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BEFORE THE ARIZONA CORPORATION COMMISSION

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2016 AUG 11 P 4:48

COMMISSIONERS

DOUG LITTLE - Chairman
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

In the matter of:)
)
 Robert J. Moss and Jennifer L. Moss, husband)
 and wife,)
)
 The Fortitude Foundation, an Arizona)
 corporation,)
)
 Ventures 7000, LLC, an Oklahoma limited)
 liability company,)
)
 Jeffrey D. McHatton and Starla T. McHatton,)
 husband and wife,)
)
 Robert D. Sproat and Jane Doe Sproat,)
 husband and wife,)
)
 Kevin Krause and Jane Doe Krause, husband)
 and wife, and)
)
 Vernon R. Twyman, Jr., a single man,)
)
 Respondents.)

DOCKET NO. S-20953A-16-0061

**SECURITIES DIVISION'S RESPONSE
TO MOTION TO CONTINUE HEARING**

Arizona Corporation Commission

DOCKETED

AUG 11 2016

DOCKETED BY *[Signature]*

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") respectfully requests that this Tribunal deny the Motion to Continue Hearing filed by Respondents Ventures 7000, LLC ("Ventures 7000") and Vernon R. Twyman, Jr. ("Twyman") on August 9, 2016.

MEMORANDUM OF POINTS AND AUTHORITIES

Relevant Procedural Facts

On February 23, 2016, the Division filed the original Temporary Order to Cease and Desist ("TC&D") and Notice of Opportunity for Hearing ("Notice") in this matter. On April 25, 2016, Ventures 7000 was served. See Affidavit of Service of Process filed 5/4/2016. On May 6, 2016,

1 Twyman, as Ventures 7000's manager, filed its Request for Hearing. On May 17, 2016, Twyman filed
2 Ventures 7000's Answer to the original TC&D and Notice.

3 Previously, on March 16, 2016, the Division attempted to serve Twyman with the original
4 TC&D and Notice via certified mail, return receipt requested, pursuant to R14-4-303(D)(5). A true and
5 correct photocopy of the envelope the Division sent is attached hereto as **Exhibit 1**. The envelope went
6 unclaimed. *See Exhibit 1*. The Postal Service returned the envelope to the Division. *See id.*

7 On May 25, 2016, this Tribunal held a prehearing conference. Neither Mr. Twyman nor any
8 other representative of Ventures 7000 attended. *See* Transcript filed on 6/7/2016. At that prehearing
9 conference, the Division stated its intent to amend the TC&D and Notice. *Id.* at page 4, lines 9-18. The
10 Division also requested that the hearing be set for September 2016, but the Tribunal declined to set a
11 definite hearing date. *See id.* at page 9, lines 21-25.

12 On July 1, 2016, the Division filed a Motion for Leave to File Amended Temporary Order to
13 Cease and Desist and Notice of Opportunity for Hearing ("Amended TC&D and Notice"). The Division
14 served a copy of that Motion, which included the proposed Amended TC&D and Notice, on Ventures
15 7000 by mail in care of Twyman as its Manager. Also on July 1, 2016, this Tribunal issued a Procedural
16 Order setting the hearing that Ventures 7000 and other respondents requested to begin on September
17 19, 2016.

18 On July 14, 2016, this Tribunal granted the Division's Motion for Leave to File Amended
19 TC&D and Notice. On July 19, 2016, the Division filed the Amended TC&D and Notice and
20 immediately began attempting service. Specifically, that same day, the Division's undersigned counsel
21 emailed a courtesy copy of the Amended TC&D and Notice to Oklahoma attorney Mickey K. Leslie,
22 who is Venture 7000's registered agent. A true and correct copy of that email without the attachment
23 is contained in the email string attached hereto as **Exhibit 2**. The Division requested that Mr. Leslie
24 accept service of the Amended TC&D for Ventures 7000 and Twyman. Mr. Leslie agreed to accept
25 service for Ventures 7000 but not for Twyman. *See Exhibit 2*.

26

1 On July 20, 2016, a Colorado attorney for Twyman and Ventures 7000, Kit Barron Bradshaw,
2 telephoned the Division's undersigned counsel and discussed that Twyman and Ventures 7000 were
3 in the process of retaining Arizona counsel. In an email that same day, the Division sent Mr.
4 Bradshaw copies of the Procedural Order dated July 1, 2016, setting the hearing to begin on
5 September 19, 2016. A true and correct copy of that email without the attachments is attached hereto
6 as **Exhibit 3**. The Division again requested that Twyman agree to be served with the Amended
7 TC&D and Notice through his counsel. *See Exhibit 3*. Mr. Bradshaw did not agree to accept service.

8 On August 2, 2016, attorneys Robert Mitchell, Megan Jury and Sarah Deutsch entered their
9 Notice of Appearance for Twyman and Ventures 7000.

10 On August 3, 2016, the Sheriff's Office in Tulsa, Oklahoma personally served Twyman with
11 the Amended TC&D and Notice on behalf of the Division. The Division will file an affidavit of service
12 when it receives one from the Tulsa Sheriff's Office.

13 **There is No Good Cause to Continue the Hearing.**

14 Continuances require "a showing of good cause." R14-3-109(Q), Rules of Practice and
15 Procedure Before the Corporation Commission. Here, Ventures 7000 and Twyman attempt to
16 leverage Twyman's efforts to avoid service of process, which succeeded until August 3rd, into good
17 cause to continue the hearing. That is the antithesis of good cause. Twyman should not be rewarded
18 with a continuance because he avoided service.

19 The hearing date should not have come as a surprise to Twyman and Ventures 7000 because
20 the Division requested that the hearing be set in September at the prehearing conference that was held
21 on May 25, 2016. Neither Twyman nor any other representative of Ventures 7000 attended that
22 prehearing conference, however. If they had, they could have objected to the Divisions' request that
23 the hearing be set for September 2016. Having elected not appear, they should not be heard now to
24 complain about the hearing date that was set.

1 The filing of the Amended TC&D and Notice is no reason for Twyman or Ventures 7000 to
2 seek a continuance. The amendment decreased the amount of restitution they allegedly owe. See
3 Redline attached as Exhibit 2 to Motion for Leave to File Amended TC&D and Notice.

4 Twyman and Ventures 7000 delayed until recently to retain counsel. Ventures 7000 was first
5 served in this action on April 25, 2016, and Twyman has known of this action since at least May 6,
6 2016, when he filed Ventures 7000's Request for Hearing. Their delay in seeking counsel does not
7 constitute good cause for a continuance.

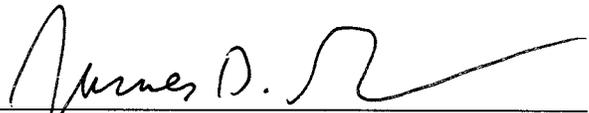
8 Finally, Mr. Mitchell, Ms. Jury and Ms. Deutsch accepted their representation of Ventures
9 7000 and Twyman knowing that the hearing is set to begin on September 19, 2015. If they did not
10 feel they could adequately represent their clients at the September 19th hearing, they should have
11 declined the representation. Having accepted it, however, they should abide by the hearing schedule
12 that was set back on July 1, 2016. Mr. Mitchell, Ms. Jury and Ms. Deutsch still have nearly six (6)
13 weeks to prepare for the September 19th hearing.

14 **Conclusion**

15 Ventures 7000 and Twyman have failed to demonstrate any good cause to continue the
16 scheduled hearing. The Division respectfully requests that the Motion to Continue Hearing be denied.

17 RESPECTFULLY SUBMITTED this 11th day of August, 2016.

18 ARIZONA CORPORATION COMMISSION

19
20 By 
21 James D. Burgess
22 Attorney for the Securities Division
23 Arizona Corporation Commission
24
25
26

1 On this 11th day of August, 2016, the foregoing document was filed with Docket Control as a
2 Securities Division Response to Motion, and copies of the foregoing were mailed on behalf of the
3 Securities Division to the following who have not consented to email service. On this date or as
4 soon as possible thereafter, the Commission's eDocket program will automatically email a link to
5 the foregoing to the following who have consented to email service. On this date, an e-mail was
6 also sent by the undersigned to any of the following who have consented to email service.

7 COPY of the foregoing hand-delivered
8 this 11th day of August, 2016, 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 COPIES of the foregoing sent via U.S. Mail
15 this 11th day of August, 2016, to:

16 Jeffrey D. McHatton and Starla T. McHatton, and The Fortitude Foundation
17 P.O. Box 1983
18 Higley, Arizona 85236
19 Respondents Pro Se

20 Robert J. Moss and Jennifer L. Moss
21 125 West Baylor Lane
22 Gilbert, AZ 85233
23 Respondents Pro Se

24 Kevin H. Krause and Jane Doe Krause
25 4245 E. Cielo Azul
26 Tucson AZ 85711
Respondents Pro Se

Robert D. Mitchell
Megan R. Jury
Sarah K. Deutsch
TIFFANY & BOSCO, P.A.
2525 E. Camelback Road, 7th Floor
Phoenix, AZ 85016-4229
Attorneys for Vernon R. Twyman, Jr. and Ventures 7000, LLC

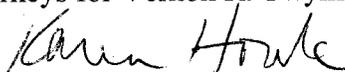
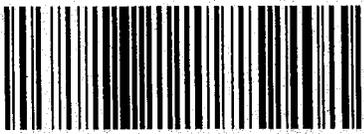


Exhibit 1

CERTIFIED MAIL™



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RETURN TO SENDER
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SIXIN

in this box

Class Mail
Age & Fees Paid
S
Pit No: G-10

Arizona Corporation Commission
Securities Division
1300 W. Washington - 3rd Floor
Phoenix, AZ 85007

8481
SAUTE

UNCLAIMED

Vernon Twyman
5316 81st Street E.
Tulsa, OK 74137

4187

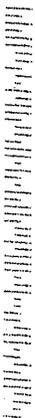
Received

MAY 02 2016

Arizona Corp. Commission
Securities Division

1st NOTICE
2nd NOTICE
RETURNED

4-16-2016



POST CLASS MAIL
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011E13060678

Exhibit 2

James Burgess

From: James Burgess
Sent: Wednesday, July 20, 2016 2:05 PM
To: mickleslie@att.net
Cc: Kit Bradshaw; Toni Brown; James Burgess
Subject: RE: Ventures 7000, LLC and Vernon R. Twyman, Jr.

Dear Mr. Leslie,

With respect to your agreement to accept service of process for Ventures 7000, LLC, thank you.

James ("Jamie") Burgess
Senior Enforcement Attorney
Securities Division, Arizona Corporation Commission
1300 West Washington, Third Floor
Phoenix, Arizona 85007
(602) 542-0171
jburgess@azcc.gov

From: Mick Leslie [mailto:mickleslie@sbcglobal.net]
Sent: Wednesday, July 20, 2016 11:38 AM
To: James Burgess <JBurgess@azcc.gov>
Cc: Kit Bradshaw <kbradshaw@barronfirm.com>
Subject: RE: Ventures 7000, LLC and Vernon R. Twyman, Jr.

Mr. Burgess:

I will agree to accept service of the TC&D on behalf of Ventures 7000, LLC. I do not have permission or authority to accept service on behalf of Mr. Twyman personally.

Mick

Leslie & Associates PLLC
Mickey K. Leslie, Attorney at Law
6212 E. 89th Street
Tulsa, Oklahoma 74137
Phone: (918) 481-1907

Facsimile: (918) 921-5642
Cell: (918) 637-9286

From: James Burgess [<mailto:JBurgess@azcc.gov>]
Sent: Tuesday, July 19, 2016 6:58 PM
To: Mickey K. Leslie Esq. (mickleslie@sbcglobal.net)
Cc: Toni Brown; James Burgess
Subject: Ventures 7000, LLC and Vernon R. Twyman, Jr.

Dear Mr. Leslie,

Please find attached a courtesy copy of the Amended Temporary Order to Cease and Desist and Notice of Opportunity for Hearing ("TC&D") that the Securities Division filed today. Will you agree to accept service of process on behalf of Ventures 7000, LLC?

In addition, are you authorized to accept service of process for Vernon R. Twyman, Jr.?

Please let us know. Thank you.

James ("Jamie") Burgess
Senior Enforcement Attorney
Securities Division, Arizona Corporation Commission
1300 West Washington, Third Floor
Phoenix, Arizona 85007
(602) 542-0171
jburgess@azcc.gov

Exhibit 3

James Burgess

From: James Burgess
Sent: Wednesday, July 20, 2016 1:51 PM
To: Kit Barron Bradshaw Esq (kbradshaw@barronfirm.com)
Cc: Mickey K. Leslie Esq. (mickleslie@sbcglobal.net); Toni Brown; James Burgess
Subject: Ventures 7000, LLC and Vernon R. Twyman, Jr.
Attachments: 2016 07-01 Procedural Order setting heraring date for Sept 19 2016.pdf; 2016 07-14 Eighth Procedural Order granting Motion for Leave to File Amended TC&D.pdf

Dear Mr. Bradshaw,

Following up on our conversation of a few minutes ago, please find attached the Procedural Order dated July 1, 2016, which sets the hearing to begin on September 19, 2016, and to continue through until October 6, 2016, if necessary; and the Procedural Order dated July 14, 2016, which granted the Division leave to file the Amended Temporary Cease and Desist Order and Notice of Opportunity for Hearing ("Amended TC& D") and reaffirmed the hearing dates. Please note that the Procedural Orders require the parties to exchange their lists of witnesses and exhibits on August 5, 2016.

You may access the docket in this matter on-line at <http://edocket.azcc.gov/>.

As we discussed, I would appreciate it if Mr. Twyman will reconsider the Division's request that it be able to serve him with the Amended TC& D through his counsel, whether that be Mr. Leslie, you or another attorney. If Mr. Twyman prefers to be served in person, however, we can certainly make that happen.

Regards,

James ("Jamie") Burgess
Senior Enforcement Attorney
Securities Division, Arizona Corporation Commission
1300 West Washington, Third Floor
Phoenix, Arizona 85007
(602) 542-0171
jburgess@azcc.gov