

U. S. ENVIRONMENTAL PROTECTION AGENCY

REGION 7

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901 NORTH 5<sup>th</sup> STREET

KANSAS CITY, KANSAS 66101

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

In the Matter of	)	
	)	
KASHFLOW, INC.	)	DOCKET NO. TSCA-07-2010-0002
St. Louis, Missouri	)	
	)	
Respondent	)	
	)	COMPLAINANT'S
	)	MOTION IN LIMINE
	)	TO EXCLUDE TESTIMONY OF
Proceedings under Section 16(a) of the	)	ADDINA HOBSON
	)	AND DENISE MCCLOUD
Toxic Substances Control Act,	)	
15 U.S.C. § 2615(a)	)	
	)	
	)	

**COMPLAINANT'S MOTION IN LIMINE**  
**TO EXCLUDE TESTIMONY OF**  
**ADDINA HOBSON AND DENISE MCCLOUD**

1. Comes now the United States Environmental Protection Agency, Region 7 (EPA or Complainant), and respectfully submits the following Motion in Limine to Exclude Testimony of Addina Hobson and Denise McCloud.

2. Counsel for Complainant has contacted Counsel for Respondent, who objects to the granting of relief sought in this Motion.

3. Rule 22.19(a)(1) provides that "Except as provided in § 22.22(a), . . . any witness whose name and testimony summary has not been included in prehearing information exchange shall not be allowed to testify."

4. Respondent's Prehearing Exchange states that Moshin Bajwa "will testify as a fact witness" and "may also be called for other matters," and provides a summary of his expected testimony. Respondent has thus demonstrated its knowledge of Rule 22.19 by naming a witness to be called at hearing and providing a summary of his expected testimony.

5. Respondent's Prehearing Exchange section, "Expected Witnesses" also identifies Addina Hobson and Denise McCloud, but does not identify them as either fact witnesses or expert witnesses, or provide a summary of their expected testimony. According to Respondent's Prehearing Exchange, each "will testify by Affidavit as attached hereto." These affidavits are identified as exhibits RX1 and RX6.

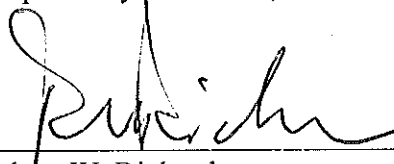
6. Respondent's Supplemental Prehearing Exchange, which was filed on June 1, 2010, and the filing of which Complainant opposes, continues to assert that witnesses Hobson and McCloud "will testify by Affidavit." A reasonable conclusion is that Respondent intends to not call witnesses Hobson and McCloud at the hearing.

7. In accordance with Rule 22.19(g), where a party fails to provide information within its control as required pursuant to § 22.19, the Presiding Officer in her discretion may, among other actions, infer the information would be adverse to the party, or exclude the information from evidence. Respondent has failed to provide information within its control that witnesses Hobson and McCloud will testify at the hearing. Appropriately, their testimony should be excluded from evidence.

8. The exception of Rule 22.22(a) as referenced in Rule 22.19(a) does not apply, because the exception requires that the non-exchanging party has provided the required information to all other parties as soon as it had control of the information. Respondent has had control of the information whether it would call the witnesses at hearing since the time it filed its Prehearing Exchange on May 17, 2010, and has not as of the date of this Motion provided information otherwise.

9. Respectfully, Complainant moves that the Presiding Officer rule in limine to exclude the testimony of Addina Hobson and Denise McCloud.

Respectfully submitted,



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Robert W. Richards  
Attorney  
Office of Regional Counsel

**CERTIFICATE OF SERVICE**

I certify that on the date noted below I hand carried the original Complainant's Motion in Limine to Exclude Testimony of Addina Hobson and Denise McCloud in the matter of KASHFLOW, INC, Docket No. TSCA-07-2010-0002, to the Regional Hearing Clerk and sent a true and exact copy of the Complainant's Motion in Limine to Exclude Testimony of Addina Hobson and Denise McCloud by certified mail, return receipt requested to:

Robert C. Withington, Esquire  
7116 Oakland Avenue  
Richmond Heights, Missouri 63117

and sent a copy to:

Honorable Susan L. Biro  
U.S. EPA Headquarters  
Ariel Rios Building  
1200 Pennsylvania Avenue  
Mail Code 1900L  
Washington, DC 20460

or by fax to:

Fax number: 202-565-0044.

6/8/10  
Date

Kimberly [Signature]  
Signature