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BEFORE THE ARIZONA CORPORATION COMMISSION

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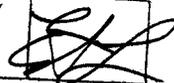
In the matter of:

DOCKET NO. S-20867A-12-0459

- 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,

Arizona Corporation Commission
DOCKETED

JAN 28 2014

DOCKETED BY 

Respondents.

NINTH
PROCEDURAL ORDER
(Grants Motion to Withdraw and Motion to Continue)

BY THE COMMISSION:

On November 8, 2012, the Securities Division ("Division") of the Arizona Corporation Commission ("Commission") filed a Notice of Opportunity for Hearing ("Notice") against Tri-Core Companies, LLC, ("Tri-Core"); Tri-Core Mexico Land Development, LLC ("TC Mexico"); Tri-Core Business Development, LLC ("TC Business"); ERC Compactors, LLC ("ERC Compactors"); ERC

1 Investments, LLC (“ERC Investments”); C&D Construction Services, Inc. (“C&D”); Pangaea
2 Investment Group, LLC (“Pangaea”), d/b/a Arizona Investment Center (“AIC”); Jason Todd Mogler;
3 Brian N. Buckley and Cheryl Barrett Buckley, husband and wife; Casimer Polanchek; and Nicole
4 Kordosky (collectively “Respondents”). In the Notice, the Division alleged multiple violations of the
5 Arizona Securities Act (“Act”) in connection with the offer and sale of securities in the form of
6 notes.¹

7 The Respondents were duly served with a copy of the Notice.

8 On November 26, 2012, a request for hearing in this matter was filed on behalf of C&D.

9 On November 30, 2012, Respondents Tri-Core, TC Business, ERC Compactors, ERC
10 Investments, Jason Todd Mogler, Brian N. Buckley and Cheryl Barrett Buckley filed requests for
11 hearing.

12 On December 10, 2012, by Procedural Order, a pre-hearing conference was scheduled on
13 January 15, 2013.

14 On January 15, 2013, at the pre-hearing conference, Respondents Tri-Core, TC Business,
15 ERC Compactors, ERC Investments, and Jason Mogler appeared through counsel. Respondents
16 Brian and Cheryl Buckley appeared on their own behalf. The Division also appeared through
17 counsel. Although the parties who requested a hearing were discussing a possible resolution of the
18 proceeding, the Division requested a status conference be scheduled to determine if a hearing should
19 be scheduled in the event settlement did not occur.

20 On January 16, 2013, by Procedural Order, a status conference was scheduled on March 20,
21 2013.

22 On January 29, 2013, Respondent Nicole Kordosky filed a request for hearing.

23 On January 31, 2013, by Procedural Order, Respondent Nicole Kordosky’s name was added
24 to the service list and she was apprised of the status conference scheduled for March 20, 2013.

25
26 ¹ On February 6, 2013, the Commission issued Decision Nos. 73666 and 73667 against Pangaea and TC Mexico,
27 respectively, as Default Orders finding them in violation of the Act. On May 8, 2013, the Commission issued Decision
28 No. 73867, a Default Order, against Respondent Polanchek finding him in violation of the Act. On October 25, 2013, the
Commission issued Decision No. 71447, a Consent Order, against the Buckley Respondents finding him in violation of
the Act, and holding the Buckleys’ marital community liable. On January 7, 2014, the Commission issued Decision No.
74251, a Consent Order, against Respondent Kordosky.

1 On March 20, 2013, at the status conference, the Division appeared through counsel,
2 Respondents Tri-Core, TC Business, ERC Compactors, ERC Investments and Jason Mogler appeared
3 through counsel, Respondent C&D appeared through counsel, and Respondents Brian Buckley and
4 Nicole Kordosky appeared on their own behalf. Mrs. Buckley did not appear. The Division's
5 counsel indicated that while discussions to resolve the issues raised by the Notice were ongoing, a
6 hearing should be scheduled in the fall to avoid scheduling conflicts in a lengthy proceeding because
7 there would be approximately 12 Division witnesses and voluminous exhibits. Additionally, one of
8 the attorneys who represents the Respondents indicated that he would call a like number of witnesses.

9 On March 21, 2013, by Procedural Order, a hearing was scheduled to commence on October
10 7, 2013 and last over a number of weeks.

11 On April 4, 2013, the Division filed a Motion to Continue ("Motion") the hearing due to the
12 unavailability of a key witness during the scheduled hearing. The Division requested that the
13 proceeding be continued to October 21, 2013, and that the remaining dates of the hearing also be
14 rescheduled. The Division further indicated that counsel for the Respondents who were represented
15 as well as the pro per Respondents in the proceeding had been contacted concerning the Division's
16 Motion and that they had no objections to the Motion.

17 On April 24, 2013, by Procedural Order, the Division's Motion was granted and the hearing
18 was continued to October 21, 2013.

19 On September 11, 2013, the Division filed a Motion to Allow Telephonic testimony of
20 approximately six witnesses who mostly reside out of state. There were no objections to this motion.

21 On September 20, 2013, the Division filed a Stipulation to Partially Continue the Hearing
22 Dates because counsel for the majority of the Respondents recently informed the Division that he had
23 a conflict with a criminal matter in which he is counsel of record and that proceeding had been set for
24 an eight to ten week trial which was to commence on November 5, 2013. The Division further stated
25 that the judge in that proceeding has refused to continue the criminal trial in deference to the
26 Commission's proceeding. Additionally, the Division stated that the parties had agreed to proceed
27 with the first two weeks of hearing scheduled in October 2013 and to continue the remaining three
28

1 weeks scheduled in November 2013 to February or March 2014 with the majority of the Respondents
2 represented by the affected counsel presenting their case in chief at that time.

3 On October 4, 2013, by Procedural Order, telephonic testimony was authorized to be utilized
4 in the proceeding. Additionally, a portion of the proceeding was continued as agreed by the parties to
5 February, 2014.

6 On October 21, 2013, a full public hearing was convened before a duly authorized
7 Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Division, Tri-
8 Core, TC Business, ERC Compactors, ERC Investments, Jason Mogler and C&D appeared with
9 counsel. Ms. Kordosky appeared on her own behalf. The hearing also proceeded as scheduled on
10 October 22, 2013, with the presentation of evidence by the Division.

11 On October 23, 2013, at the beginning of the proceeding, Mr. Bobby Thrasher, counsel for
12 Tri-Core, TC Business, ERC Compactors, ERC Investments and Jason Mogler stated that an issue
13 had arisen with respect to his continued representation of ERC Compactors and ERC Investments
14 ("ERC Entities"). Counsel related that the ERC Entities which he was representing were in fact sold
15 by Respondent Mogler in March 2013 to a non-party to the proceeding, Mr. Guy Quinn. As evidence
16 of this sale, Mr. Thrasher provided a copy of the Purchase Contract. However, it did not appear to be
17 either complete or the final agreement with pages numbered consecutively. Counsel stated further
18 that although he had initially represented the ERC Entities, he believed that a clear conflict of
19 interests existed, and that he could no longer represent these companies without prejudice to them
20 and their new owner. Mr. Thrasher further indicated that he wished to file a Motion to Withdraw as
21 counsel for the ERC Entities, and he also requested that the balance of the proceeding be continued
22 and resume in the February proceeding, as previously ordered.

23 Counsel for the Division indicated that she had been unaware of this conflict previously, and
24 had only been apprised of this situation shortly before the hearing on October 23, 2013, and had been
25 surprised by these requests.

26 After a recess, the parties agreed that the proceeding should be continued to February and that
27 a Motion to Withdraw and a Motion for a Procedural Conference be filed as discussed at the hearing.
28

1 On October 25, 2013, the Division filed a Motion for a Procedural Conference and indicated
2 that copies of the following documents were e-mailed to Mr. Quinn: the Notice; documents related to
3 the representation of the ERC Entities filed by Mr. Thrasher; and a copy of the Sixth Procedural
4 Order which scheduled the matter for further hearing on February 3, 2014.

5 The Division further requested that certain time deadlines be established with respect to the
6 future representation of the ERC Entities and requested that other procedural matters be addressed at
7 the Procedural Conference.

8 On November 1, 2013, Mr. Bobby Thrasher filed a Motion to Withdraw as Counsel of Record
9 for the ERC Entities due to the change in ownership and for other reasons disclosed on the record at
10 the October 23, 2013 hearing. No objections have been filed to this motion.

11 On November 19, 2013, by Procedural Order, the Motion to Withdraw by Mr. Bobby
12 Thrasher was granted conditioned upon a copy of the complete and final Purchase Contract being
13 filed. Additionally, a lawful representative or counsel for the ERC Entities was ordered to enter an
14 appearance in this matter if they were going to participate further in the proceeding and contest the
15 Notice.

16 On December 6, 2013, an Arizona attorney filed a letter on behalf of the ERC Entities and
17 stated that no appearance would be entered on behalf for the ERC Entities and that the current
18 manager of these Respondents "was not in control of the entities during the relevant time frame."
19 Further, the attorney went on to state that a resolution of the matter was being sought with the
20 Commission.

21 On December 12, 2013, at the procedural conference, the Division and Tri-Core, TC Business
22 and Mr. Mogler were represented by counsel. No appearance was made on behalf of C&D or any
23 remaining Respondents. The Purchase Contract for the ERC Entities was further discussed, and
24 counsel for Tri-Core, TC Business and Mr. Mogler indicated that he would be seeking discovery with
25 respect to the Division investigator's notes, logs and reports beyond the documentary material
26 disclosed by the Division with the exchange of Exhibits and Witness Lists as ordered previously. Mr.
27 Thrasher agreed that he would pursue the material he required by filing for a subpoena by December
28 17, 2013, and the Division's counsel agreed to file a response by January 6, 2014.

1 On December 17, 2013, counsel for Tri-Core, TC Business and Mr. Mogler filed what was
2 captioned "Application for Issuance of Subpoena for Documents to Arizona Corporation Securities
3 Division" ("Application"). Therein counsel requested "an unredacted copy of the investigative file."
4 The only documents excluded from the Application were those documents previously provided to the
5 Respondents in the Division's List of Exhibits and Witnesses pursuant to stipulation on August 26,
6 2013.²

7 On December 31, 2013, the Division filed its Response in Opposition ("Response") to the
8 Application by Tri-Core, TC Business and Mr. Mogler. The Division stated that on October 31, 2013,
9 it had advised Respondents' counsel the procedures necessary to obtain discovery from the Division,
10 and that Respondents' counsel had delayed until December 17, 2013, to file their request in this
11 proceeding.

12 The Division stated that the action herein is governed by the Commission's Rules A.A.C.
13 R14-3-101, et seq. and the Administrative Procedures Act, A.R.S. § 41-1001, et seq. ("APA"). The
14 Division argued that the Respondents had been provided with thousands of documents along with its
15 list of witnesses prior to the commencement of the hearing and that Respondents' Application neither
16 complied with the Commission's Rules nor the APA. The Division stated that Respondents failed to
17 meet their burden to show "reasonable need" before a subpoena would issue for the production of
18 documents. The Division detailed how Respondents had produced more than 30,000 documents to
19 the Division and the majority of them were admitted into evidence through the Division's
20 investigator. These documents contained no surprises and Respondents had the opportunity to
21 conduct their own investigation prior to the start of the hearing. The Division further stated that no
22 specific prejudice was set forth in the Application and that Respondent's "due process" rights were
23 not violated. Additionally, the Division argued that it was not required to provide privileged or
24 confidential documents, and cited a plethora of cases in support of its position that Respondents had
25 either not shown a substantial need or that they could not obtain the information elsewhere. Lastly,
26 the Division cited A.R.S. § 44-2042, the Commission's confidentiality statute, arguing that all
27 information or documents acquired by the Division during its investigation were confidential unless
28

² In the exchange, the Division provided Respondents with in excess of 250 Exhibits.

1 the presiding judge authorized their disclosure. In conclusion, the Division argued that the
2 Application was overbroad, unduly burdensome, untimely and that it constituted a “stall tactic” after
3 considering the timeline in the proceeding.

4 Respondents Tri-Core, TC Business and Mr. Mogler did not file a reply to the Response.

5 On January 16, 2014, by Procedural Order, the Application was denied because it was not
6 timely and the Respondents had not shown a reasonable or substantial need for the documents, and
7 they failed to show why the confidentiality of the documents should not be maintained pursuant to
8 A.R.S. § 44-2042.

9 On January 22, 2014, counsel for C&D filed a Motion to Withdraw as counsel for C&D citing
10 A.A.C. R14-3-104(E) which permits the withdrawal of an attorney upon good cause being shown.
11 Pursuant to Rule 42 of the Rules of the Arizona Supreme Court, counsel cited Ethical Rule (“ER”)
12 1.16 which governs the termination of representation. Counsel stated “C&D has failed to
13 substantially fulfill its obligations” to counsel by failing to make payments for its defense in this
14 complex proceeding. It was further stated that this was placing an unreasonable financial burden on
15 counsel who, after warning to C&D, is requesting permission to withdraw from the proceeding as
16 C&D’s counsel. Counsel further represented that C&D had been served with a copy of this motion
17 and had been advised when the proceeding is to resume.

18 A Motion to Continue the February 3, 2014, hearing was also filed on January 22, 2014, by
19 counsel for Tri-Core, TC Business and Mr. Mogler. Therein, counsel requested a 30 to 45 day
20 continuance or another date convenient to the Commission for the remaining portion of the
21 proceeding which is presently scheduled to be heard on various dates between February 3, 2014 and
22 February 20, 2014. Counsel requested this continuance due to a conflict which has arisen with a
23 criminal proceeding which he is involved in at the Maricopa County Superior Court. The criminal
24 case has been rescheduled to commence on February 4, 2014. Counsel represented that the criminal
25 proceeding is scheduled for a four to six day jury trial which will take it into the second week of the
26 Commission’s ongoing proceeding.

27 On January 24, 2014, the Division filed responses to each of the pending motions by counsel
28 for C&D and by counsel for Tri-Core, TC Business and Mr. Mogler. With respect to the Motion to

1 Withdraw, the Division argues that the motion is not timely since apparently nonpayment has been at
2 issue for at least nine months, and additionally, C&D should not be granted any further continuances
3 whether it is represented or not.

4 With respect to the Motion to Continue the February 3, 2014 hearing, the Division argues that
5 the proceeding was continued previously due to a conflict of interest of counsel and that a hearing
6 with an expected duration of three weeks is not easily rescheduled. According to the Division's
7 counsel, its representative attended the court's scheduling conference and that counsel for Tri-Core,
8 TC Business and Mr. Mogler did not "raise the conflict with this administrative hearing." However,
9 in the Motion to Continue, counsel states, "Pursuant to local rule, a criminal trial has priority over an
10 administrative hearing." The Division argues further that the "better part of two weeks" would
11 remain of the presently scheduled administrative hearing with no conflict. However, this could lead
12 to a further fragmentation of the proceeding if the matter is not concluded by the end of February.

13 Under the circumstances, with respect to the Motion to Withdraw by counsel for C&D, it
14 should be granted. With respect to the Motion for a Continuance by counsel for Tri-Core, TC
15 Business and Mr. Mogler, it should be granted, but it should be rescheduled as soon as practicable.

16 IT IS THEREFORE ORDERED that the Motion to Withdraw of Counsel for C&D is hereby
17 granted.

18 IT IS FURTHER ORDERED that Mr. Bobby Thrasher shall file a complete and final
19 Purchase Contract for the ERC Entities, as previously ordered.

20 IT IS FURTHER ORDERED that the proceeding shall be continued to **February 18, 2014, at**
21 **10:00 a.m.**, at the Commission's offices, 1200 West Washington Street, Hearing Room No. 2,
22 Phoenix, Arizona, as previously ordered.

23 IT IS FURTHER ORDERED that the parties shall reserve **February 19, 20, 24, 25, 26, 27,**
24 **and March 3, 4, 5, and 6, 2014**, for additional days of hearing, if necessary.

25 IT IS FURTHER ORDERED that **if the parties reach a resolution of the issues raised in**
26 **the Notice prior to the hearing, the Division shall file a Motion to Vacate the proceeding.**

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28 ...

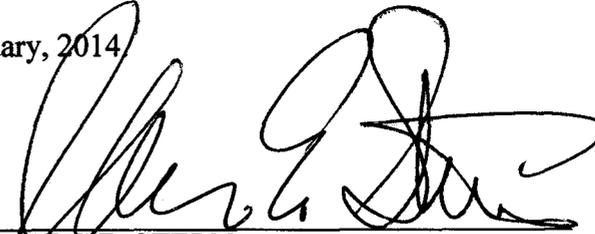
1 IT IS FURTHER ORDERED that the Ex Parte Rule (A.A.C. R14-3-113-Unauthorized
2 Communications) is in effect and shall remain in effect until the Commission's Decision in this
3 matter is final and non-appealable.

4 IT IS FURTHER ORDERED that all parties must comply with Rules 31 and 38 of the Rules
5 of the Arizona Supreme Court and A.R.S. § 40-243 with respect to the practice of law and admission
6 *pro hac vice*.

7 IT IS FURTHER ORDERED that withdrawal or representation must be made in compliance
8 with A.A.C. R14-3-104(E) and Rule 1.16 of the Rules of Professional Conduct (under Rule 42 of the
9 Rules of the Arizona Supreme Court). Representation before the Commission includes appearances
10 at all hearings and procedural conferences, as well as all Open Meetings for which the matter is
11 scheduled for discussion, unless counsel has previously been granted permission to withdraw by the
12 Administrative Law Judge or the Commission.

13 IT IS FURTHER ORDERED that the Presiding Administrative Law Judge may rescind, alter,
14 amend, or waive any portion of this Procedural Order either by subsequent Procedural Order or by
15 ruling at hearing.

16 DATED this 29th day of January, 2014

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20 
MARC E. STERN
ADMINISTRATIVE LAW JUDGE

21 Copies of the foregoing mailed/delivered
22 this 29th day of January, 2014 to:

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