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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:

**WING HAVEN FARM, LLC  
GARY G. HATCH,**

Respondents.

**MOTION IN LIMINE**

**Docket No. SD-10-10-0072  
Docket No. SD-10-10-0073**

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The Utah Division of Securities (Division), by and through Assistant Attorney General Jeffrey Buckner, and pursuant to UTAH R. EVID. 104 (authorizing determination of preliminary questions about qualification of persons to be witnesses, relevancy) and UTAH ADMIN. CODE R151-4-516 (authorizing sanctions), hereby moves for an order, sanctioning Respondents Wing Haven Farm, LLC and Gary G. Hatch for failure to produce documents, and provide a summary of witness testimony by the due dates. The parties were to produce witness lists by September 8, 2011. *see* Notice of Hearing and Scheduling Order, dated August 4, 2011, at 2; and exchange

discovery by February 3, 2011. *See* Notice of Pre-hearing Conference and Scheduling Order, dated July 26, 2011, at 1.

Respondents produced a witness and exhibit list by the due date, but did not provide a brief summary of their testimony.<sup>1</sup> Instead, Respondents identified names of witnesses with job titles at various entities.<sup>2</sup> Job titles are not self-evident of testimony, however, and it is unclear from a name and a job title whether their testimony is even relevant.

In their witness and exhibit list, Respondents identified their exhibits as Exhibit 1, 1a, 1c, d and so on through Exhibit 6, but it is unclear what these documents are. Respondents had previously failed to produce documents by February 3, 2011, later explaining that the only documents they had were those accompanying the motion to dismiss. Notice of Pre-hearing Conference and Scheduling Order at 2. If the documents identified as exhibits in the witness and exhibit list are the same as the attachments to the motion to dismiss, most of them are not “evidence.” Most were created for the motion and did not exist in documentary form prior to the motion.

In the witness and exhibit list, Respondents also purport to be re-opening discovery, either disclosing additional documents or seeking production. Respondents also purport to be seeking depositions, and reserving the right to amend the witness and exhibit list.

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<sup>1</sup> Respondents identified six “will call” witnesses, and eight “may call” witnesses for the two-hour hearing. By contrast, the Division identified two “will call” witnesses, and three “may call” witnesses.

<sup>2</sup> Respondents also did not provide telephone numbers or addresses for their witnesses.

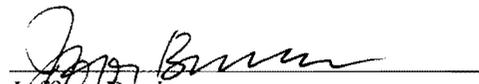
The Division cannot adequately prepare for trial without knowing what documents Respondents have, what witnesses they intend to call, and what documents they intend to introduce. The Division voiced its objection to the adequacy of Respondents' witness and exhibit list, but Respondents did not respond.

Under the Rules, an evasive or incomplete answer is treated as a failure to answer. UTAH ADMIN. CODE R151-4-516(d). Failure to comply permits the presiding officer to accept, as established, certain facts; prohibit the disobedient party from supporting or opposing designated claims or defenses; prohibiting the disobedient party from introducing designated matters in evidence; and rendering a judgment by default against the disobedient party. *Id.* Moreover, discovery cannot be extended to prevent a hearing from going forward. *Id.* R151-4-508(2)(d).

For non compliance with the orders of the presiding office, sanctions should be imposed. The Division requests a ruling on its motion before the hearing set for September 22, 2011.

Respectfully submitted this September 12, 2011.

MARK L. SHURTLEFF  
UTAH ATTORNEY GENERAL

  
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Jeffrey Buckner  
Assistant Attorney General

**CERTIFICATE OF SERVICE**

I, Shayla Shepherd, hereby certify that I have this day served a copy of the foregoing

**Motion in Limine** by mailing a copy, with postage prepaid, to

Wing Haven Farm, LLC  
Gary G. Hatch  
6905 South 1300 East #240  
Midvale, Utah 84047

Dated at Salt Lake City, Utah this 17 day of September 2011.

  
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Shayla Shepherd