**BEFORE THE ARIZONA CORPORATION COMMISSION**

**COMMISSIONERS**

JIM O’CONNOR – Chairman

LEA MÁRQUEZ PETERSON

ANNA TOVAR

KEVIN THOMPSON

NICK MYERS

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|  | DOCKET NO. **ADMINISTRATIVE SUBPOENA** |
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TO: **Custodian of Records**

 **YOU ARE HEREBY COMMANDED**, pursuant to Arizona Constitution Article 15 § 4, A.R.S. §§ 40-241, 40-244, A.A.C. R14-2-801 *et seq*., A.A.C. R14-3-109, and Ariz. R. Civ. P. 30 and 45, to produce and permit inspection, copying, testing or sampling for the following designated documents, electronically stored information or tangible things, or to permit the inspection of premises. *See* Exhibit “A.”

**Place of Production or Inspection**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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 Phoenix, Arizona 85007

**Date and Time of Production**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**Your Duties in Responding To This Administrative Subpoena**

1. **Exhaustion of Administrative Remedies:** The doctrine of administrative remedies applies when a statute or rule establishes an administrative review procedure and determines when judicial review is available. The following provisions govern the procedure for responding and objecting to Commission administrative subpoenas and must be followed prior to seeking any available judicial remedies under Ariz. R. Civ. P. Rule 45.

**Generally – the Commission’s Power to Inspect and Investigate.** Pursuant to Ariz. Const. art. XV, § 4, the corporation commission, and the several members thereof, shall have power to inspect and investigate the property, books, papers, business, methods, and affairs of any corporation whose stock shall be offered for sale to the public and of any public service corporation doing business within the state, and for the purpose of the commission, and of the several members thereof, shall have the power of a court of general jurisdiction to enforce the attendance of witnesses and the production of evidence by subpoena, attachment, and punishment, which said power shall extend throughout the state. Said commission shall have power to take testimony under commission or deposition either within or without the state. Furthermore, pursuant to A.R.S. § 40-244(A), “[e]ach commissioner may administer oaths and certify to all official acts. The commission, or a commissioner, or any party, may take depositions as in a court of record.”

**Commission Subpoenas.** Pursuant to A.A.C. R14-3-109(O), subpoenas requiring the attendance of a witness from any place in the state of Arizona to any designated place of hearing for the purpose of taking testimony of such witnesses orally before the Commission may be issued upon application in writing. A subpoena may also command the person to whom it is directed to produce books, papers, documents or tangible things designated therein. The application for such subpoenas must specify, as clearly as possible, the books, waybills, papers, accounts or other documents desired.

**Service.** If service of subpoena is made by an officer of the state or his deputy, such service shall be evidenced by his return thereon. In case of failure to make service, the reasons for the failure shall be stated on the original subpoena. In making service the original subpoena shall be exhibited to the person served, shall be read to him if he is unable to read, and a copy thereof shall be left with him. The original subpoena, bearing or accompanied by the required return, shall be returned forthwith to the Commission. A.A.C. R14-3-109(O).

**Objections:** Per A.A.C. R14-3-109(O), the Commission or presiding officer, upon motion made promptly and, in any event, at or before the time specified in the subpoena for compliance therewith may:

* + 1. Quash the subpoena if it is unreasonable or oppressive, or
		2. Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued, of the reasonable cost of producing the books, waybills, papers, accounts or other documents desired.

**Fees.** Witnesses who are summoned are entitled to the same fees as are paid for like service in the courts of the state of Arizona, such fees to be paid by the party at whose instance the witness is subpoenaed. A.A.C. R14-3-109(O). Pursuant to A.R.S. § 40-244(B), each witness who appears by order of the commission or a commissioner shall receive for his attendance the same fees allowed by law to a witness in civil actions, which shall be paid by the party at whose request the witness is subpoenaed. The fees of a witness subpoenaed by the commission shall be paid from the fund appropriated for the use of the commission as other expenses of the commission are paid. Any witness subpoenaed, except one subpoenaed by the commission, may, at the time of service, demand his mileage and one days attendance, and if not paid need not attend. A witness furnished free transportation shall not receive mileage.

**Depositions.** The Commission, a Commissioner, or any party to any proceeding before it may cause the depositions of witnesses to be taken in the manner prescribed by law and of the civil procedure for the Superior Court of the state of Arizona. A.A.C. R14-3-109(P).

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**Your Duties in Responding To a Civil Subpoena**

1. **Judicial Remedies Available Under Ariz. R. Civ. P. 45:** Following the exhaustion of any and all administrative remedies governing administrative subpoenas issued by the Commission and barring any conflicting provisions in the statutes and rules governing administrative subpoenas issued by the Commission, the following provisions govern a respondent’s procedure for responding and objecting to a subpoena, pursuant to Rule 45 of the Arizona Rules of Civil Procedure.

***Attendance at a Trial*.** If this subpoena commands you to appear at a trial, you must appear at the place, date and time designated in the subpoena unless you file a timely motion with the court and the court quashes or modifies the subpoena. *See* Rule 45(b)(5) and Rule 45(e)(2) of the Arizona Rules of Civil Procedure. *See also* “Your Right To Object To This Subpoena” section below. Unless a court orders otherwise, you are required to travel to any part of the state to attend and give testimony at a trial. *See* Rule 45(b)(3)(A) of the Arizona Rules of Civil Procedure.

***Attendance at a Hearing or Deposition*.** If this subpoena commands you to appear at a hearing or deposition, you must appear at the place, date and time designated in this subpoena unless either: (1) you file a timely motion with the court and the court quashes or modifies the subpoena; or (2) you are not a party or a party's officer and this subpoena commands you to travel to a place other than: (a) the county where you reside or you transact business in person; or (b) the county where you were served with the subpoena or within forty (40) miles from the place of service; or (c) such other convenient place fixed by a court order. *See* Rule 45(b)(3)(B) and Rule 45(e)(2)(A)(ii) of the Arizona Rules of Civil Procedure. *See also* “Your Right To Object To This Subpoena” section below.

***Production of Documentary Evidence*.** If this subpoena commands you to produce and permit inspection, copying, testing, or sampling of designated documents, electronically stored information, or tangible things, you must make the items available at the place, date, and time designated in this subpoena, and in the case of electronically stored information, in the form or forms requested, unless you provide a good faith written objection to the party or attorney who served the subpoena. You may object to the production of electronically stored information from sources that you identify as not reasonably accessible because of undue burden or expense, including sources that are unduly burdensome or expensive to access because of the past good-faith operation of an electronic information system or good-faith and consistent application of a document retention policy. *See* Rule 45(c)(2)(D) of the Arizona Rules of Civil Procedure. Other grounds for objection are described in the “Your Right To Object To This Subpoena” section below. If this subpoena does not specify a form for producing electronically stored information, you may produce it in native form or in another reasonably usable form that will enable the receiving party to have the same ability to access, search, and display the information as the responding person, but you need not produce the same electronically stored information in more than one form. *See* Rule 45(c)(2)(B) and (C) of the Arizona Rules of Civil Procedure.

If the subpoena commands you to produce documents, you have the duty to produce the designated documents as they are kept by you in the usual course of business, or you may organize the documents and label them to correspond with the categories set forth in the subpoena. *See* Rule 45(c)(4) of the Arizona Rules of Civil Procedure.

***Inspection of Premises*.** If the subpoena commands you to make certain premises available for inspection, you must make the designated premises available for inspection on the date and time designated in this subpoena unless you provide a good faith written objection to the party or attorney who served the subpoena. *See* Rule 45(c)(6) of the Arizona Rules of Civil Procedure. *See also* “Your Right to Object to This Subpoena” section below.

***Combined Subpoena*.** You should note that a command to produce certain designated materials, or to permit the inspection of premises, *may* be combined with a command to appear at a trial, hearing, or deposition. *See* Rule 45(b)(2) of the Arizona Rules of Civil Procedure. You do not, however, need to appear in person at the place of production or inspection unless the subpoena *also* states that you must appear for and give testimony at a hearing, trial or deposition. *See* Rule 45(c)(3) of the Arizona Rules of Civil Procedure.

**Your Right To Object To This Subpoena**

***Generally*.** If you have concerns or questions about this subpoena, you should first contact the party or attorney who served the subpoena. The party or attorney serving the subpoena has a duty to take reasonable steps to avoid imposing an undue burden or expense on you. The superior court enforces this duty and may impose sanctions upon the party or attorney serving the subpoena if this duty is breached. *See* Rule 45(e)(1) of the Arizona Rules of Civil Procedure. Unless otherwise ordered by the court for good cause, the party seeking discovery from you must pay your reasonable expenses incurred in responding to a subpoena seeking the production of documents, electronically stored information, tangible things, or an inspection of premises. If you seek payment of expenses other than routine clerical and per-page copying costs as allowed by A.R.S. § 12-351, you must object on the grounds of undue burden to producing the materials without the subpoenaing party's payment, and send an advance estimate of those expenses to the subpoenaing party, before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier. You need not comply with those parts of the subpoena that are the subject of the objection, unless the court orders you to do so. The court may enter an order conditioning your response to the subpoena on payment of your additional expenses, including ordering payment of those expenses in advance. *See* Rule 45(e)(1)(B).

***Procedure for Objecting to a Subpoena for Attendance at a Hearing, Trial or Deposition*.** If you wish to object to a subpoena commanding your appearance at a hearing, trial or deposition, you must file a motion to quash or modify the subpoena with the court to obtain a court order excusing you from complying with this subpoena. *See* Rules 45(b)(5) and 45(e)(2) of the Arizona Rules of Civil Procedure. The motion must be filed in the superior court of the county in which the case is pending or in the superior court of the county from which the subpoena was issued. *See* Rule 45(e)(2)(A) and (B) of the Arizona Rules of Civil Procedure. The motion must be filed before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier. *See* Rule 45(e)(2)(D) of the Arizona Rules of Civil Procedure. You must send a copy of any motion to quash or modify the subpoena to the party or attorney who served the subpoena. *See* Rule 45(e)(2)(E) of the Arizona Rules of Civil Procedure. Even if you file such a motion, you must still attend and testify at the date, time, and place specified in the subpoena, unless excused from doing so--by the party or attorney serving the subpoena or by a court order--before the date and time specified for your appearance. *See* Rule 45(b)(5) of the Arizona Rules of Civil Procedure.

The court *must* quash or modify a subpoena:

(1) if the subpoena does not provide a reasonable time for compliance;

(2) unless the subpoena commands your attendance at a trial, if you are not a party or a party's officer and if the subpoena commands you to travel to a place other than: (a) the county where you reside or transact business in person; (b) the county where you were served with a subpoena, or within forty (40) miles from the place of service; or (c) such other convenient place fixed by a court order; or

(3) if the subpoena requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(4) if the subpoena subjects you to undue burden.

*See* Rule 45(e)(2)(A) of the Arizona Rules of Civil Procedure.

The court *may* quash or modify a subpoena:

(1) if the subpoena requires you to disclose a trade secret or other confidential research, development or commercial information;

(2) if you are an unretained expert and the subpoena requires you to disclose your opinion or information resulting from your study that you have not been requested by any party to give on matters that are specific to the dispute;

(3) if you are not a party or a party's officer and the subpoena would require you to incur substantial travel expense; or

(4) if the court determines that justice requires the subpoena to be quashed or modified.

*See* Rule 45(e)(2)(B) of the Arizona Rules of Civil Procedure.

In these last four circumstances, a court may, instead of quashing or modifying a subpoena, order your appearance or order the production of material under specified conditions if: (1) the serving party or attorney shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and (2) if your travel expenses or the expenses resulting from the production are at issue, the court ensures that you will be reasonably compensated. *See* Rule 45(e)(2)(C) of the Arizona Rules of Civil Procedure.

***Procedure for Objecting to Subpoena for Production of Documentary Evidence*.** If you wish to object to a subpoena commanding you to produce documents, electronically stored information or tangible items, or to permit the inspection of premises, you may send a good faith written objection to the party or attorney serving the subpoena that objects to: (1) producing, inspecting, copying, testing, or sampling any or all of the materials designated in the subpoena; (2) inspecting the premises; or (3) producing electronically stored information in the form or forms requested or from sources that are not reasonably accessible because of undue burden or expense, the good-faith routine operation of an electronic information system, or the good-faith and consistent application of a document retention policy. You also may object on the ground that the subpoena seeks the production of materials that that have already been produced in the action or that are available from parties to the action. *See* Rule 45(e)(1)(A). If you seek payment of expenses other than routine clerical and per-page copying costs as allowed by A.R.S. § 12-351, you must object on the grounds of undue burden to producing the materials without the subpoenaing party's payment, and provide an advance estimate of those additional expenses. You must send your written objection to the party or attorney who served the subpoena before the time specified for compliance or within 14 days after the subpoena is served, whichever is earlier. *See* Rule 45(c)(6)(A)(i) and (ii) of the Arizona Rules of Civil Procedure.

If you object because you claim the information requested is privileged, protected, or subject to protection as trial preparation material, you must express the objection clearly, and identify in writing the information, document, or electronically stored information withheld and describe the nature of that information, document, or electronically stored information in a manner that--without revealing information that is itself privileged or protected--will enable the demanding party to assess the claim. *See* Rules 26(b)(6)(A) and 45(c)(5)(A) of the Arizona Rules of Civil Procedure. You may object to providing the information required by Rule 26(b)(6)(A) if providing the information would impose an undue burden or expense.

If you object to the subpoena in writing, you do not need to comply with the subpoena until a court orders you to do so. It will be up to the party or attorney serving the subpoena to first personally consult with you and engage in good faith efforts to resolve your objection and, if the objection cannot be resolved, to seek an order from the court to compel you to provide the documents or inspection requested, after providing notice to you. *See* Rule 45(c)(6)(B) and (C) of the Arizona Rules of Civil Procedure.

If you are not a party to the litigation, or a party's officer, the court will issue an order to protect you from any significant expense resulting from the inspection and copying commanded. *See* Rule 45(c)(6)(B) of the Arizona Rules of Civil Procedure.

Instead of sending a written objection to the party or attorney who served the subpoena, you also have the option of raising your objections in a motion to quash or modify the subpoena, or through a motion for protective order. *See* Rule 45(c)(6)(B) and (e)(2) of the Arizona Rules for Civil Procedure. The procedure and grounds for doing so are described in the section above entitled “Procedure for Objecting to a Subpoena for Attendance at a Hearing, Trial or Deposition.”

If the subpoena *also* commands your attendance at a hearing, trial or deposition, sending a written objection to the party or attorney who served the subpoena does not suspend or modify your obligation to attend and give testimony at the date, time and place specified in the subpoena. *See* Rule 45(c)(6)(A)(iii) of the Arizona Rules of Civil Procedure. If you wish to object to the portion of this subpoena requiring your attendance at a hearing, trial or deposition, you must file a motion to quash or modify the subpoena as described in the section above entitled “Procedure for Objecting to a Subpoena for Attendance at a Hearing, Trial or Deposition.” *See* Rule 45(b)(5) and 45(c)(6)(A)(iii) of the Arizona Rules of Civil Procedure. Even if you file such a motion, you must still attend and testify at the date, time, and place specified in the subpoena, unless excused from doing so--by the party or attorney serving the subpoena or by a court order--before the date and time specified for your appearance. *See* Rule 45(b)(5) of the Arizona Rules of Civil Procedure.

**Disobedience of this subpoena** constitutes contempt of the Arizona Corporation Commission and may subject you to further proceedings and penalties under law, pursuant to

A.R.S. § 40-424.

Given under by hand the seal of the Arizona Corporation Commission this \_\_\_ day of \_\_\_, 20\_\_.

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 Arizona Corporation Commission