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8 *Attorneys for Brightergy, LLC*

9
10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

11 IN AND FOR THE COUNTY OF MARICOPA

12 Lynne H. Anthony Revocable Trust dated
11/30/2001, Lynne H. Anthony as Trustee;
13 Robert Sonnenschein, as an individual;
Gerald R. Hale, as an individual; C. Scott
14 Anthony, as an individual; Janie B. Hale,
individually and as Trustee of Janie B.
15 Hale Revocable Trust dated 11/4/1994;
Carolyn Sue McMillon, as an individual;
16 Larry McMillon, as an individual; James
Stanley Powers, as an individual; and
17 Patricia Ann Powers Trust, Patricia Ann
Powers as Trustee,

18 Plaintiffs,

19 v.

20 Palo Verde Capital, L.L.C., an Arizona
21 limited liability company; PVPE, L.L.C.,
an Arizona limited liability company; Palo
22 Verde Fund, L.P., a Delaware limited
partnership; Palo Verde Private Equity
23 Fund, L.P., a Delaware limited partnership;
and Anthony R. Stacy, a married man,

24 Defendants.
25

No. CV2013-012420

BRIGHTERGY, LLC'S MOTION IN
RESPONSE TO THE RECEIVER'S
MOTION FOR ORDER TO COMPEL
SUPPLY SIDE 1, LLC AND BRIGHTERGY,
LLC TO TURNOVER TO THE RECEIVER
ASSETS OF PALO VERDE FUND L.P.
AND REQUEST FOR ATTORNEY FEES

(Assigned to the Honorable Arthur Anderson)

1 Supply Side 1, LLC and Brightergy, LLC (collectively hereinafter “Brightergy”), by and
2 through its counsel of record, hereby responds to the Receiver's Motion for Order to Compel
3 Supply Side 1, LLC and Brightergy, LLC to Turnover to the Receiver Assets of Palo Verde Fund
4 L.P. and Request for Attorney Fees, ("Motion") , and it support states the following:

5 1. Peter S. Davis, as the Court appointed Receiver of the Palo Verde Fund LP, the
6 Palo Verde Private Equity Fund, LP and PVPE, LLC (“Receiver”) filed its Motion seeking
7 payment of funds allegedly due it, pursuant to an Asset Purchase Agreement ("Agreement")
8 entered into between Brightergy and Acumen Energy Solutions, Inc. ("Acumen").

9 2. Acumen is a wholly owned subsidiary of Palo Verde Private Equity Fund, LP and
10 Palo Verde Fund is the largest creditor of Acumen

11 3. On August 27, 2014, pursuant to the Agreement, Acumen sold to Brightergy two
12 of Acumen's business lines, which included contract commissions on certain identified contracts.
13 Under the Agreement, Brightergy paid Acumen \$350,000.00 and agreed to pay Acumen 50% of
14 aggregate contract commission collected by Brightergy in excess of \$600,000.00.

15 4. Brightergy does not dispute that the Agreement requires Brightergy to pay the
16 Receiver 50% of the aggregate contract commission. However, Brightergy does dispute the
17 amount potentially due under the Agreement, as some of the amount alleged to be owed were
18 generated from contracts which were not purchased as part of the Agreement, but were instead
19 generated by Brightergy. Commissions from these original contracts are not due to the Receiver.

20 5. Brightergy is willing to provide the amount it rightfully owes the Receiver on a
21 going-forward basis, based on its reconciliation of the amounts calculated, pursuant to the
22 Agreement. However, Brightergy does not agree with the Receiver position, which is that
23 Brightergy is not entitled to an offset.

24 6. Brightergy has a claim against the Receiver that may be raised as a part of this
25 Cause, or otherwise in a separate court, against the Receiver for monies due and owing
26 Brightergy, which would be an offset to any monies Brightergy owes, pursuant to the Motion.

1 7. Exhibit D to the Motion identifies Brightergy's claim to a valid foreign judgment
2 against Acumen from the Lucas County, Ohio Courts (the "Judgment") in the amount of
3 \$105,853.43 plus attorney's fees, costs and expenses in the amount of \$35,328.63 or a total
4 amount of \$141,182.06. A judgment due in large part to the malfeasances of Acumen.

5 8. Brightergy is not trying to circumvent the secured interest of the Palo Verde Fund
6 and is willing to provide the amount it owes. However, seeking an offset to monies owed is part
7 and parcel with the Agreement and should not be viewed separate as a claim as if Brightergy was
8 another creditor. The Receiver is entitled to the funds owed due Acumen and those funds should
9 be reduced by the monies owed Brightergy.

10 WHEREFORE, the Brightergy respectfully requests this Court:

11 1. Enter an Order requiring Brightergy to pay \$0 at this time. Brightergy
12 owes \$117,385.73, and is entitled to an offset of \$141,182.06. Brightergy shall not owe any
13 further amounts until the offset is fully realized. When the offset is fully realized, Brightergy
14 shall be required to pay Commissions as required under the Agreement; and

15 2. For such other and further relief as the Court may deem just and proper.

16
17 Dated: November 10, 2016

DENTONS U.S. LLP

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19 By: /s/ Joshua S. Akbar

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1 ORIGINAL of the foregoing e-filed
2 with the Clerk of the Maricopa
3 County Superior Court this 10th day
4 of November, 2016.

5 COPY of the foregoing mailed this
6 10th day of November, 2016 to:

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