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1 MICHAEL D. KIMERER (AZ #002492)
1313 E. Osborn Rd. - Suite 100
2 Phoenix, AZ 85014
mdk@kimerer.com
3 (602) 279-5900

4
5 TIMOTHY J. GALLIGAN (CA #92174)
Pro Hac Vice Attorney (in process)
6 5 Borealis Way
Castle Rock, CO 80108
7 timothyjgalligan@yahoo.com
(650) 504-7788

Arizona Corporation Commission

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10 Attorneys for Respondents

11
12 **BEFORE THE ARIZONA CORPORATIONS COMMISSION**

15 DAVID PAUL SMOOT and MARIE
KATHLEEN SMOOT (aka KATHY SMOOT),
16 husband and wife,

) Docket No.: S-20814A-11-0313

) **DECLARATION IN SUPPORT OF
MOTION FOR CONTINUANCE**

17 NATIVE AMERICAN WATER, LLC (dba
"NATAWA"), an Arizona limited company,

18 NATAWA COPRORATION (dba "NATAWA"),
19 a Delaware corporation with previous
authorization to conduct business in Arizona
20 as a foreign corporation, and

21 AMERICAN INDIAN TECHNOLOGIES
INTERNATIONAL, LLC (aka "AITI"), an
22 Arizona limited liability company,

) Judge: MARC E. STERN

23 Respondents.
24

25
26 I, TIMOTHY J. GALLIGAN, ESQ. hereby declare:

27 1. I am over the age of 18 and was previously a *pro hac vice* attorney for subject case.
28

1 2. The Securities Division of the Arizona Corporations Commission ("Division") filed a
2 Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist... ("NOH")
3 against Respondents on October 20, 2011.

4 3. Between 2011 and 2013, I managed all of the Respondents' responses to document
5 subpoenas, communicated with four different and successive Division attorneys at least 34 times in
6 writing and many times verbally as to various misstatements of law and fact in their NOH, led the
7 defense of Respondents and requested amendments, retractions, dismissal and/or case settlement
8 numerous times based on evidence submitted to the Division. All requests were denied.

9 4. From receipt of the Division's initial subpoenas in or about mid-2011 through 2012 and
10 beyond, I was responsible for the vast majority of Respondents' substantive defense in subject case.

11 5. From ALJ STERN's stay order issued on April 4, 2012 until the Division's status motion
12 filed on December 19, 2017 - five years, eight months and 15 days in total - I do not recall receiving
13 any communications from the Division.

14 6. On June 11, 2018 - six years, seven months and 21 days after filing of the NOH - the
15 Division filed an Amended NOH that deleted and edited some, but not all, of the Division's
16 misstatements of law and fact recorded in its initially filed NOH and as requested respectfully and
17 repeatedly in my multiple letters/emails to five successive and sequential Division attorneys:
18 MICHAEL DAILEY, WILLIAM BLACK, JULIE COLEMAN MATTHEW NEUBERT and
19 RYAN MILLECAM.

20 7. Respondents DAVID and KATHLEEN SMOOT are depleted of their financial assets to
21 retain previous counsels JOSEPH MAIS and BRIAN LAKE, and their law firm PERKINS COIE,
22 *et. al.*

23 8. In late 2017, KEITH H. BARATZ, MD of the MAYO CLINIC in Rochester, MN
24 operated on my left eye to correct vision issues. My right eye was enucleated when I was Age 3-4.
25 Approximately two months ago, I developed severe blurriness, cloudiness, "floaters" and an
26 inability to focus in my left eye on a continuing basis post-op. Locating the cursor on my computer
27 and distinguishing between letters/numbers is a serious challenge. I returned to MAYO for a full
28 day of testing on June 13, 2018 and DR. BARATZ diagnosed my condition as "posterior vitreous

1 collapse of the left eye, probably with mild vitreous hemorrhage" (collapse of the vitreous humor
2 and internal bleeding between the retina and lens). His prognosis: "visual function will be limited ...
3 which may take 6-12 months." The relevant GALLIGAN-MAYO CLINIC Chart Note was
4 provided to Division Counsel RYAN MILLECAM as Ex. "1", but is not included here in the public
5 record in the interest of patient/physician confidentiality.

6 9. My wife, PAMELA, suffers from Waldenstrom's Macroglobulinemia, a very rare,
7 incurable and terminal form of blood cancer, and is also treating at the Mayo Clinic in Rochester,
8 MN. She has completed the first phase of chemo treatments, but must now undergo autologous
9 stem cell harvesting, processing and transplantation as the next phase of her cancer battle. Expected
10 duration there as estimated by the Mayo transplant team: 12-14 days. We are working with the
11 hematology, transplant and other scheduling personnel to calendar the procedures this or next
12 month. I am MRS. GALLIGAN's near-full-time care provider. The relevant GALLIGAN-MAYO
13 CLINIC Chart Note from her treating oncologist that documents the need for MRS. GALLIGAN to
14 return to Mayo for stem cell harvesting between July and September, 2018 was provided to
15 Division Counsel RYAN MILLECAM as Ex. "2", but is not included here in the public record in
16 the interest of patient/physician confidentiality.

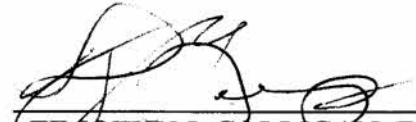
17 10. Local Arizona counsel, MICHAEL KIMERER, has had virtually no previous
18 involvement in ACC-SMOOT case.

19 11. Because of my inability to read and respond to the Division's Amended NOH or defend
20 Respondents, and the need to be a present caregiver for my wife in Rochester and here in the
21 Denver area, I hereby request a continuance of at least 90 days to file an answer and/or file
22 applicable motions to dismiss beyond the date ordered by ALJ STERN in his Ninth Procedural
23 Order. The Division served me with their Amended NOH on June 16, 2018. 30 days thereafter,
24 Respondents' answer date, per JUDGE STERN's order, will be July 16, 2018. 90 days thereafter
25 will be October 14, 2018.

26 12. If DR. BARATZ' estimate of 6-12 months for clearance of my vision issues is accurate,
27 or if there are complications during my wife's transplant procedures or medical condition, I may
28 need to request another extension in the future.

1 13. Because of the Division's delay in prosecuting this case, my *pro hac vice* status expired
2 in our about 2013, but a renewal application was approved by the Arizona State Bar last month and
3 a motion is pending before this Court to grant admission.
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6

7 DATED: July 9, 2018


TIMOTHY J. GALLIGAN, ESQ.

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