

**UNITED STATES OF AMERICA**  
**before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**Administrative Proceeding**  
**File No. 3-20801**

**In the Matter of**

**DF GROWTH REIT II, LLC,**

**Respondent.**

**DIVISION OF ENFORCEMENT'S RESPONSE**  
**TO DF GROWTH REIT II, LLC'S MOTION**  
**FOR AN ORDER TO SHOW CAUSE**

July 7, 2022

Stephen T. Kam  
Jennifer C. Barry  
U.S. Securities and Exchange Commission  
Division of Enforcement  
444 S Flower St  
Los Angeles, CA 90071

Counsel for Division of Enforcement

The Division of Enforcement (“Division”) submits this Response to Respondent DF Growth REIT II’s (the “Respondent” or “REIT II”) Motion for an Order to Show Cause, served on July 7, 2022.

**I. INTRODUCTION**

On July 7, 2022, Respondent filed a Motion for an Order to Show Cause Why the Enforcement Division Should Not Be Sanctioned for (1) (Apparently) Failing to Serve Respondent DF Growth REIT II, LLC with its Reply Brief and (2) (Apparently) Failing to Include a Certificate of Service with its Filing. The Respondent’s Motion contains multiple inaccuracies to the Court and should be denied.

Respondent states that the Division did not file a Reply brief and that “June 28, 2022 . . . came and went . . . without Respondent or counsel receiving anything whatsoever from the Division.” This statement is false. In fact, a paralegal with the Division filed the Division’s Reply on June 28, 2022. *See* Exhibit 1. The same paralegal then served the Division’s Reply on all defense counsel of record at 4:38 PM PST and forwarded the notice of filing on June 28, 2022. *See* Exhibit 2. While the Division’s Reply inadvertently did not include a Certificate of Service, defense counsel was not prejudiced in any way as defense counsel were contemporaneously served with the Division’s Reply at the time of filing.<sup>1</sup>

Respondent’s aim in submitting its Motion is evident: it wants an opportunity to file a sur-reply to the Division’s Motion for Summary Disposition, even though the motion has been fully briefed and Respondent has no right to file a sur-reply. Respondent attempts this

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<sup>1</sup> Respondent does not dispute in its Motion the manner in which it was served. In any case, the Division notes that both parties throughout the course of this litigation have exclusively served filings on the opposing party through email. In fact, Respondent acknowledges that it was “properly served” with the Division’s Motion for Summary Disposition, by which she was served by email.

misdirection by re-characterizing the Division’s Reply brief as an “opposition brief” and tells the Court that it “wishes to reply to the opposition brief that it can only assume the Division filed well over a week ago.” Respondent’s Motion at 6. However, the case schedule adopted by the Court provides for no such briefing.

The Court’s order adopting the parties’ proposed case schedule set the deadline for filing “Motions for summary disposition” on June 3, 2022, the deadline for filing “Oppositions to motions for summary disposition” on June 20, 2022, and the deadline for filing “Summary disposition replies” on June 27, 2022. While the Division filed a motion for summary disposition on June 3, 2022, the Respondent elected to not file its own disposition motion. Respondent then filed an opposition to the Division’s motion for summary disposition on June 21, 2022.<sup>2</sup> Respondent was then served with the “Division of Enforcement’s Reply to DF Growth REIT II, LLC’s Response to the Division’s Motion for Summary Disposition” on June 28, 2022.

In short, Respondent misrepresents to the Court that it did not receive the Division’s Reply (which it did), and then seeks to use the inadvertent omission of a Certificate of Service as an excuse to ask the Court for the opportunity to file a sur-reply, which is not permitted under the Commission Rules of Practice or under the Court’s scheduling order.

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<sup>2</sup> Due to the Juneteenth federal holiday, Respondent filed its opposition to the Division’s Motion for Summary Disposition on June 21<sup>st</sup> and the Division filed its Reply on June 28<sup>th</sup>.

**II. CONCLUSION**

For the foregoing reasons, the Division respectfully requests that the Court deny REIT II's Motion for an Order to Show Cause and permanently suspend REIT II from its continued use of Regulation A.

Dated: July 7, 2022

Respectfully submitted,  
DIVISION OF ENFORCEMENT

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Stephen T. Kam (323) 302-7465  
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Los Angeles, CA 90071

*Counsel for the Division of Enforcement*

**In the Matter of DF Growth REIT II, LLC**

Administrative Proceeding File No. 3-20801

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the Division of Enforcement's Response to DF Growth REIT II, LLC's Motion for an Order to Show Cause was served on the following on this 7th day of July, 2022, in the manner indicated below:

The Honorable Carol Fox Foelak (By electronic email only)  
Administrative Law Judge  
U.S. Securities and Exchange Commission  
100 F. Street, N.E.  
Washington, D.C. 20549  
[alj@sec.gov](mailto:alj@sec.gov)

DF Growth REIT II, LLC (By electronic email only)  
c/o Sanjay Bhandari, Esq.  
c/o Arielle A. Seidman, Esq.  
BUCHALTER  
655 W. Broadway, Suite 1625  
San Diego, CA 92101  
[sbhandari@buchalter.com](mailto:sbhandari@buchalter.com)  
[aseidman@buchalter.com](mailto:aseidman@buchalter.com)

Leslie A. Hakala (By electronic email only)  
Law Office of Leslie A. Hakala  
10653 W. Pico Boulevard  
Los Angeles, CA 90064  
[leslie.hakala@lahlaw.org](mailto:leslie.hakala@lahlaw.org)

Dated: July 7, 2022

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COUNSEL FOR THE DIVISION OF ENFORCEMENT

# Division of Enforcement's Exhibit 1



# U.S. Securities and Exchange Commission

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4904	3-20801	REPLY TO DF GROWTH REIT II, LLC'S RESPONSE TO THE DIVISION'S MOTION FOR SUMMARY DISPOSITION	06/28/2022
4751	3-20801	Motion and Declaration in Support of Summary Disposition and Attachment Exhibits 1-29	06/03/2022
4657	3-20801	Joint Proposal Pursuant May 16, 2022 Order	05/18/2022
4435	3-20801	MOTION TO STRIKE DF GROWTH REIT II, LLC 'S MOTION TO DISMISS	04/14/2022

# Division of Enforcement's Exhibit 2



**Kam, Stephen**

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**From:** Smith, Jamar (Contractor)  
**Sent:** Tuesday, June 28, 2022 4:38 PM  
**To:** 'Bhandari, Sanjay'; 'Seidman, Arielle A.'; ALJ; 'leslie.hakala@lahlaw.org'  
**Cc:** Kam, Stephen  
**Subject:** eFAP Notice of Filing – AP File No. 3-20801  
**Attachments:** Division Reply brief (SK certified).pdf; Kam Declaration ISO Reply (SK certified).pdf; Index of Exhibits with Exhibits 1 and 2.pdf

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Date: 06/28/2022  
Description: REPLY TO DF GROWTH REIT II, LLC'S RESPONSE TO THE DIVISION'S MOTION FOR SUMMARY DISPOSITION  
ID: 4904

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