the criminal matter, *State v. Simpson*, the State had scheduling conflicts and filed a written motion
23 to reset the criminal trial, but there is no indication that Moving Respondents’ counsel ever advised
24 the criminal court of the administrative hearing. *See* January 16, 2014 Minute Entry, attached as

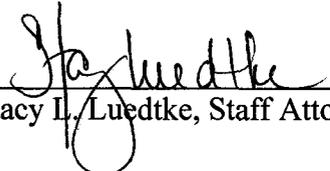
25 _____
26 ¹ The conflict was based on the sale of the Respondent ERC entities that was reflected in a purported purchase agreement. Despite being ordered twice to produce a final version of the purchase agreement for the ERC entities that supports the conflict of interest, Moving Respondents have failed to do so. *See* Seventh Procedural Order dated November 19, 2013 & Eighth Procedural Order dated January 16, 2014.

1 Exhibit 1. Further, Division staff attended the Final Trial Management Conference in the criminal
2 matter on January 23, 2014. The criminal trial judge specifically asked counsel about any
3 “scheduling issues”, and Moving Respondents’ counsel failed to raise the conflict with this
4 administrative hearing. It is up to Moving Respondents’ counsel to determine which matter has
5 priority. Minimally, counsel had a duty of candor to the criminal court to advise it of this
6 administrative hearing, and allow the judge to determine which had priority.

7 Moving Respondents’ counsel also states that the criminal proceeding is scheduled for 4-6
8 days of trial, but the Minute Entry from the Comprehensive Pretrial Conference and Trial Order
9 states it is 4-5 days. See November 25, 2013 Minute Entry, attached as Exhibit 2. It is unclear
10 from the Motion to Continue why all of the February 2014 administrative hearing dates must be
11 continued when the criminal trial should be completed by February 10, 2014. This leaves the
12 better part of two weeks of scheduled administrative hearing dates with no conflict. Minimally,
13 there is no reason to continue all of the hearing dates.

14 To the extent this Court is inclined to grant the continuance, the Division requests that
15 Moving Respondents be instructed that no further continuances will be granted, and also requests
16 that the hearing be rescheduled to the earliest date practicable for the parties and the Court. The
17 constant delays in these proceedings at the last minute by Moving Respondents impacts the
18 Division’s ability to adequately prepare for hearing, results in duplicative preparation, and
19 inconveniences witnesses who are scheduled to testify.

20
21
22 RESPECTFULLY SUBMITTED this 24th day of January, 2014.

23
24 
25 Stacy L. Luedtke, Staff Attorney for the Securities Division
26

1 ORIGINAL and 9 copies of the foregoing
2 filed this 24th day of January, 2014 with:

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

7 COPY of the foregoing hand-delivered
8 this 24th day of January, 2014, to:

9 The Honorable Marc E. Stern
10 Administrative Law Judge
11 Arizona Corporation Commission
12 1200 W. Washington St.
13 Phoenix, AZ 85007

14 COPY of the foregoing mailed
15 this 24th day of January, 2014, to:

16 Dale B. Rycraft Jr., Esq.
17 THE RYCRAFT LAW FIRM, PLLC
18 2929 N. Power Rd., Suite 101
19 Mesa, Arizona 85215
20 *Attorney for C&D Construction*

21 Bobby Thrasher, Jr.
22 530 E. McDowell Rd., Ste 107-495
23 Phoenix, Arizona 85004
24 *Attorney for Mogler, Tri-Core Companies, Tri-Core Business Dev.,*

25 Guy Quinn
26 1129 Stonegate Ct.
Bartlett, IL 60103

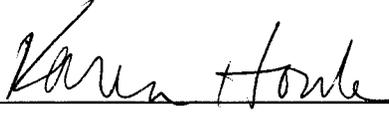


EXHIBIT 1

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2012-161493-001 SE

01/16/2014

JUDGE ROBERT E. MILES

CLERK OF THE COURT
A. Moore
Deputy

STATE OF ARIZONA

DANE C PAULSEN

v.

CHRISTOPHER MICHAEL SIMPSON (001)

BOBBY O THRASHER JR.
M E BUDDY RAKE JR.

TRIAL MANAGEMENT CONFERENCE

9:33 a.m.

State's Attorney:	Dane Paulsen
Defendant's Attorney:	Bobby Thrasher & Buddy Rake
Defendant:	Present
Court Reporter:	Melody O'Donnell

Court and counsel discuss pretrial matters. Defendant's Motion to Dismiss is pending. The State will file a Response. The State advises that amended charges may be filed.

Upon written motion by counsel for the State, and good cause appearing based on the following grounds:

Scheduling conflicts,

IT IS ORDERED vacating the current trial setting of 1/23/2014 and resetting same to **2/4/2014** at 8:00 a.m. before the Master Calendar Assignment Judge in Courtroom 5B in the South Court Tower. All subpoenaed witnesses are to report to Courtroom 5B in the South Court Tower for trial and will be directed to the trial court from there.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2012-161493-001 SE

01/16/2014

IT IS ORDERED resetting Final Trial Management Conference (FTMC) on **1/23/2014** at 8:30 a.m. in this division.

IT IS ORDERED that no time be excluded. LAST DAY REMAINS: 2/25/2014.

IT IS FURTHER ORDERED affirming prior release orders.

9:42 a.m. Matter concludes.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.

EXHIBIT 2

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2012-161493-001 SE

11/25/2013

JUDGE ROBERT E. MILES

CLERK OF THE COURT
A. Moore
Deputy

STATE OF ARIZONA

DANE C PAULSEN

v.

CHRISTOPHER MICHAEL SIMPSON (001)

BOBBY O THRASHER JR.

COMPREHENSIVE PRETRIAL CONFERENCE/TRIAL ORDERS

9:40 a.m.

State's Attorney:	Danalyn Savage
Defendant's Attorney:	Bobby Thrasher
Defendant:	Presence Waived
Court Reporter:	Melody O'Donnell

Defense counsel is directed to file defendant's affidavit acknowledging the Final Trial Management Conference and Trial date. The affidavit shall be filed by 12/10/2013. If not filed by 12/10/2013, a bench warrant will issue for defendant's failure to appear today.

This is the time set for Comprehensive Pretrial Conference.

Status of the case is discussed.

Comprehensive Pretrial Statement:

- A. Status of Case: A plea offer was not made.
- B. Status of Disclosure: Disclosure is completed.
- C. The number of days for trial is expected to be 4-5.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2012-161493-001 SE

11/25/2013

D. The number of witnesses (combined for both sides) is expected to be 10-12. The number of out of state witnesses is expected to be zero. The number of expert witnesses is expected to be 2.

E. Status of the interviews: The number of interviews completed is zero. The number of interviews left to complete is 5-6. The number of depositions required is zero.

F. An interpreter is not required for this trial.

G. The number of jurors required for trial is 8. The number of requested alternates is 2.

H. The State is requesting an aggravating factors trial to the jury.

I. Counsel has not submitted special jury instructions.

J. Counsel has not requested a lesser-included offense.

K. A substantive motion is not anticipated by one or more of the parties.

L. A motion in limine is not anticipated by one or more of the parties.

IT IS ORDERED affirming Final Trial Management Conference (FTMC) on **1/16/2014** at 8:30 a.m. in this division

IT IS FURTHER ORDERED affirming the Firm Trial Date of **1/23/2014** at 8:00 a.m. before the Master Calendar Assignment Judge in Courtroom 5B in the South Court Tower. All subpoenaed witnesses are to report to Courtroom 5B in the South Court Tower for trial and will be directed to the trial court from there.

IT IS FURTHER ORDERED that the Joint Pretrial Statement (JPTS) is due in the case management division by 5:00 p.m., five (5) judicial days before the FTMC.

IT IS FURTHER ORDERED with the JPTS, Counsel shall deliver to the case management division, copies of the following:

A. A jointly-completed time and witness estimate list. The Court will use the list to predict the length of the trial for the jurors and to direct Counsel to follow the trial time limits established. Any time limitation set will be reasonable presumptive limits subject to modification upon a showing of good cause.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2012-161493-001 SE

11/25/2013

B. A joint set of agreed upon preliminary and final jury instructions, including Preliminary Criminal RAJI or standard RAJI.

C. Separate sets of requested instructions that have not been agreed upon. Please read *Rosen v. Knaub*, 175 Ariz. 329, 857 P.2d 381 (1993).

D. Proposed Voir Dire questions which the Court will give. In jury trial cases the parties shall jointly prepare a brief summary of the case which the Court will read to the jury at the commencement of voir dire.

E. Any juror notebooks. The Court encourages use of juror notebooks in appropriate cases. Stipulating the contents into evidence is necessary. Key exhibits may be included, along with diagrams, photographs, and timelines.

IT IS FURTHER ORDERED that any disclosure and/or discovery shall be completed no later than seven (7) days prior to trial. Any party seeking further disclosure and/or discovery after the discovery deadline shall seek leave of the Court by motion supported by affidavit to extend the time for disclosure and/or discovery. Parties may extend the deadline by written stipulation which waives any objections to the late disclosure and/or discovery.

MOTIONS IN LIMINE

Any motions in limine shall be filed twenty (20) days before the FTMC and such motions must meet the test of *State v. Superior Court*, 108 Ariz. 396, 397, 499 P.2d 152 (1972): "The primary purpose of a motion in limine is to avoid disclosing to the jury prejudicial matters which may compel a mistrial." See also, Ariz. Rules of Evidence, Rule 103(c). A written response to a motion in limine may be filed no later than ten (10) days thereafter. The Court will rule on the motions in limine without oral argument. If the Court wishes to hear argument, the argument will be heard at the morning of the FTMC.

PRETRIAL MOTIONS

All pretrial motions must be filed in writing thirty (30) days before the FTMC. All motions must comply with Rule 35.1 including setting forth a sufficient factual basis for the motion. Failure to file a sufficient motion may result in the motion being denied without evidentiary hearing. See: Rule 16.1[c] Rule 16.2 [b]; *State v. Anaya* 170 Ariz. 436, 443 (1991); *State v. Wilson* 164 Ariz. 406, 407 (1990) and *State v. Alvarado* 121 Ariz. 485, 487 (1979).

All pretrial motions shall be filed with this division.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2012-161493-001 SE

11/25/2013

The Court will hear and rule upon objections at the FTMC. The rulings will be stated on the record, using exhibit numbers. All objections to known exhibits and witnesses must be made before or during the FTMC or will be deemed to have been waived.

IT IS FURTHER ORDERED that counsel, at the FTMC, shall be prepared to discuss:

A. Time limits in voir dire, opening statements, examination of witnesses and closing arguments.

B. Stipulations for the foundation and authenticity of exhibits.

C. Jury instructions (preliminary and final), juror notebooks (Counsel shall bring any proposed jury notebooks to the conference), mini-opening statements and voir dire.

D. Any special scheduling or equipment issues.

E. Status of settlement of the case.

EXPEDITED DISCOVERY

If there are any issues as to the disclosure required under Rule 15, the parties shall attempt to resolve the issue under Rule 15.7 (b). After personal consultation, the party seeking relief shall file a written motion setting forth the issue and requested relief. This motion, the opposing parties' response, and any reply shall be filed with this division.

All parties shall comply with Rule 15 disclosure orders. Failure to comply could result in sanctions which could include preclusion of witnesses, monetary fines, or any other sanction which is deemed appropriate.

FAILURE TO APPEAR

A defendant's failure to appear at any final trial management conference, trial, evidentiary hearing, or any hearing set before the court may result in a bench warrant being issued for his or her arrest and the FTMC, trial, evidentiary hearing or any hearing set before the court may be conducted in the defendant's absence.

CONTINUANCE OF TRIAL

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CR2012-161493-001 SE

11/25/2013

The trial date shall not be continued unless a written motion to continue is filed at least five days before trial. A continuance will not be granted unless the motion shows that extraordinary circumstances exist. (Rule 8.5, Rules of Criminal Procedure and guidelines thereto).

INTERPRETER

It is the responsibility of counsel to notify the court before which a hearing will be held 48 hours in advance of any hearing needing an interpreter for a victim or witness (10 business days for any language other than Spanish).

Defendant's Motion for Reconsideration (of ruling re Motion to Remand) has been submitted today.

IT IS FURTHER ORDERED affirming prior release orders.

LAST DAY: 2/25/2014.

9:44 a.m. Matter concludes.

This case is eFiling eligible: <http://www.clerkofcourt.maricopa.gov/efiling/default.asp>. Attorneys are encouraged to review Supreme Court Administrative Order 2011-140 to determine their mandatory participation in eFiling through AZTurboCourt.