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9 **ARIZONA SUPERIOR COURT**
10 **MARICOPA COUNTY**

11 FIERCE INVESTMENTS LTD.,) No. CV2018-006866
12) CV2019-005943
13 Plaintiff,)
14 v.) **MOTION FOR MISCELLANEOUS**
15) **RELIEF RELATING TO COURT-**
16 AZTEC COPPER INC., an Arizona) **ORDERED ANNUAL SHAREHOLDER**
17 corporation;) **MEETING**
18) (Assigned to the Hon. Christopher Whitten)
19 Defendant.) (Expedited consideration requested)

18 Plaintiff Fierce Investments Ltd. (“Fierce”) respectfully requests relief from the Court on
19 several issues relating to the Aztec Copper Inc. (“Aztec”) shareholder meeting that has been
20 ordered by the Court. Fierce asks that these issues be decided on an expedited basis, as the
21 Receiver (with Fierce’s agreement) does not intend to set the meeting until guidance has been
22 received from this Court on these issues. Resolution of these issues is necessary to ensure that
23 the meeting is conducted effectively and that shareholder rights are respected.

24 **First**, Fierce asks that the Receiver be ordered to preside over the meeting, and that the
25 Receiver (or his designee) serve as the election inspector at the meeting. According to Aztec’s
26 Annual Report on file with the Arizona Corporation Commission, Christine Reeves is the sole

1 director of Aztec (though she apparently believes that Ron Arnold is also a Director) and Ron
2 Arnold is Aztec's President and sole officer. Section 3.11 of Aztec's Bylaws provides for the
3 shareholder meeting to be called to order and chaired by the Chairman of the Board of Directors,
4 the President or another officer, in that order. Section 3.10 of Aztec's Bylaws provides that the
5 Board can appoint an election inspector who will (i) determine the number of shares outstanding,
6 (ii) determine the authenticity, validity and effect of proxies, (iii) determine the credentials of
7 persons purporting to be shareholders or persons named or referred to in proxies, (iv) determine
8 the number of shares represented in person and by proxy at the meeting, (v) receive and count
9 votes and announce the results thereof, (vi) hear and determine all challenges and questions
10 pertaining to proxies and voting and (vii) perform such acts as may be proper to conduct elections
11 and voting with complete fairness to all shareholders.

12 As the Court is aware, Fierce has been at odds with Aztec's Director and its President,
13 and has filed three lawsuits and two Motions for Contempt as part of a process that has
14 culminated in this Court-ordered shareholder meeting and the appointment of the Receiver. It is
15 appropriate for a third party, such as the Receiver, to chair the meeting and to serve as the election
16 inspector where there is a dispute among shareholders. If the meeting is not properly conducted,
17 and the votes are not properly counted, the effort put into holding this meeting will be wasted.
18 Moreover, Mr. Arnold is apparently unable to travel, and thus will not be physically present in
19 any event. To be clear, Fierce does not seek to have its representative or designee serve as the
20 election inspector. But it would be appropriate, in these circumstances, for the Receiver to
21 conduct the meeting and to tabulate the shareholder votes.

22 **Second**, Fierce asks that the Court issue an order confirming what has already been
23 established, but still not accepted by Aztec: that Fierce is a shareholder of Aztec. To
24 recapitulate, Fierce alleged in the first paragraph of its Complaint in this Shareholder Meeting
25 Lawsuit (CV2018-006866) that it owned 40 million shares of Aztec, and Aztec did not contest
26 that allegation. Fierce again alleged, in paragraph one of its Complaint in the Books and Records

1 Lawsuit (CV2018-003675), that it owned 40 million shares of Aztec, and Aztec did not contest
2 that allegation. Fierce again provided sworn testimony in its Verified Complaint (at ¶ 14) in
3 this Receivership action that it was a shareholder.

4 Fierce’s ownership of Aztec stock was an essential element in each of those actions,
5 because not only was it alleged in the respective complaints, Fierce could not have obtained a
6 judgment compelling a shareholders’ meeting and could not have obtained a judgment
7 compelling inspection of Aztec’s books and records, unless Fierce was an Aztec shareholder.

8 Aztec elected not to answer either complaint, and did not assert as a defense in either of
9 those actions that Fierce was not a shareholder. Accordingly, it is precluded from doing so now.
10 *See Pettit v. Pettit*, 218 Ariz. 529, 533 ¶ 10 (App. 2008) (holding that under the doctrine of claim
11 preclusion “a second claim is precluded ‘not only upon facts actually litigated but also upon
12 those points which might have been litigated.’”) (citations omitted).

13 It is of no consequence that the judgments in the Shareholder Meeting Lawsuit and the
14 Books and Records Lawsuit were default judgments, because claim preclusion applies to default
15 judgments. *See, e.g., Circle K Corp. v. Indus. Comm’n of Ariz.*, 179 Ariz. 422, 425 (App. 1993).
16 Section 18 of the Restatement (Second) of Judgments—cited favorably in *Pettit*—provides that
17 “[i]n an action upon the judgment, the defendant cannot avail himself of defenses he might have
18 interposed, or did interpose, in the first action. Restatement (Second) of Judgments § 18, cmt. c,
19 illustration 4.

20 This issue was squarely and properly addressed by this Court at the Receivership hearing
21 on April 19, 2019. “[I]t has been established in the judgments that Fierce is a shareholder. Those
22 two judgments, otherwise, make no sense.” (Transcript of April 19, 2019 hearing, at 24). The
23 judgment giving Fierce access to Aztec’s books and records, and the judgment granting Fierce’s
24 demand that a shareholder meeting be held, and that it participate in that meeting, necessarily
25 mean that Fierce is a shareholder. “[We]’ve litigated whether Fierce is a shareholder. That issue
26 has been resolved in two different judgments.” (Transcript of April 19, 2019 hearing, at 22).

1 The Court further noted:

2 [T]here is a general policy that promotes the finality of judgments. You had an
3 opportunity to appear. You had an opportunity to litigate the issue. It was specifically
an issue. And if you were dissatisfied, [Aztec] had an opportunity to appeal.

4 (*Id.* at 24). The Order Appointing Receiver further confirms that Fierce is an Aztec shareholder.
5 See Order at § 2(a) (Receiver “shall give notice of the meeting to *Plaintiff and other*
6 *shareholders*”) (emphasis added).

7 Notwithstanding the above, Aztec remains unwilling to recognize Fierce as a shareholder.
8 Accordingly, Fierce respectfully requests that the Court issue an order confirming that Fierce is
9 a shareholder of Aztec, so there is no dispute on this issue at the upcoming annual shareholder
10 meeting.

11 The **third** issue relates to share ownership. Aztec has acknowledged that Fierce was
12 issued 40 million shares, but has made various inconsistent, illogical and unsupported assertions
13 about the purported revocation of Fierce’s shares. The one consistent point has been that the all
14 shares were revoked at once. This is a binary issue: if Fierce owns any shares, it owns 40 million
15 shares, as alleged in the first paragraph of its Complaints. Aztec has never suggested that it
16 cancelled only some of Fierce’s shares; it has always been an all-or-nothing proposition.

17 It is important, given the upcoming shareholder meeting at which Aztec’s Directors will
18 be elected, for the election official to have certainty on this point. Accordingly, Fierce asks that
19 the order confirming its share ownership further confirm that it owns 40 million shares of Aztec
20 common stock.

21 A proposed form of order is submitted herewith.

22 Respectfully submitted this 17th day of June, 2019.

23 **COPPERSMITH BROCKELMAN PLC**

24 By /s/ Keith Beauchamp

25 Keith Beauchamp

26 Roopali H. Desai

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