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**BEFORE THE DIVISION OF SECURITIES  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

IN THE MATTER OF;

AMERICAN-DAIRY.COM, INC.,  
ALPATI PAUL SCHWENKE,  
JAMIS MELWOOD JOHNSON,

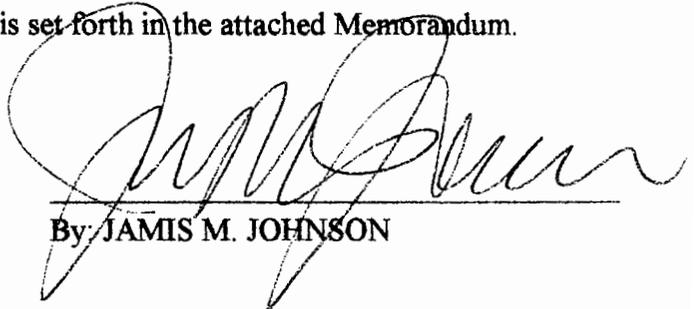
Respondents.

**MOTION FOR UT. CIV. PRO. RULE 11  
SANCTIONS**

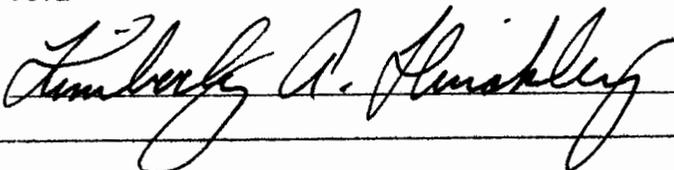
Docket No. SD-06-0010  
Docket No. SD-06-0011  
Docket No. SD-06-0012

Respondent, Jamis M. Johnson, comes now *pro se*, pursuant to Department of Commerce Ut. R. Civ. Pro 11(c)(1)(a) and moves that counsel for the Division be sanctioned for having filed the pleading dated May 19, 2006, captioned "Reply Supporting Division's Motion to Strike." The pleading should be stricken for being an improper filing. This purported "reply" actually again responds to the substance of the arguments supporting Johnson's Response to Division's Opposition to Motion to Dismiss and thus is an improper and unfair second memorandum in opposition thereto. Good cause is set forth in the attached Memorandum.

DATED this July 31, 2006.

  
By: JAMIS M. JOHNSON

**CERTIFICATE OF SERVICE:** I, the undersigned, do hereby certify that I hand delivered a true and correct copy of the foregoing, in the U.S. mail, to Department of Commerce Division of Securities, Attention: Pam Radzinski, 160 E 300 S, Salt Lake City, UT 84114-6760 and to Assistant Utah Attorney General Jeffrey Buckner, 160 E 300 S, Salt Lake City, UT 84114-0872

 6/3/06  
Dated

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**BEFORE THE DIVISION OF SECURITIES  
OF THE DEPARTMENT OF COMMERCE  
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IN THE MATTER OF;

AMERICAN-DAIRY.COM, INC.,  
ALPATI PAUL SCHWENKE,  
JAMIS MELWOOD JOHNSON,

Respondents.

**MEMORANDUM IN SUPPORT OF  
MOTION FOR SANCTIONS PURSUANT  
TO UT.R.CIV. PRO. 11**

Docket No. SD-06-0010  
Docket No. SD-06-0011  
Docket No. SD-06-0012

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The Division filed a pleading dated May 19, 2006, and captioned "Reply Supporting Division's Motion to Strike" which is an improper filing in that primarily it addresses a second time in addition to the already filed Division's Opposition to Johnson's Motion to Dismiss the substantive arguments raised in such Motion to Dismiss. Ut. R. Civ. Pro. 11(b) provides that a pleading be (1) not presented for any improper purpose and (2) the claims, defenses, and other legal contentions therein are warranted. The Division's pleading fails those tests for the reasons identified in Respondent Johnson's Memorandum in Support of the Motion to Strike such Improper Reply, to wit: The Division is not entitled to some new pleading that is actually a second responsive brief. Both U.R.Civ. Pro. 7 and the specific Dept. Of Commerce Administrative Procedures Act R. 151-46b-7 only allow first, a memorandum in support of a motion, second, a memorandum in opposition and finally, a reply by a movant, period. Nothing more, not some fourth pleading, the Division's Improper Reply. The Division, while improperly filing a second response, also used that improper brief as a further opportunity to respond to several substantive issues of law raised by the Motion to Dismiss which it may not properly respond to a second time in such a Reply - issues further that have nothing to do

with a strike motion. Thus the Improper Reply was wrongly filed, because it addresses the substance of the Motion to Dismiss on issues that have nothing to do with whether or not Respondent Johnson's memorandum should be stricken for being over-length. As such, those substantive arguments could not have ever been within the scope of the pleading even as the Division styled it even were such pleading proper. This is an improper "second bite at the apple" which is therefore an "improper purpose" under Rule 11.

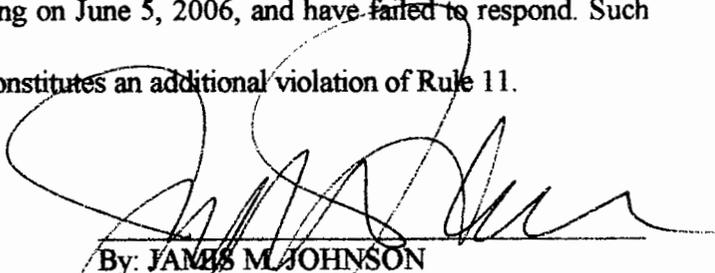
The nature of the sanction to be imposed is by Rule 11(c)(2):

Nature of sanction; limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney fees and other expenses incurred as a direct result of the violation.

The appropriate sanction should be striking the improper pleading and awarding Respondent his fees and costs for bringing this matter forward, Pennington v. Allstate Ins. Co., 973 P.2d 932 (Utah 1998).

The Division and its counsel were served the 20 day safe harbor requirement of Rule 11(c)(1)(A) to withdraw such improper pleading on June 5, 2006, and have failed to respond. Such failure to remedy the improper pleading itself constitutes an additional violation of Rule 11.

DATED this July 31, 2006.

  
By: JAMES M. JOHNSON

**CERTIFICATE OF SERVICE:** I, the undersigned, do hereby certify that I hand delivered a true and correct copy of the foregoing, in the U.S. mail, to Department of Commerce Division of Securities, Attention: Pam Radzinski, 160 E 300 S, Salt Lake City, UT 84114-6760 and to Assistant Utah Attorney General Jeffrey Buckner, 160 E 300 S, Salt Lake City, UT 84114-0872

  
Dated 6/5/06