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

**IN THE MATTER OF THE LICENSES
OF:**

**JEFFREY LANE MOWEN; and
ELIZABETH MOWEN a.k.a.
ELIZABETH WARD;**

Respondents.

**APPLICATION FOR LEAVE TO
FILE SUR-REPLY**

Docket No. SD-06-0037

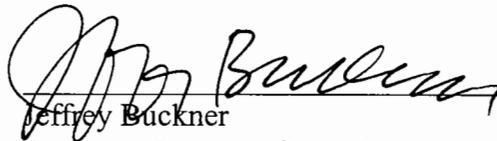
Docket No. SD-06-0038

The Division of Securities (Division), pursuant to the rules governing motion practice, namely, Utah Admin. Code R151-46b-7(6)(Department of Commerce rules recognize three pleadings: motion plus supporting memorandum, memorandum in opposition, and reply); see also Utah R. Civ. P. 7(b), (c); Utah R. Jud. Admin. 4-501(1)(uniform rules governing motion practice allow three pleadings: motion and supporting memorandum, opposition, and reply); Utah Admin. Code R151-46b-5(3)(Utah Rules of Civil Procedure looked to as persuasive, but not controlling authority); but see DUCivR 56-1(b)(no sur-reply considered without leave of

court), by and through counsel, hereby requests leave to file a sur-reply to the “notarized statement” of Jeffrey Mowen and Elizabeth Ward dated October 23, 2006, for the reason that the statements raise issues for the first time that the Division is deprived of responding to otherwise, and are not pleadings recognized by Rule. The Division’s application for leave is made and based on the accompanying memorandum of points and authorities.

Respectfully submitted this November 6, 2006.

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**MEMORANDUM OF POINTS AND
AUTHORITIES SUPPORTING
APPLICATION FOR LEAVE TO
FILE SUR-REPLY**

Docket No. SD-06-0037

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STATEMENT OF RELEVANT FACTS

On October 6, 2006, Mowen filed a motion to set aside judgment. None of the statements in Mowen's motion were supported by affidavit or document other than a copy of an unsigned answer. The Division served its opposition memorandum on October 18, 2006, pointing out these defects. In response, Mowen served a "notarized statement" of himself and Elizabeth Ward dated October 23, 2006. The signatures were notarized, but none of the statements were made under oath. Moreover, the notarized statement contradicts the earlier

certificate of mailing. The certificate of mailing said the answer was hand-delivered to Pam Radzinski as well as mailed, but no mention of service to Ward. The notarized statement merely indicates mailing to the Division of Securities and hand-delivery to Ward and no mention of service to her attorney.

LAW AND ARGUMENT

I The Notarized Statements Are Inadmissible

“Before testifying, every witness shall be required to declare that the witness will testify truthfully, by oath or affirmation administered in a form calculated to awaken the witness’ conscience and impress the witness’ mind with the duty to do so.” Utah R. Evid. 603; see also Utah Code Ann. § 45-1-1 et seq. (notary authorized to administer oaths or affirmations).

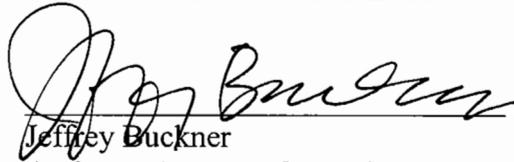
In this case, the notarized statements do not qualify as an affidavit because the statements are not made under oath. Because the statements are not under oath, they are inadmissible.

CONCLUSION

For these reasons, the Division should be granted leave to file a sur-reply.

Respectfully submitted this November 6, 2006.

MARK L. SHURTLEFF
UTAH ATTORNEY GENERAL


Jeffrey Duckner
Assistant Attorney General

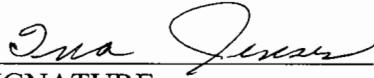
MAILING CERTIFICATE

I, Ina Jensen, hereby certify that I have this day served a copy of the foregoing
Application for Leave to File Sur-Reply and Memorandum of Points and Authorities
Supporting Application for Leave to File Sur-Reply by mailing a copy, with postage prepaid,
to

Jeffrey L. Mowen
125 East Main Street, Suite 411
American Fork, UT 84003

Attorney James L. Driessen
Driessen Law
305 North 1130 East
Lindon, Utah 84601

Dated at Salt Lake City, Utah this 6th day of November, 2006


SIGNATURE