

October 6, 2006

Jeffrey L. Mowen

125 East Main Street, Suite 411

American Fork, Utah, 84003

Telephone: (801) 427-1390

Defendant

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Department of Commerce
Division of Securities

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

In the Matter of :

Jeffrey Lane Mowen;

And Elizabeth Mowen, aka Elizabeth Ward

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**MOTION TO SET
ASIDE JUDGEMENT**

Docket no. SD-06-0037

Docket no. SD-06-0038

Director: Wayne Klein

STATEMENT OF RELIEF THAT RESPONDENT SEEKS

Respondent Jeffrey Lane Mowen seeks that the Director Wayne Klein Set Aside judgment in this administrative action as per the rules of civil and administrative procedure, furthermore that Mowen has the right to be properly heard in this matter and that Justice be served.

STATEMENT OF THE FACTS

- a) Respondent Mowen did attend the scheduling hearing held on August 4th, 2006.
- b) Director Wayne Klein did extend the deadline for Respondent Mowen's answer to the O.S.C until August 18th.
- c) Respondent Mowen attended the hearing with attorney Mike Holje of Brown, Bradshaw & Moffat.
- d) Respondent Mowen intended at that time to retain attorney Mike Holje and his firm.
- e) Respondent Mowen was not able to retain the same prior to the extended answer date by virtue of the prohibitive retainer and the time frame allotted.
- f) Respondent Mowen did indeed respond to the O.S.C document within the extended time frame.
- g) Respondent Mowen sent his answer to the O.S.C document as per the attachment included in this motion showing the certificate of mailing date of August 10th.
- h) Respondent Mowen assumed that the division and Director Wayne Klein had properly received his answer.

- i) Respondent Mowen later discovered without any notice from the division that they 'may' have not received it and as a procedural courtesy resent the same answer to the O.S.C. on September 11th, 2006.
- j) Respondent Mowen being concerned that the same delivery method once again 'may' not be received &/or acknowledged sent it in 'other' alternative forms to insure not only delivery but verification of the same this time.
- k) Respondent Mowen knows that the division did indeed receive his answer to the O.S.C. from this second delivery.
- l) Respondent Mowen has not yet been able to retain attorney Mike Holje and his firm at the time of the filing of this motion, but will shortly be able to complete the retainer agreement for the balance of this proceeding.
- m) Respondent Mowen now files this motion to for the right to be heard, clearing his good name of any wrong doing or violation.
- n) Respondent Mowen seeks that the honorable Director Wayne Klein set aside this judgment and continue with the administrative procedure as per the schedule agreed upon in the August 4th hearing.

**SUMMARY STATEMENT OF WHY THE
MOTION TO SET ASIDE JUDGMENT SHOULD BE GRANTED**

Respondent Mowen seeks that this Motion to Set Aside Judgment be granted based on Proper Application the following Rules of Procedure as further enumerated in the section below;

AS Per Utah code 63-46b-11 where it says, "(3) (a) A defaulted party may seek to have the agency set aside the default order, and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure."

AS Per UT R. Civ. Pro Rule 55(c) "Setting aside default. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)."

AS Per 60(b), " Mistakes; inadvertence; excusable neglect; newly discovered evidence; fraud, etc. On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been

discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), or (3), not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this Subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action."

**SUMMARY POINTS WHY THE MOTION TO
SET ASIDE JUDGMENT SHOULD BE GRANTED**

Respondent Mowen hereby first enters a general denial that he did not comply with Director Klein's extension to answer the division's O.S.C., of which he did indeed comply as agreed upon well in advance of the August 18th deadline. Note: Respondent's Mowen general denials refer to denial of any possible connections or knowledge of those enumerated allegations and all the allegations in general, but is neither affirming nor denying the specific allegations which should not be directed at him personally as per the signed judgment.

1. Respondent Mowen reserves the right to challenge jurisdiction subsequent to any factual findings in the O.S.C. hearing
2. Respondent Mowen reserves the right to challenge the procedure subsequent to any factual findings in the O.S.C. hearing
3. Respondent Mowen did send his answer to the O.S.C. document to the Division as per his certificate of mailing on August 10th, which is included as an attachment to this Motion to Set Aside Judgment.
4. Respondent Mowen did send his answer to the O.S.C. document to the Attorney General's Office as per his certificate of mailing on August 10th, which is included as an attachment to this Motion to Set Aside Judgment.
5. Respondent Mowen did send his answer to the O.C.S. folded in thirds having been printed on 8.5 x 11 white paper, in a plain # 10 envelope directly to the Division (please refer to original certificate of mailing).

6. Respondent Mowen did send his answer to the O.C.S. folded in thirds having been printed on 8.5 x 11 white paper, in a plain # 10 envelope directly to the Attorney General's Office (please refer to original certificate of mailing).
7. Respondent Mowen having sent in the manner mentioned in the item above it is conceivable that it may have been mis-delivered to the division as not Mowen's answer to the O.S.C.
8. Respondent Mowen having sent in the manner mentioned in the item above it is conceivable that it may have been mistaken by the division as not Mowen's answer to the O.S.C.
9. Respondent Mowen having sent in the manner mentioned in the item above it is conceivable that it may have been mis-delivered to the Attorney General's Office as the Mowen's answer to the O.S.C.
10. Respondent Mowen having sent in the manner mentioned in the item above it is conceivable that it may have been mistaken by the Attorney General's Office as the Mowen's answer to the O.S.C.
11. Respondent Mowen, asking now that Director Klein acknowledges that as a result that the Heber M. Wells building was/is under reconstruction at the time of Mowen sending his answer to the O.S.C, it is more than conceivable that the division did not receive the document as sent, (please refer to original certificate of mailing).
12. Respondent Mowen, asking now that Director Klein acknowledges that as a result that the Heber M. Wells building was/is under reconstruction at the time of Mowen sending his answer to the O.S.C, it is more than conceivable that the Attorney General's Office did not receive the document as sent, (please refer to original certificate of mailing).
13. Respondent Mowen, asking now that Director Klein acknowledges that as a result that the Heber M. Wells building was/is under reconstruction at the time of Mowen sending his answer to the O.S.C, it is more than conceivable that the division did receive the document as sent, (please refer to original certificate of mailing), but 'may' have lost it as a result of this activity where the division is located.
14. Respondent Mowen, asking now that Director Klein acknowledges that as a result that the Heber M. Wells building was/is under reconstruction at the time of Mowen sending his answer to the O.S.C, it is more than conceivable that the Attorney General's Office did receive the document as sent, (please refer to original certificate of mailing), but 'may' have lost it as a result of this activity where the Attorney General's Office is located.
15. Respondent Mowen, asking now that Director Klein acknowledges that as a result that the Heber M. Wells building was/is under reconstruction at the time of Mowen sending his answer to the O.S.C, it is more than conceivable that the division did not receive the document as sent,

- (please refer to original certificate of mailing) as a result of the USPS making a delivery mistake.
16. Respondent Mowen, asking now that Director Klein acknowledges that as a result that the Heber M. Wells building was/is under reconstruction at the time of Mowen sending his answer to the O.S.C, it is more than conceivable that the Attorney General's Office did not receive the document as sent, (please refer to original certificate of mailing) as a result of the USPS making a delivery mistake.
 17. Respondent Mowen did send his answer to the O.S.C in good faith having sent it directly to the division not having it weighed by the USPS, which 'may' have affected its delivery (please refer to original certificate of mailing).
 18. Respondent Mowen did send his answer to the O.S.C in good faith having sent it directly to the Attorney General's Office, not having it weighed by the USPS, which 'may' have affected its delivery (please refer to original certificate of mailing).
 19. Respondent Mowen did send his answer to the O.S.C in good faith having sent it directly to the division, which 'may' have been lost in the system not as a result of neglect or fault of Mowen (please refer to original certificate of mailing).
 20. Respondent Mowen did send his answer to the O.S.C in good faith having sent it directly to the Attorney General's Office, which 'may' have been lost in the system not as a result of neglect or fault of Mowen (please refer to original certificate of mailing).
 21. Respondent Mowen has subsequently resent his answer to the O.S.C. on September 11th, 2006, utilizing both the USPS and UPS, knowing now that the Division, the Attorney General's office and the honorable Director Wayne Klein have received it, will now demonstrate that his answer was indeed sent as per the original certificate of mailing dated on August 10th, 2006 (please refer to the second certificate of mailing).

SUMMARY OF REQUEST THAT
MOTION BE GRANTED & JUDGEMENT NOW SET ASIDE

As Per Rule 55(c) Mowen respectfully requests that the honorable Director Wayne Klein grant this motion and set aside the judgment by finding any and all circumstantial evidence as valid that Mowen did indeed mail his answer to the O.S.C. on August 10th, 2006 , well in advance of the extension date of August 18th, 2006, that was granted in the scheduling hearing on August 4th, 2006.

Mowen respectfully requests that the honorable Director Wayne Klein grant this motion and set aside the judgment by finding it 'may' have been lost in the mail or at the Division.

Mowen respectfully requests that the honorable Director Wayne Klein grant this motion and set aside the judgment by finding that Mowen did in fact comply.

Mowen respectfully requests that the honorable Director Wayne Klein grants this motion and set aside the judgment by finding but that neither the Division, nor the Attorney General's Office did receive Mowen's answer to the O.S.C. as it occurred as a result of things outside Mowen's control.

As Per Rule 60(b) Mowen respectfully requests that the honorable Director Wayne Klein grant this motion and set aside the judgment by finding that 'if' Mowen somehow made a mistake, it was excusable neglect.

Mowen respectfully requests that the honorable Director Wayne Klein grant this motion and set aside the judgment by finding that 'if' Mowen somehow made a mistake, it was excusable neglect, for example it is conceivable that there 'may' not have been enough postage sufficient to send his answer to the O.S.C. in this manner.

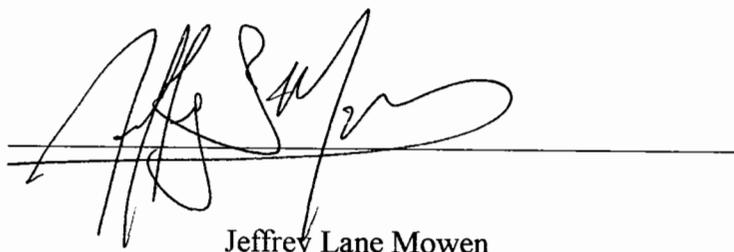
Mowen respectfully requests that the honorable Director Wayne Klein grant this motion and set aside the judgment by finding that 'if' Mowen somehow made a mistake, it was excusable neglect, for example it is conceivable that Mowen 'may' have mis-addressed his answer to the O.S.C. to both the Division or the Attorney General's Office.

Mowen respectfully requests that the honorable Director Wayne Klein grant this motion and set aside the judgment by finding that 'if' Mowen somehow made a mistake, it was excusable neglect, that "if" Mowen 'may' have made any mistakes, they were not in bad faith.

FINALLY, Mowen respectfully requests that the honorable Director Wayne Klein grant this motion and set aside the judgment by finding that 'if' Mowen somehow made a mistake, OR 'if' the Division somehow made a mistake, OR 'if' the Attorney General's Office somehow made a mistake, or 'if' the USPS somehow made a mistake, it now be deemed as excusable, AND justice requires that Mowen be heard in this matter taken against him.

Respectfully submitted, this 6th day of October, 2006

BY:



Jeffrey Lane Mowen

CERTIFICATE OF MAILING

I hereby certify that I mailed, postage prepaid, by USPS first class mail, and/or by UPS courier delivery, a true and correct copy of the foregoing Motion to Set Aside Judgment, along with the original Answer to the O.S.C. and corresponding certificate of mailing, this 6th day of October, 2006.

Or, (check and initial if appropriate)

_____ Hand Delivered

Jeff Buckner
Attorney General's Office
160 East 300 South
PO Box 140872

Salt Lake City, Utah 84114

_____ Hand Delivered

Pam Radzinski
Utah Dept. of Commerce
Securities Division

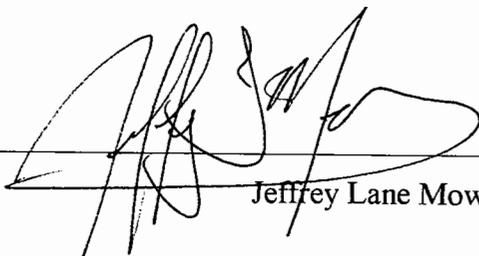
160 East 300 South
P.O. BOX 146760

Salt Lake City, Utah 84114

✓  Hand Delivered

Elizabeth Ward

BY: _____



Jeffrey Lane Mowen