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

**FIERCE INVESTMENTS, LTD.,**

Plaintiff,

v.

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

Defendants.

Case No.: CV2018-006866

**DEFENDANTS' RESPONSE IN  
OPPOSITION TO MOTION FOR  
CONTEMPT**

(Assigned to the Honorable Daniel Kiley)

Defendant Aztec Copper, Inc. ("Aztec") submits this Response in Opposition to the Motion of Plaintiff to hold Aztec in Contempt.

The Default Judgment entered by this Court ordered Aztec (1) to hold an annual meeting in Maricopa County to elect officers and to transact other business, (2) set an annual meeting within 40 days of the date of the Order and to give at least 10 days' notice to other shareholders and Plaintiff; (3) to deliver to Plaintiff's counsel within 10 days of the Order a list of shareholders entitled to receive notice and to vote and the annual meeting; and (4) to make its directors and officers, Ron Arnold and Christine Reeves, available depositions by Plaintiff's counsel within 30 days of the Order.

As this Response demonstrates, Aztec has taken steps to comply with the Default Judgment and an Order of Contempt is not justified. Plaintiff's Motion for Contempt should be denied.

## STATEMENT OF FACTS

This Action arose from a dispute over ownership and control of Aztec Copper Inc., an Arizona corporation. In its Complaint, Plaintiff Fierce Investments, Ltd. a Bahamian corporation, claims that it is the record owner of some 40,000,000 shares of Aztec.

This Court entered a default judgment on the Complaint in which it held that “Plaintiff Fierce has the right to inspect the books and records of Aztec under A.R.S. §10-602 but has been denied it’s right to conduct such inspection.” Default Judgment, ¶ B. A.R.S. §10-602 specifies that only shareholders have the rights described therein.

Two of the Directors of Aztec and its Canadian counsel have submitted Declarations detailing the facts of the matter, including Aztec’s efforts to comply with the default judgment. See attached Declarations of Ron Arnold, Christine Reeves and Stephen Snyder, Exhibits A, B and C.

### **Declaration of Ron Arnold**

Mr. Arnold describes himself as a director of Aztec and sets out the non-shareholder status of Plaintiff. Arnold Declaration, ¶¶ 1 and 3. Arnold also describes his efforts and those of Christine Reeves to comply with the provisions of the default Judgment, attached to his Declaration as Exhibit B.

Mr. Arnold describes the tight timeframe considering the international travel required to comply and describes his health issues, including serious medical issues that have resulted in direction from his physician no to travel. A copy of a note from his physician dated January 10, 2018, is attached to the Declaration as Exhibit C. Arnold Declaration ¶ 7.

Mr. Arnold includes a letter of Mr. Snyder, his Canadian counsel, to Plaintiff’s counsel dated December 18, 2018 in which Mr. Snyder requested that the deposition be conducted in Edmonton, Alberta, Canada due to the recent surgery of Mr. Arnold. Mr. Snyder also offers to make Ms. Reeves available for deposition in Canada. Finally, Mr. Snyder includes with his letter a list of Aztec shareholders. Attached to the Arnold Declaration as Exhibit D. Arnold Declaration, ¶ 8. This request was refused by Plaintiff.

Mr. Arnold notes that Exhibit C, a letter from Mr. Snyder to Plaintiff’s counsel of January

1 10, 2019 also suggests that the parties utilize video conferencing for both Mr. Arnold and Ms.  
2 Reeves depositions. It appears that Plaintiff did not even respond to this proposal by Mr. Snyder.  
3 As Mr. Arnold state, Aztec and its directors have made reasonable attempts to comply with the  
4 deposition requirements of the default judgment. Arnold Declaration, ¶¶ 9 and 10.

5 Since Plaintiff has filed a similar Motion for Contempt in the companion case, CV2018-  
6 006866, Mr. Arnold addresses the requirements of that default judgment.

7 Mr. Arnold states that as Chairman of the Board of Directors of Aztec and due to his  
8 inability to travel due to medical issues, he set and attempted to hold an annual meeting of the  
9 shareholders of Aztec in Canada in February. In particular, on February 11, 2019 he sent a Notice  
10 of Meeting, with the option to send a proxy, to the shareholders on the list submitted to Plaintiff  
11 of December 18. The meeting was held on February 23, 2019.

12 According to Mr. Arnold, even with the Notice he sent, there was no quorum at the  
13 meeting. Mr. Arnold notes that most of the shareholders reside in the Edmonton area where the  
14 meeting was held. He also notes, that given the inability of the shareholders' meeting to raise a  
15 quorum in Edmonton, where most of the shareholders reside, it is unlikely that a quorum would  
16 be possible if the meeting were held in Maricopa County. Arnold Declaration, ¶¶ 11 and 12.

17 Finally, Mr. Arnold states that he and Christine Reeves have provided to Plaintiff, through  
18 Aztec's Canadian counsel, copies of all records that exist for Aztec. Arnold Declaration, ¶ 13.

19 Based upon the foregoing, Mr. Arnold states that he believes that through him and Ms.  
20 Reeves, Aztec has made "reasonable and substantive attempts to meet its obligations pursuant to  
21 the Default Judgment and an order for contempt of court would be unnecessarily harsh and  
22 unfounded." Arnold Declaration, ¶ 14

### 23 **Declaration of Christine Reeves**

24 Ms. Reeves is a director of Aztec and she describes her efforts to comply with the default  
25 judgment. Ms. Reeves describes the tight timeframe considering the international travel required  
26 to comply.

27 Ms. Reeves notes that Exhibit C, letters from Mr. Snyder to Plaintiff's counsel of  
28 December 18, 2018 and January 10, 2019 ask that the depositions occur in Canada and suggests

1 that the parties utilize video conferencing for both Mr. Arnold and Ms. Reeves depositions. It  
2 appears that Plaintiff did not even respond to this last proposal by Mr. Snyder. According to Ms.  
3 Reeves, because she and Mr. Arnold have made themselves available to be deposed in Edmonton  
4 and by video conference and given that video conferencing would be the most cost-effective  
5 method to depose residents of Edmonton, it is her position that Aztec and its directors have made  
6 reasonable attempts at complying with the default judgment. Reeves Declaration, ¶ 10.

7 Since Plaintiff has filed a similar Motion for Contempt in the companion case, CV2018-  
8 006866, Ms. Reeves addresses the requirements of that default judgment.

9 Ms. Reeves states that the annual meeting ordered by the Court was attempted to be held  
10 in Edmonton because of Mr. Arnolds medical issues and because most of the shareholders reside  
11 in the area around Edmonton. As she says, due to the location of the shareholders and the fact  
12 that Aztec has been inactive for several years, it was considered that the best chance to reach a  
13 quorum was to hold the meeting in Edmonton. Ms. Reeves states that she personally signed and  
14 sent notices to every shareholder of record for Aztec by regular mail and by electronic mail, when  
15 it was available. Reeves Declaration. ¶ 11.

16 Despite the efforts of Mr. Arnold and Ms. Reeves, no quorum was reached at the annual  
17 meeting on February 23, 2019. As Ms. Reeves concludes, if no quorum could be reached in  
18 Edmonton, it is her belief that there would be even less likelihood of reached a quorum if the  
19 meeting was scheduled in Maricopa County. All reasonable measures were taken to hold a  
20 meeting of the shareholders with enough members to reach quorum and conduct business. Ms.  
21 Reeves states her belief that the Court should make the determination that reasonable best efforts  
22 were taken to hold a proper meeting of the Aztec shareholders and that an order of Contempt  
23 against Aztec or its directors would be unreasonable and harsh in these circumstances. Reeves  
24 Declaration ¶ 12.

25 As to the sister case's orders regarding the books and records of Aztec, Ms. Reeves states  
26 that copies of all books and records of Aztec have already been given to Plaintiff. As she states,  
27 when Ms. Reeves joined the Board in May 2010 and since that time, Aztec has had no money,  
28 no bank account and no access to any bank accounts. Aztec, Ron Arnold and Ms. Reeves have

1 no records other than those provided to Plaintiff through their Canadian counsel in June 2018 as  
2 demonstrated in Exhibit E to her Declaration. Reeves Declaration ¶ 13.

3 Based upon the foregoing, Ms. Reeves states that she believes that “Aztec has met or has  
4 made all reasonable efforts to meet its obligations as outlined in the Default Judgment. As such,  
5 an order for contempt of court would be harsh and unfounded.” Reeves Declaration, ¶ 14

6 **Declaration of Stephen C. Snyder**

7 Mr. Snyder is the Canadian solicitor representing Aztec, Ron Arnold and Christine  
8 Reeves. In his Declaration, attached as Exhibit C, Mr. Snyder states that the provisions of the  
9 default judgment have been substantially complied with and that reasonable steps have been  
10 taken in those areas which have not yet been the subject of complete compliance. Snyder  
11 Declaration, ¶ 3.

12 Mr. Snyder states that he was surprised that in Mr. Beauchamp’s Declaration, submitted  
13 as a part of Plaintiff’s Motion for Contempt, Mr. Beauchamp references in his paragraph 19 a  
14 letter from Mr. Snyder to Mr. Beauchamp dated December 31, 2018 but then attaches an  
15 irrelevant letter dated March 22, 2018 rather than the referenced letter. Snyder Declaration ¶ 5.

16 In Snyder’s correspondence of December 18, 2018 to Beauchamp, Mr. Snyder advised  
17 Beauchamp that Mr. Arnold and Ms. Reeves would be available for depositions in Edmonton.  
18 In subsequent correspondence of January 10, 2019, Mr. Snyder suggested the possibility that  
19 depositions could take place via video conference. Mr. Beauchamp never responded to this  
20 suggestion. Snyder Declaration ¶ 5.

21 Mr. Snyder responds to paragraphs 5 thorough 11 of Mr. Beauchamp’s Declaration by  
22 stating that all books and records have been made available to Mr. Beauchamp for review, to the  
23 best of Mr. Snyder’s knowledge. In particular, Mr. Snyder testifies that he enclosed the existing  
24 books and records with correspondence to Mr. Beauchamp dated June 7, 2018—prior to the entry  
25 of default or the default judgment. Snyder Declaration ¶ 6.

26 Mr. Snyder testifies that contrary to Mr. Beauchamp’s Declaration, at paragraph 19, a draft  
27 copy of the default judgment was never received by Mr. Snyder’s office. If Mr. Beauchamp had  
28 consulted with Mr. Snyder, Mr. Snyder would have recommended changes to both the timeline

1 and the locations of deposition and meetings. Further, the default judgment would have been  
2 disputed because the timelines were simply impossible to meet due to Mr. Arnold's illness and  
3 the tightness of the times allowed. Snyder Declaration ¶¶ 7 and 8.

4 Mr. Snyder was personally present at the meeting of some of the shareholders of Aztec  
5 held on February 23, 2019. Every reasonable attempt was made to achieve a quorum, including  
6 notice to shareholders by electronic and regular correspondence which included a Notice of e  
7 meeting and a form of proxy. Copies of these documents are attached to Mr. Snyder's  
8 Declaration as Exhibit C.

9 Due to the tight timeline of the default judgment, there was no possibility of working with  
10 shareholders to determine a date that would have been convenient. All previous shareholders'  
11 meetings have been held in the Edmonton area because this was convenient to the greatest  
12 number of shareholders. Snyder Declaration ¶¶ 9 and 10.

13 Mr. Snyder states that in light of the fact that no quorum could be attained despite the best  
14 efforts of Mr. Arnold and Ms. Reeves, and of Mr. Arnold's health issues which prevent him from  
15 traveling outside Edmonton, it would be unreasonable and harsh under these circumstances for  
16 the Court to issue an Order for Contempt. Snyder Declaration ¶ 12.

17 Mr. Snyder opines that Aztec has complied with or has made reasonable attempts to  
18 comply with the provisions of the default judgment. Snyder Declaration ¶ 13.

#### 19 **Evidentiary Objections to Keith Beauchamp Declaration**

20 In Mr. Snyder's Evidentiary Objections to Keith Beauchamp's Declaration, attached as  
21 Exhibit D, Mr. Snyder challenges paragraphs 5, 10 and 16 of Mr. Beauchamp's Declaration as  
22 inaccurate. Specifically, Mr. Beauchamp erroneously advises that this Court ordered Mr. Arnold  
23 and Ms. Reeves be deposed in Phoenix. There is no reference in the default judgment in this case  
24 that supports this claim. A copy of the default judgment is attached to the Snyder Objection as  
25 Exhibit A. Snyder Objection ¶ 1.

26 Mr. Snyder also challenges Mr. Beauchamp's claim in paragraph 20 of his Declaration that  
27 Mr. Beauchamp "was prepared to take the depositions of Mr. Arnold and Ms. Reeves at my office  
28 . . . and waited for over 30 minutes but neither Mr. Arnold nor Ms. Reeves appeared." Upon



1 reviewing the transcript of the deposition, it is clear that no depositions were attempted under  
2 action No. CV2018-006866. Mr. Beauchamp attached to his Declaration a transcript from a  
3 separate action. The transcript is attached to the Snyder Objection as Exhibit B. Snyder Objection  
4 ¶ 2.

5 Mr. Snyder's Objections challenge the claim in the Beauchamp Declaration, ¶ 6, which  
6 references a non-existent requirement in the default judgment that Aztec supply details regarding  
7 shareholders, including number of shares, classes of shares, voting entitlements, how the list was  
8 prepared, etcetera. Snyder notes that there is no reference in the Court's default judgment that  
9 directs Aztec to supply Fierce or its counsel with such particulars. Snyder states his belief that  
10 Aztec, in supplying a complete list of shareholders to Mr. Beauchamp had fully complied with  
11 the default judgment. Snyder Objections ¶ 3.

12 Mr. Snyder states that, contrary to paragraph 17 of Mr. Beauchamp's Declaration, no draft  
13 of the default judgment or other related documentation was served on Mr. Snyder, or if it was, it  
14 was not identified or indicated as such. Snyder's Objections ¶ 4.

### 15 **ARGUMENT**

16 As set forth in the attached Declarations of Ron Arnold, Christine Reeves and Stephen  
17 Snyder, Exhibits A, B and C, respectively, Aztec has taken all steps available to it to comply with  
18 the Judgment.

#### 19 **Depositions of Arnold and Reeves**

20 Plaintiff's Motion seeks to hold Aztec and Reeves in contempt for failing to comply with  
21 the Judgment. As noted above, Reeves, a Canadian citizen and resident, has never been served  
22 and no judgment has been entered against her. This Court has no personal jurisdiction over her.  
23 Other than her position as a Director of Aztec, she is not a party to this litigation.

24 As to the deposition of Arnold, as noted by Plaintiff, Arnold is under medical care and has  
25 been advised not to travel until the investigation of his medical condition is completed. For that  
26 reason, he was not available for the deposition noticed in January. Arnold Declaration ¶ 7; Snyder  
27 Declaration ¶ 12.

All existing books and records have been produced to Plaintiff's counsel. In particular, there are no books or records available beyond those already produced to Plaintiff's counsel. Declaration of Christine Reeves, ¶13; Snyder Declaration ¶ 6

An additional issue is the Court's finding that Fierce has the right to review books and records pursuant to A.R.S. §10-1602. This section requires that a shareholder must have been a shareholder of record for at least 6 months before the request. As set forth in the Declaration of Christine Reeves, Fierce voluntarily terminated its certificate of shares in April 2011. Since it was not a shareholder at the time of the filing of the request to examine books and records, A.R.S. §10-1602 does not apply. Reeves Declaration ¶3; Arnold Declaration ¶ 3.

Aztec having made reasonable efforts to perform under the default judgment, especially in light of the continuing deterioration of Mr. Arnold's health, has performed to the best of its ability and requests the Court to deny the Motion for Contempt submitted by Plaintiff.

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