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BEFORE THE ARIZONA CORPORATION COMMISSION

In the Matter of:

Visionary Business Works, Inc., d/b/a Fleetronix,

Robert Brian Brauer and Melissa Brauer,

Timothy John Wales and Stacey Wales,

Respondents.

NO. S-20976A-16-0210

**WALES REPLY TO SECURITIES
DIVISION OPPOSITION TO WALES
MOTION TO DEPOSE WITNESSES**

Arizona Corporation Commission

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Come now Respondents Timothy John Wales and Stacey Wales (hereafter "Wales") and reply to the "Securities Division's Response to Motion for Order Permitting Prehearing Depositions."

Counsel for the Division states in the third paragraph of his response, "Administrative proceedings are intended to be speedier and less costly than civil litigation, as demonstrated by the limited discovery allowed by the Arizona Procedures Act and the Commission's Rules." This is exactly the problem.

The administrative law process exists for the convenience of the government. It is the culmination of the twentieth century progressive movement. The government is the friend of the people. We should not burden the government when it is attempting to do the people's work. Rules of civil procedure and evidence are burdens.

The Commission promulgates substantive rules of conduct. The Commission then considers whether to authorize investigations into whether the Commissions rules have been violated. If the Commission authorizes an investigation, the investigation is conducted by the Commission, which reports its findings to the Commission. The Commission may withhold materials discovered during its investigation. If the Commission thinks the findings warrant an enforcement action, the Commission issue a complaint. The Commission's complaint is then prosecuted by the Commission and adjudicated by a judge employed by the Commission.

1 The rules of procedure and evidence applicable to constitutional courts, built around the
2 concept of fairness and due process of law are not applicable in the Commission's courts. They use
3 their own rules of procedure and their own rules on admissibility of evidence. Discovery rules,
4 which are designed to facilitate the collection of information necessary to fully examine a dispute in
5 court, are not applicable to the Commission's proceedings.

6 If the Commission's Judge finds against a party, the party can then appeal to a court. But
7 the citizen does not get a new trial in the court. There is no trial de novo. The citizen is stuck with
8 the limited scope of the evidence that could be developed and presented in the Commission's
9 system.

10 Yet serious negative consequences confront the citizen in an administrative prosecution,
11 similar to the consequences of being convicted of a crime. But the government's burden of proof is
12 preponderance of the evidence, not proof beyond a reasonable doubt.

13 It is remarkable that this process developed over the course of the late 20th century. The
14 wholesale grant of subject matter authority to government agencies was really a return to practices
15 prevalent prior to the development of American constitutional law.

16 The Administrative law scheme is really for the convenience of the government and to
17 facilitate the agencies exercise of its powers. The rights of and injury to the citizens swept up in the
18 process are quite literally a secondary consideration in the scheme of administrative law.

19 This is not the forum, or the vehicle to litigate the issue, but it should be noted that there is a
20 growing movement to roll back the administrative law scheme. Columbia Law School Professor
21 Philip Hamburger published "*Is Administrative Law Unlawful?*" in 2014 and has been a much
22 sought after speaker at legal symposia. Public interest law firms are being formed with the express
objective and purpose of challenging administrative law schemes.

Hamburger argues that the development of administrative law is nothing less than a return to
a system of royal prerogatives that prevailed prior to the development of principles limiting
government power with constitutions. The development of the administrative law scheme is sold as
a unique response to modern societies complexities. But, it is a return to what existed prior to the
classical liberal ideological revolution of the 18th century. The creation of executive prerogatives,
for the benefit of the executive, has deep historical roots. It was beaten back by English
constitutional ideas in the 17th century and even more decisively by the American constitution in
the 18th century. Attacking limits on the government's powers reemerged during the Progressive
Era of the 20th Century.

1 The Wales take the position here that the entire administrative prosecution undertaken by the
2 Commission in this matter is a violation of the Wales due process rights under the Fifth and
3 Fourteenth Amendments to the United States Constitution. The Wales are aware that the the due
4 process argument was made, without success, by the victims of the government's prosecution in
5 *Chevron v. Natural Resources Defense Counsel*, 467 U.S. 837 (1984). However, it is time to revisit
6 the *Chevron* holding.

7 Of particular concen in the Commission's complaint are the fraud allegations. The
8 Commission seeks to hold the Wales responsible for the conduct of an employee of VBW who
9 found the Wight investors. This employee, Robert Brauer, the former CFO of VBW, is also a
10 respondent in this matter.

11 The Wales instructed Brauer to be completely honest and transparent in any contact with
12 potential investors. Yet, it appears that the Wights complaint to the Commission has driven this
13 matter to it's current state. The Wales have no idea what the Wight's have told the commission, or
14 what they claim Brauer said to them, which might have induced them to invest.

15 One important fact ommitted from the Commissions facts in the complaint is that Brauer
16 embezzled \$249,420.00 from VBW. The Wales later learned that he kept two sets of books. At this
17 date, the Wales have no idea what financial statements and projections Brauer gave the Wights.

18 The Commission alleges that Brauer gave the Wights inaccurate and fraudulent financial
19 statements inducing them to invest. It is entirely possible that he gave them the financial statements
20 he was providing to the Wales. These financial statements were designed by Brauer to hide his
21 embezzlement. They would have been accurate, but for the hidden embezzlement.

22 The Wales need to discover, prior to the hearing what representations and what financial
statements were provide to the Wights by Brauer. They can then develop further evidence to defend
themselves from the allegations made by the Commission. The alternative is to allow the Wales to
be "surprised" by the testimony of the Wights at the hearing.

 And of course, on appeal, should there be an unfavorable ruling, there is no trial de novo in a
Court. The Wales are faced with this Hobsian choice for the convenience of the Commission.

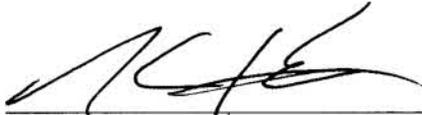
 Similarly, the pre-hearing deposition of Brauer is critical to the defense on the fraud charges.
Counsel does not know if Mr. Brauer would appear on a deposition subpoena, but to prepare the
Wales defense, the effort must be made. The undertaking to get Brauer's testimony on record prior
to the hearing is related to the motion to continue filed by the the Wales.

1 Should the Commission issue a subpoena for Mr. Brauer, it is our understanding that he now
2 resides in Florida. The Wales will have to use the interstate compact relating the mutual enforcement
of civil process to give the subpoena the effect of law in Florida.

3 With respect to Mr. Warren, based on the theory of the prosecution set out in the Division's
4 response, the Wales will foregoe the request to depose Mr. Warren. Same for Mr. Cano and Mr. De
Las Casas, based on the statements set out by Division counsel in the response.

5 DATED this 17th day of December 2016.

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9 Original filed with Arizona Corporation Commission
December 17, 2016 with copy to:

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