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7 Attorneys for Defendant Aztec

8 **SUPERIOR COURT OF THE STATE OF ARIZONA**
9 **COUNTY OF MARICOPA**

10 **FIERCE INVESTMENTS, LTD.,**

11 Plaintiff,

12 v.

13 **AZTEC COPPER INC., an Arizona**
14 **corporation, RON ARNOLD, an**
15 **individual; and CHRISTINE REEVES,**
16 **an individual,**

17 Defendants.

Case No.: CV2018-006866

MOTION TO SET ASIDE DEFAULT

(Assigned to the Honorable Daniel Kiley)

18 Defendant Aztec Copper, Inc. ("Aztec") moves this Court to set aside the default
19 entered by the Clerk pursuant to Arizona Rules of Civil Procedure Rules 55(a)(2) and (3)
20 upon Plaintiff filing of an Application for Entry of Default on July 2, 2018. Grounds for
21 this Motion are the lack of standing of Plaintiff to file this Complaint and the lack of subject
22 matter jurisdiction of this Court.

23 Aztec has been sued twice in this Court in less than 60 days by the same Plaintiff
24 seeking relief that is beyond the jurisdiction of this Court to grant.

25 A Memorandum of Points and Authorities is submitted herewith.

26 DATED this 20th day of August 2018.

27 **STEPHEN C. RICH, PLLC**

28 By /s/ Stephen C. Rich
Stephen C. Rich
3601 East Elwood, #101
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Attorneys for Defendant Aztec

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MEMORANDUM OF POINTS AND AUTHORITIES

Aztec has been sued in this Court by the same Plaintiff twice within 60 days.¹ Plaintiff lacks standing to support the remedies it requests.

In CV2018-003675 ("3675"), Plaintiff claims that it is the owner of 40,000,000 shares of the issued stock of Aztec. Based upon that allegation, Plaintiff then asks the Court to Order Aztec to allow it to inspect certain books and records of the Aztec, pursuant to A.R.S. §10-1604. This section, however, applies only to shareholders of a company.

In CV2018-006866 ("6866") Plaintiff again claims to be the owner of 40,000,000 shares of stock of Aztec and requests the Court to Order Aztec to hold an annual meeting pursuant to A.R.S. §10-703. This section requires that an application to the Court must be by "any shareholder of the corporation entitled to participate in an annual meeting."

Plaintiff is Not a Shareholder.

If the evidence shows that Plaintiff Fierce Investments claims to be a shareholder is not true, then Plaintiff lacks any standing to request the Court to order Aztec to allow it to inspect the books and records or to ask the Court to Order Aztec to hold and annual meeting. In each case, the Court would lack subject matter jurisdiction to order the relief because the application came from a non-shareholder and neither cited statute would be applicable.

Plaintiff has produced no evidence to support its assertion that it owns 40,000,000 shares of Aztec. In fact, it cannot do so, since it voluntarily cancelled all of those shares in 2006 when it defaulted on the option agreement which was the basis for the issuance of those shares.

The summary of a corporate review of Aztec's current shareholders, done by Harder & Company, a Canadian law firm located in Vancouver, B.C. is attached as **Exhibit A**. This report makes it clear that Plaintiff is not a shareholder of Aztec. If that is so, then Plaintiff cannot invoke the Arizona statutes to have this Court order access to records or force an annual

¹ Cause Nos. CV2018-003675, filed March 6, 2018 and CV2018-006866, filed May 4, 2018.

1 meeting.

2 Jurisdiction is never waived and an Order entered in excess of jurisdiction is void.
3 *Lamb v. Superior Court*, 127 Ariz. 400, 403-404, 621 P.2d 906, 909-910 (1980); *Caruso v.*
4 *Superior Court*, 100 Ariz. 167, 412 P. 2d 463 footnote 2, (1966).

5 If the Court lacks jurisdiction, the default was improperly granted in both cases and
6 must be set aside.

7 **Meritorious Defense**

8 The Courts prefer to make decisions on the merits. Here, there is a meritorious defense
9 for Aztec, namely, that Plaintiff is not a shareholder and has no basis for asking this Court to
10 enter the Orders requested.

11 Given the meritorious defense, this Court would err if it failed to set aside the default
12 entered by the Clerk of Court.

13 **CONCLUSION**

14 The default entered by the Clerk of Court should be set aside because the Court lacks
15 jurisdiction in this matter. Likewise, the default should be set aside because the Defendant
16 Aztec has demonstrated a meritorious defense to be considered by the Court.

17 In addition, Defendant asks that the Default Hearing set for August 22 be vacated as
18 newly retained counsel, undersigned, is unavailable on that date and will be out of the State.
19 See Declaration of Stephen C. Rich, attached as **Exhibit B**.

20 DATED this 20th day of August 2018.

21 STEPHEN C. RICH, PLLC

22
23 By /s/ Stephen C. Rich
24 Stephen C. Rich
25 3601 East Elwood, #101
26 Phoenix, Arizona 85040
27 Attorneys for Defendant Aztec

1 ORIGINAL OF THE FOREGOING MAILED

2 This 20th day of August 2018, to:

3 Keith Beauchamp, Esq.

4 Roopali H. Desai, Esq.

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8 Attorneys for Plaintiff

9 BY  _____