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Attorney for Respondents

BEFORE THE DIVISION OF SECURITIES OF THE DEPARTMENT OF COMMERCE OF THE STATE OF UTAH	
IN THE MATTER OF: **E & R HOLDINGS, LLC, and RAYMOND PAUL MORRIS,** **Respondents**	**ANSWER TO ORDER TO SHOW CAUSE** **Docket No. SD-07-0087** **Docket No. SD-07-0088**

The Respondents, E & R Holdings, LLC and Raymond Paul Morris, hereinafter collectively referred to as Respondents, hereby respond to the Order to Show Cause issued by the Division of Securities, Utah Department of Commerce (hereinafter "Division"). Respondents answer as follows:

FIRST AFFIRMATIVE DEFENSE

The Division fails to state a claim for which relief can be granted.

ANSWERS TO SPECIFIC ALLEGATIONS

1. Neither admit nor deny but affirmatively allege that jurisdiction is not necessarily appropriate simply because the Division makes allegations of alleged violations of §61-1-1 *et seq.*

2. Admit.

3. Admit.

4. Admit so much of this allegation as states or implies that the Division received a Rule 506 Notice filing notice filing from Respondents which filing speaks for itself. Respondents neither admit nor deny all remaining portions of the this allegation including

but not limited to whether Promissory notes are securities under the Utah Uniform Securities Act.

5. Neither admit nor deny whether the Division received subscription agreements and/or questionnaires and/or a private placement memorandum, and which if so received speak for themselves. With respect to each discrete subpart a through i, Respondents are without sufficient information to either admit nor deny the allegations contained in those paragraphs and affirmatively allege that each such agreement speaks for itself.

6. Neither admit nor deny this allegation and affirmatively allege that the documents speak for themselves.

7. Neither admit nor deny whether the Private Placement Memorandum provides audited financial statements or disclosures and affirmatively allege that the documents speak for themselves. Neither admit nor deny whether the documents provides information concerning who, if anyone, will ultimately receive and utilize the funds of each investor. Neither admit nor deny the rates of returns set forth in each document and affirmatively allege that the documents speak for themselves.

8. This allegation does not require any answer and therefore Respondents deny this allegation.

9. Neither admit nor deny, and affirmatively allege that this allegation is a legal conclusion.

10. Neither admit nor deny this allegation and affirmatively allege that §61-1-7, Utah Code Annotated (1953 as amended) speaks for itself.

11. Neither admit nor deny and affirmatively allege that registration may not have been required as if the opportunities are securities they are either federal covered securities not requiring registration or otherwise exempt from registration.[1]

12. Deny.

13. This allegation does not require any answer and therefore Respondents deny this allegation.

14. Deny including all discrete subparts thereof.[2]

15. Deny.

16. This allegation does not require any answer and therefore Respondents deny this allegation.

17. Deny.

18. Deny.

SECOND AFFIRMATIVE DEFENSE

The investments opportunities offered by Respondents are not securities.

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[1] The State concludes in footnote 1 of the Order to Show Cause that, "Thus, the Division Staff's position is that the Issuer is in material violation of the terms of SEC Regulation D and cannot rely upon the state-law preemption (*we believe the Division's Staff meant exemption) (comment added)* offered therein." In response, Respondents firmly believes that the State is preempted form making such a determination. Specifically, Respondents rely on 15 USC § 18(a)(1)(A) which states, in relevant part, that ".. no law, rule, regulation, **or order or other administrative action** of any State or any political subdivision thereof – (1) requiring, or with respect to, registration or qualification of securities, or registration or qualification of securities transactions, shall directly or indirectly apply to a security that – (A) is a covered security." The omission of financial statements was neither willful nor deliberate. Any misreading of the law by Respondents concerning the materiality of financial statements of a start-up in connection with a Rule 506 offering was emphatically inadvertent.

[2] In paragraph 5.A. of Issuer's response to the Division's letter dated June 21, 2007 inquiring about Issuer's offering, Issuer made the following comment, "*Issuer inadvertently believed that its actual business activities in which it enters into joint ventures with third parties constituted an investment in securities. In reality, Issuer is an active business partner in these joint ventures. Furthermore, Issuer is not in the business of investing its investor proceeds in securities of any kind. Investor proceeds remain in Issuer's control and are not passed on to third parties.*" Respondents reiterate the foregoing explanation of their business. Issuer does not pass funds on to third parties. Furthermore, Issuer's Private Placement Memorandum has been rewritten to clarify its business activities and has been sent to its current investors along with a rescission offer.

THIRD AFFIRMATIVE DEFENSE

The investment opportunities, if securities, are federal covered securities which need not be registered in Utah.

FOURTH AFFIRMATIVE DEFENSE

The investment opportunities, if securities, are exempt from registration in Utah.

FIFTH AFFIRMATIVE DEFENSE

The investment opportunities, if securities, are exempt from registration because they are offered to accredited investors.

SIXTH AFFIRMATIVE DEFENSE

The interpretation of what is a federal covered security is vested solely in the Securities Exchange Commission and therefore any attempt by the Division to interpret whether the investment opportunity is a federal covered security is preempted by federal law.

SEVENTH AFFIRMATIVE DEFENSE

The requirement of registration is preempted in whole or in part by 15 USC §77R.

EIGHTH AFFIRMATIVE DEFENSE

All claims asserted are barred in whole or in part by Regulation D, Rule 506, Securities Exchange Act of 1933.

NINTH AFFIRMATIVE DEFENSE

All claims asserted must be denied because they are not supported by substantial evidence.

TENTH AFFIRMATIVE DEFENSE

The claims asserted by the Division are barred by the Supremacy Clause of the United States Constitution.

ELEVENTH AFFIRMATIVE DEFENSE

The claims asserted by the Division are barred by the Commerce Clause to the United States Constitution.

TWELFTH AFFIRMATIVE DEFENSE

The claims asserted by the Division are barred by the Due Process clauses to the United States Constitution.

THIRTEENTH AFFIRMATIVE DEFENSE

The relief sought by the Division amounts to a taking requiring just compensation and due process of the law.

FOURTEENTH AFFIRMATIVE DEFENSE

The claims asserted by the Division are barred by substantial compliance by the Respondents.

FIFTEENTH AFFIRMATIVE DEFENSE

The claims asserted by the Division relating to fraud and deception are barred by the failure of the Division to plead such claims with particularity.

SIXTEENTH AFFIRMATIVE DEFENSE

The claims asserted by the Division are barred by payment to the investors.[3]

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[3] Of the Issuer's original investors, only three remain, all of whom are accredited. All three investors have received payments exceeding their principal investment amounts. Furthermore, each investor's payments have also exceeded their principal amount plus interest at an annualized rate of 12% which would bar civil liability pursuant to Section 61-1-22(b) of the Utah Uniform Securities Act

SEVENTEENTH AFFIRMATIVE DEFENSE

The claims asserted by the Division are barred in whole or in part because the Respondents did not engage in fraudulent practices as defined by statute or the Utah Administrative Code.

EIGHTEENTH AFFIRMATIVE DEFENSE

The claims asserted by the Division are barred in whole or in part because the Respondents did not engage in any unlawful act.

NINETEENTH AFFIRMATIVE DEFENSE

The claims asserted by the Division are barred in whole or in part by the lack of usery laws in the State of Utah.

TWENTITH AFFIRMATIVE DEFENSE

The claims asserted by the Division are barred in whole or in part because the rate of return is not unreasonable under the circumstances of these particular transactions.

TWENTY FIRST AFFIRMATIVE DEFENSE

The claims asserted by the Division are barred in whole or in part because the Respondents have not engaged in dishonest or unethical practices.

TWENTY SECOND AFFIRMATIVE DEFENSE

The claims are barred in whole or in part by proper notice registration as required by both statute and rule.

TWENTY THIRD AFFIRMATIVE DEFENSE

The claims are barred in whole or in part by investment intent.

WHEREFORE, the Respondents pray for an order dismissing this Order to Show Cause.

Dated and Signed this 8th day of January, 2008.

Luc Nguyen
Attorney for Respondents

CERTIFICATE OF SERVICE

This is to certify that on this the 8th day of January, 2008, I caused a true and correct copy of the foregoing document to be mailed to the person or entity named below, first class postage prepaid:

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