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**Attorney for Respondents**

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

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**IN THE MATTER OF:**

**UTAH GROWTH, LLC,  
ABM INVESTMENT MANAGEMENT  
COMPANY,  
G. JASON PAISOLA, and  
TRISHA LEEP AISOLA,**

**Respondents**

**MOTION FOR STAY PENDING  
RESOLUTION OF CRIMINAL  
PROCEEDINGS**

**Docket No. SD-10-0030**

**Docket No. SD-10-0031**

**Docket No. SD-10-0032**

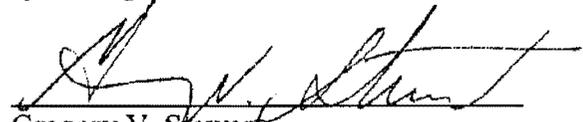
**Docket No. SD-10-0033**

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The Respondents in this matter, by and through undersigned counsel, hereby move for a stay of these proceedings until the final resolution of any criminal proceedings which may be brought by the Attorney General's Office in the Third District Court in Salt Lake County. The parallel criminal and civil proceedings represented by any criminal proceedings which may be brought and this case threaten to undermine and burden the right against self-incrimination provided under the Fifth Amendment to the United States Constitution.

This Motion is accompanied by a supporting legal memorandum. For the reasons stated therein, this Motion should be granted.

RESPECTFULLY SUBMITTED this 10th day of August, 2010.

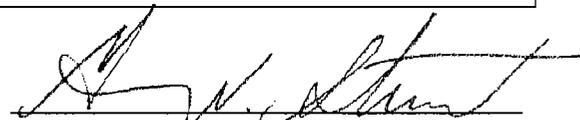


Gregory V. Stewart  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I personally served a true and correct copy of the foregoing on  
this 10th day of August, 2010, to the following:

J. Steven Eklund Division of Securities Utah Department of Commerce P.O. Box 146701 Salt Lake City, UT 84114-6701	Sent via: <input type="checkbox"/> Hand-Delivery <input checked="" type="checkbox"/> Facsimile: (801) 530-6446 <input type="checkbox"/> Mailed (U.S. Mail, postage prepaid) <input type="checkbox"/> Other _____
Jeffrey S. Buckner Utah Attorney General's Office 160 East 300 South P.O. Box 140872 Salt Lake City, UT 84114-0872	Sent via: <input type="checkbox"/> Hand-Delivery <input checked="" type="checkbox"/> Facsimile: (801) 366-0315 <input type="checkbox"/> Mailed (U.S. Mail, postage prepaid) <input type="checkbox"/> Other _____
Thomas A. Brady Division of Securities Utah Department of Commerce 160 E 300 S Salt Lake City, UT 84114-2305	Sent via: <input type="checkbox"/> Hand-Delivery <input checked="" type="checkbox"/> Facsimile: (801) 530-6980 <input type="checkbox"/> Mailed (U.S. Mail, postage prepaid) <input type="checkbox"/> Other _____

  
\_\_\_\_ Secretary       Attorney

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**IN THE MATTER OF:**

**UTAH GROWTH, LLC,  
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COMPANY,  
G. JASON PAISOLA, and  
TRISHA LEEP AISOLA,**

**Respondents**

**MEMORANDUM IN SUPPORT OF  
MOTION FOR STAY PENDING  
RESOLUTION OF CRIMINAL  
PROCEEDINGS**

**Docket No. SD-10-0030**

**Docket No. SD-10-0031**

**Docket No. SD-10-0032**

**Docket No. SD-10-0033**

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The Respondents in this matter file this memorandum in support of their *Motion for Stay Pending Resolution of Criminal Proceedings* (“Motion”). Specifically, the Respondents are requesting that this matter be stayed until any criminal proceedings which may be brought by the Attorney General’s Office in the Third District Court in Salt Lake County are fully resolved. For the following reasons, the Motion should be granted.

## DISCUSSION

Although criminal proceedings have yet to be filed against the Respondents in this matter, this motion is based upon the fact that any statements made in the course of this proceeding may be used in the criminal proceedings, thereby impinging on Fifth Amendment rights against self-incrimination; conversely, if, in an effort to preserve such Fifth Amendment rights, the Respondents make no statements in these proceedings, the Respondents' defense will be significantly undermined. *United States v. Kordel*, 397 U.S. 1, 7-8 (1970). As shown below, courts have been receptive to granting stays in civil proceedings in an effort to prevent defendants from facing the Hobson's choice that now faces the Respondents in this matter.

In determining a motion such as this, courts look to: 1) the timeliness of the motion, and 2) the balancing of the plaintiff's interest in proceeding with the matter expeditiously against the impairment of the rights of the defendant by so proceeding, as well as the interests of all other affected parties. *SEC v. Google*, 1997 U.S. Dist Lexis 20878 \*7-8 (D. Conn. April 30, 1997).

In this case, the first factor weighs in favor of granting the request for stay. The Motion, although belated, is being filed prior to the first hearing before the Division.

Turning to the balancing of interests prong, it is clear that delaying this proceeding will not significantly impair the Division's ability to proceed with this matter. First, the actions by the SEC and the Utah Securities Division and the State of Utah have ended the Respondents' involvement with any activity at the center of the allegations in both this and any criminal proceedings which may be brought by the Attorney General's Office. Accordingly, there is no concern that the Respondents are making false statements to any potential investors. *Cf. Brock v.*

*Tolkow*, 109 F.R.D. at 120 (noting that denial of a stay is more appropriate where there is “a tangible threat of immediate and serious harm to the public at large”).

Second, any criminal proceedings will be aimed at enforcing nearly identical interests and there is no indication that further alleged harm to the public will occur due to a stay of the civil proceedings. *SEC v. Google*, 1997 U.S. Dist Lexis 20878 (D. Conn. April 30, 1997). Indeed, the Utah Attorney General's Office will be the office prosecuting both actions. *SEC v. Graystone Nash, Inc.*, 25 F.3d 187, 193-94 (3d Cir. 1994) (“Courts must bear in mind that when the government is a party in a civil case and also controls the decision as to whether criminal proceedings will be initiated, special consideration must be given to the plight of the party asserting the Fifth Amendment.”) Moreover, in the event any criminal case is decided against the Respondents, the civil proceeding will be substantially simplified for the State since the Division would be able to assert collateral estoppel against those convicted.

In contrast, the Respondents are now facing these proceedings while being distracted by a potential criminal matter. Even if there were no Fifth Amendment issues, the simple inability to focus all efforts on one case severely undermines the Respondents’ ability to fully defend this matter. As the Second Circuit held concerning instances where there are parallel criminal and civil proceedings:

More generally, because all parties - those who invoke the Fifth Amendment and those who oppose them - should be afforded every reasonable opportunity to litigate a civil case fully and because exercise of Fifth Amendment rights should not be made unnecessarily costly, courts, upon an appropriate motion, should seek out those ways that further the goal of permitting as much testimony as possible to be presented in the civil litigation, despite the assertion of the privilege. Thus, if there is a timely request made to the court, the court should explore all possible measures in order to select that means which strikes a fair balance and accommodates both parties.

*United States v. 4003-4005 5th Ave.*, 55 F.3d 78, 83-84 (2d Circuit 1995). Similarly, the court in *Brock v. Tolkow*, 109 F.R.D. 116 (E.D.N.Y. 1985), held that:

A stay of civil proceedings is most likely to be granted where the civil and criminal actions involve the same subject matter... and is even more appropriate when both actions are brought by the government.

The noncriminal proceeding, if not deferred, might undermine the party's Fifth Amendment privilege against self-incrimination, expand rights of criminal discovery beyond the limits [allowed by the rules governing discovery in criminal cases], expose the basis of the defense to the prosecution in advance of criminal trial, or otherwise prejudice the case. If delay of the noncriminal proceeding would not seriously injure the public interest, a court may be justified in deferring it.

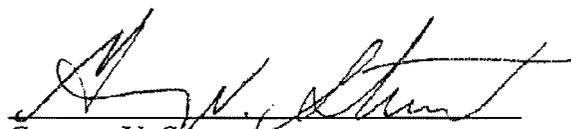
*Id.* at 119 (quoting *SEC v. Dresser Indus.*, 628 F.2d 1368, 1375-76 (footnotes omitted by *Brock* court)).

This case falls squarely within the ambit of those in which a stay of the civil proceedings has been granted. It is a case brought based upon the same alleged facts by the same government office as may be brought in any criminal proceedings. There is no threatened future harm to the public that will be caused or allowed by a stay. At most, there may be some inconvenience to the Division. Such inconvenience, however, cannot be equated with the burden otherwise being placed by dual proceedings on the constitutional right against self-incrimination presented.

## CONCLUSION

Accordingly, for the foregoing reasons, the Respondents request that the Motion be granted and that these proceedings be stayed pending the resolution of any criminal proceedings which may be brought by the Attorney General's Office in the Third District Court in Salt Lake County.

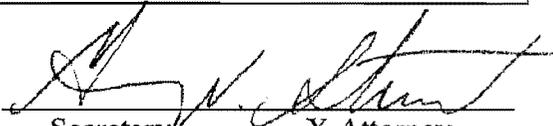
DATED this 10th day of August, 2010.

  
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Attorney for Defendant

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