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Utah Department of Commerce  
Securities Division

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68 South Main Street, 2<sup>nd</sup> Floor  
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Telephone: (801) 532-8000  
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*Attorneys for Respondents  
Carols Gregory Gaytan and  
Pacific Investors, Inc.*

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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:

CARLOS GREGORY GAYTAN AND  
PACIFIC INVESTORS, INC.

Respondents.

**MEMORANDUM IN SUPPORT OF  
MOTION TO SET ASIDE JUDGMENT**

Docket No. SD-12-0034

Docket No. SD-12-0035

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Respondents Carlos Gregory Gaytan and Pacific Investors, Inc. ("Respondents"), by and through their counsel, Douglas E. Griffith of Kesler & Rust, hereby submits this memorandum in support of its motion to set aside the default judgment entered against Respondents on or about June 6, 2012.

The basis for such motion is that Respondents timely responded to the Order to Show Cause ("OSC"), a copy of which is attached hereto as Exhibit "A", once service was effected upon Respondents. Attached hereto as Exhibit "B" is a true and correct copy of the notice of agency

action (“Notice”) which was mailed to Respondents, together with the OSC. The certificates of mailing on both the Notice and the OSC state that Julie Price, Executive Secretary of the Director of the Utah Division of Securities (“Division”) mailed these documents to the Respondents on May 31, 2012.

The Notice states that the Respondents “must file a written response with the Division within thirty (30) days of the mailing date of this Notice.” As this court will note in the file, Respondents properly filed an answer to the OSC with the Administrative Court Clerk of the Division on or about June 21, 2012, clearly within the thirty period from the date of the mailing of the Notice and OSC. A copy of said answer is attached hereto as Exhibit “C”.

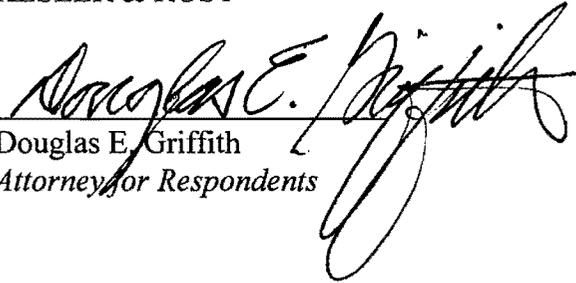
The OSC stated that a hearing to establish a scheduling order and address preliminary matters would be held on June 6, 2012. However, because this OSC and the Notice was not mailed to Respondents until May 31, 2012, Respondents did not have sufficient time before the June 6th hearing to obtain legal representation to accompany Respondents to said hearing. Consequently, Respondents failed to appear at the hearing.

Respondents should not be penalized with a default judgment for failing to appear at a scheduling hearing set less than a week after the Notice and OSC was mailed by the Division. Respondents have valid and meritorious defenses to the claims of the Division, including the assertion that the subject matter of the OSC does not involve or constitute a security.

Therefore, because Respondents timely filed a response to the OSC based on the certificate of mailing and Respondents have valid and meritorious defenses to the OSC, the court should set aside the default judgment and allow this action to proceed forward in the normal course.

**DATED** this 26<sup>th</sup> day of July, 2012.

KESLER & RUST

  
\_\_\_\_\_  
Douglas E. Griffith  
*Attorney for Respondents*

**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be delivered by the method indicated below a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO SET**

**ASIDE JUDGMENT**, postage prepaid, this 24 day of July, 2012, to:

FEDERAL EXPRESS  
 U.S. MAIL  
 HAND DELIVERY  
 TELEFAX TRANSMISSION

Administrative Court Clerk  
c/o Julie Price  
Division of Securities  
160 East 300 South, 2<sup>nd</sup> Floor  
Box 146760  
Salt Lake City, Utah 84114-6760

Linda Palmer

D. Scott Davis  
Assistant Attorney General  
Utah Division of Securities  
160 East 300 South, 5<sup>th</sup> Floor  
Salt Lake City, Utah 84114-0872

EXHIBIT "A"

Division of Securities  
Utah Department of Commerce  
160 East 300 South, 2<sup>nd</sup> Floor  
Box 146760  
Salt Lake City, UT 84114-6760  
Telephone: (801) 530-6600  
FAX: (801)530-6980

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

**IN THE MATTER OF:**

**CARLOS GREGORY GAYTAN,  
PACIFIC INVESTORS, INC.,**

**Respondents.**

**ORDER TO SHOW CAUSE**

Docket No. 11-12-0024

Docket No. 11-12-0025

It appears to the Director of the Utah Division of Securities (Director) that Carlos Gregory Gaytan and Pacific Investors, Inc. have engaged in acts and practices that violate the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, et seq. (the Act). Those acts are more fully described herein. Based upon information discovered in the course of the Utah Division of Securities' (Division) investigation of this matter, the Director issues this Order to Show Cause in accordance with the provisions of § 61-1-20(1) of the Act.

**STATEMENT OF JURISDICTION**

1. Jurisdiction over Respondents and the subject matter is appropriate because the Division alleges that they violated § 61-1-1 (securities fraud) of the Act while engaged in the offer and sale of securities in or from Utah.

## **STATEMENT OF FACTS**

### **THE RESPONDENTS**

2. Carlos Gregory Gaytan (Gaytan) was, at all relevant times, a resident of the state of Utah. Gaytan has never been licensed in the securities industry in any capacity.
3. Pacific Investors, Inc. (Pacific) is a Utah corporation that registered with the Division of Corporations on January 29, 1993. Gaytan currently serves as Pacific's Treasurer, Secretary, President, and Director. Pacific has never been licensed with the Division.

### **GENERAL ALLEGATIONS**

4. From July 23, 2009 to October 2, 2009, Respondents offered and sold securities to an investor, in or from Utah, and collected a total of \$20,000.
5. Respondents made material misstatements and omissions in connection with the offer and sale of securities to the investor identified below.
6. The investor lost \$19,950 of his investment funds.

### **INVESTOR T.P.**

7. T.P. initially met Gaytan through his work as a self-employed handyman in Utah County, Utah.
8. In July 2009, a friend asked T.P. to help him repair a swamp cooler at Gaytan's house. Upon completing the job, Gaytan approached T.P. to present a business deal separate and distinct from the repair work. With respect thereto, Gaytan made the following statements:
  - a. In 2001, Gaytan sold a house to a couple (hereinafter referred to as "Homeowners")

for \$150,000. As a part of that transaction, Gaytan loaned the Homeowners \$30,000 to help cover the purchase price. In return, Gaytan received a secondary interest on the property's deed of trust.

- b. The Homeowners had since fallen behind on their mortgage payments, and Gaytan needed an additional \$30,000 to help them with their payments.
  - c. Gaytan asked T.P. to loan him the money. He requested a total of \$30,000, but said that for every \$10,000 invested, T.P. would receive a \$1,600 profit and the return of his principal within six months.
  - d. Gaytan then stated that he would secure the loan by making T.P. the secondary interest holder on the deed of trust for the Homeowners' property. As a result, if Gaytan failed to pay T.P. in accordance with their agreement, T.P. could foreclose on the property.
9. On July 23, 2009, after deciding to invest, T.P. returned to Gaytan's residence. At that time, he delivered a \$10,000 Zions Bank cashier's check made payable to Pacific.
10. T.P. and Gaytan, on Pacific's behalf, also executed a promissory note, dated July 23, 2009, which memorialized their arrangement. The terms of the note included the following:
- a. For value received, Pacific promises to pay T.P. \$10,000 together with interest;
  - b. "In lieu of an interest rate this loan to bear a fee of \$1,600.00 dollars at the conclusion of the first six month period of its existence. No monthly payments. No deficiency;"

- c. "This loan is all due and payable six months after July 23, 2009;"
  - d. Gaytan, on Pacific's behalf, could extend the terms of the arrangement for additional six-month periods in accordance with the following payment schedule: "Borrower to pay an additional \$1,500.00 dollar fee to Lender at the conclusion of each subsequent six month period. Said payments to begin at the end of the second six month period and to continue to be due at the end of each subsequent six month period until the loan is paid in full...;" and
  - e. "In case of default in the payment of any amount of principal or interest as herein stipulated, then it shall be optional with the legal holder of this loan to declare the entire principal sum hereof due and payable..."
11. Additionally, on the same date, the parties executed a "Partial Assignment for Security Only" that assigned to T.P. a \$10,000 beneficial interest in the note secured by the deed of trust for the Homeowners' property.
12. Pursuant to that agreement, Gaytan, on Pacific's behalf, granted the assignment to T.P. as a method to secure their note, dated July 23, 2009, and such assignment should not be construed as "an out right sale of, or permanent transfer of that certain, Note and Deed of Trust," as defined therein.
13. On September 3, 2009, after having decided to invest an additional sum with Gaytan, T.P. returned to Gaytan's residence and delivered a \$5,000 Zions Bank cashier's check made payable to Pacific.

14. At that time, the parties also executed a "Memorandum/Acknowledgement" document to memorialize the additional investment.
15. Pursuant to that document, the additional investment would be subject to the same terms and conditions as the July 23, 2009 investment, with the exceptions that the "fee" for the loan would be \$800, rather than \$1,600, and the loan would be due and payable six months after September 3, 2009.
16. On October 2, 2009, T.P. made a third and final investment with Gaytan. He met with Gaytan at Gaytan's residence and delivered an additional \$5,000 Zions Bank cashier's check made payable to Pacific.
17. Again, the parties executed a "Memorandum/Acknowledgement" document to memorialize the investment. In accordance with the terms provided therein, the investment would be subject to the same terms and conditions as the July 23, 2009 investment, with the exceptions that the "fee" would be for \$800, and the loan would be due and payable six months after October 2, 2009.
18. In November 2009, T.P. saw a notice of foreclosure on the Homeowners' door. T.P. took the notice to Gaytan and inquired about his investments.
19. Gaytan responded that he did not know anything about the foreclosure and that he had used T.P.'s money for something else, despite the fact that Gaytan had originally told T.P. that the investment would be used to help make the Homeowners' mortgage current.
20. In a conversation with the Homeowners, the Division learned that the family moved out of

their house in September 2009 after Gaytan initiated foreclosure proceedings.

21. Gaytan later contacted T.P. and instructed him to go by Gaytan's house and pick up a check left under the mat at the front door. The check that T.P. received came from Pacific, was dated March 24, 2010, and provided a total payment of \$50.
22. Pursuant to the agreements by and between T.P. and Pacific, Respondents still owe T.P. \$19,950 in principal and \$3,200 in "fees."

#### **CAUSES OF ACTION**

##### **Securities Fraud under § 61-1-1 of the Act**

23. The Division incorporates and re-alleges paragraphs 1 through 22.
24. The investment opportunities offered and sold by Respondents are securities under § 61-1-13 of the Act.
25. In connection with the offer and sale of securities to the investor, Gaytan, directly or indirectly, made false statements, including, but not limited to, the following:
  - a. If Gaytan failed to pay T.P. in accordance with their agreement, T.P. could foreclose on the Homeowners' property, when in fact, Gaytan never made T.P. an interest holder on the deed of trust, thereby failing to provide T.P. with a legal right of foreclosure.
  - b. If T.P. loaned Gaytan money, he would use the funds to help the Homeowners with their mortgage payments, when in fact, Gaytan admitted to using the funds for other purposes unrelated to the mortgage payments.

26. In connection with the offer and sale of a security to the investor, Gaytan, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make statements made not misleading:

a. Some or all of the information typically provided in an offering circular or prospectus regarding Gaytan and Pacific, such as:

- i. Financial statements;
- ii. Risk factors;
- iii. Suitability factors for the investment;
- iv. Business experience and operating history;
- v. Whether the investment is a registered security or exempt from registration;  
and
- vi. Whether Respondents were licensed to sell securities.

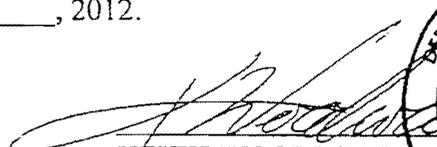
### **ORDER**

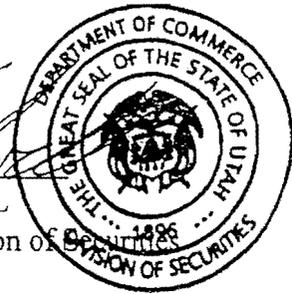
The Director, pursuant to § 61-1-20 of the Act, hereby orders Respondents to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63G-4-202, -204 through -208, and held before the Utah Division of Securities. The hearing will occur on **Wednesday, June 6, 2012, at 9:00 a.m.**, at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2<sup>nd</sup> Floor, Salt Lake City, Utah. The purpose of the hearing is to establish a scheduling order and address any preliminary matters. If Respondents fail to file an answer and appear at the hearing, the Division of Securities may hold Respondents in default, and a

fine may be imposed in accordance with Utah Code Ann. § 63G-4-209. In lieu of default, the Division may decide to proceed with the hearing under § 63G-4-208. At the hearing, Respondents may show cause, if any they have:

- a. Why Respondents should not be found to have engaged in the violations alleged by the Division in this Order to Show Cause;
- b. Why Respondents should not be ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1, or any other section of the Act; and
- c. Why Respondents should not be ordered to pay to the Division a fine amount to be determined by the Utah Securities Commission after a hearing in accordance with the provisions of Utah Admin. Rule R164-31-1, which may be reduced by restitution paid to the investor.

DATED this 19<sup>th</sup> day of April, 2012.

  
KEITH WOODWELL  
Director, Utah Division of Securities



Approved:

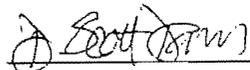
  
D. SCOTT DAVIS  
Assistant Attorney General  
A.S.

EXHIBIT "B"

Division of Securities  
Utah Department of Commerce  
160 East 300 South, 2<sup>nd</sup> Floor  
Box 146760  
Salt Lake City, UT 84114-6760  
Telephone: (801) 530-6600  
FAX: (801)530-6980

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

IN THE MATTER OF:

CARLOS GREGORY GAYTAN  
PACIFIC INVESTORS, INC.

Respondents.

NOTICE OF AGENCY ACTION

Docket No. 10-12-0074  
Docket No. 10-12-0075

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENTS:

You are hereby notified that agency action in the form of an adjudicative proceeding has been commenced against you by the Utah Division of Securities (Division). The adjudicative proceeding is to be formal and will be conducted according to statute and rule. See Utah Code Ann. § 63G-4-201 and 63G-4-204 through -209; see also Utah Admin. Code R151-4-101, *et seq.* The facts on which this action is based are set forth in the accompanying Order to Show Cause. The legal authority under which this formal adjudicative proceeding is to be maintained is Utah Code Ann. § 61-1-20. You may be represented by counsel or you may represent yourself in this proceeding. Utah Admin. Code R151-4-110.

You must file a written response with the Division within thirty (30) days of the mailing date of this Notice. Your response must be in writing and signed by you or your representative. Your

response must include the file number and name of the adjudicative proceeding, your version of the facts, a statement of what relief you seek, and a statement summarizing why the relief you seek should be granted. Utah Code Ann. § 63G-4-204(1). In addition, pursuant to Utah Code Ann. § 63G-4-204(3), the presiding officer requires that your response:

- (a) admit or deny the allegations in each numbered paragraph of the Order to Show Cause, including a detailed explanation for any response other than an unqualified admission. Allegations in the Order to Show Cause not specifically denied are deemed admitted;
- (b) identify any additional facts or documents which you assert are relevant in light of the allegations made; and
- (c) state in short and plain terms your defenses to each allegation in the Order to Show Cause, including affirmative defenses, that were applicable at the time of the conduct (including exemptions or exceptions contained within the Utah Uniform Securities Act).

Your response, and any future pleadings or filings that should be part of the official files in this matter, should be sent to the following:

**Signed originals to:**

Administrative Court Clerk  
c/o Julie Price  
Utah Division of Securities  
160 E. 300 South, 2<sup>nd</sup> Floor  
Box 146760  
Salt Lake City, UT 84114-6760  
(801) 530-6600

**A copy to:**

D. Scott Davis  
Assistant Attorney General  
Utah Division of Securities  
160 East 300 South, 5<sup>th</sup> Floor  
Salt Lake City, UT 84114-0872  
(801) 366-0358

An initial hearing in this matter is set for **Wednesday, June 6, 2012** at the Division of

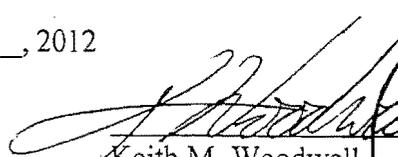
Securities, 2<sup>nd</sup> Floor, 160 E. 300 S., Salt Lake City, Utah, at 9:00 A.M. The purpose of the initial hearing is to enter a scheduling order addressing discovery, disclosure, and other deadlines, including pre-hearing motions, and to set a hearing date to adjudicate the matter alleged in the Order to Show Cause.

If you fail to file a response, as described above, or fail to appear at any hearing that is set, the presiding officer may enter a default order against you without any further notice. Utah Code Ann. § 63G-4-209; Utah Admin. Code R151-4-710(2). After issuing the default order, the presiding officer may grant the relief sought against you in the Order to Show Cause, and will conduct any further proceedings necessary to complete the adjudicative proceeding without your participation and will determine all issues in the proceeding. Utah Code Ann. § 63G-4-209(4). In the alternative, the Division may proceed with a hearing under § 63G-4-208.

The Administrative Law Judge will be Angela Hendricks, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6035. This adjudicative proceeding will be heard by Ms. Hendricks and the Utah Securities Commission. You may appear and be heard and present evidence on your behalf at any such hearings.

You may attempt to negotiate a settlement of the matter without filing a response or proceeding to hearing. To do so, please contact the Utah Attorney General's Office. Questions regarding the Order to Show Cause should be directed to D. Scott Davis, Assistant Attorney General, 160 E. 300 South, 5th Floor, Box 140872, Salt Lake City, UT 84114-0872, Tel. No. (801) 366-0358.

Dated this 19<sup>th</sup> day of April, 2012

  
Keith M. Woodwell  
Director, Division of Securities

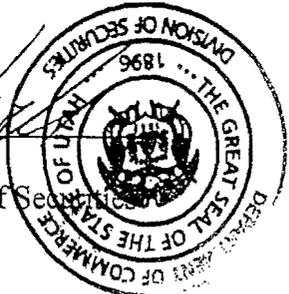


EXHIBIT "C"

DOUGLAS E. GRIFFITH (4042)  
KESLER & RUST  
68 South Main Street, 2<sup>nd</sup> Floor  
Salt Lake City, Utah 84101  
Telephone: (801) 532-8000  
Fax: (801) 531-7965  
*Attorneys for Respondents  
Carols Gregory Gaytan and  
Pacific Investors, Inc.*

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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:

CAROLS GREGORY GAYTAN AND  
PACIFIC INVESTORS, INC.

Respondents.

**ANSWER OF RESPONDENTS CAROLS  
GREGORY GAYTAN AND PACIFIC  
INVESTORS, INC.**

Docket No. SD-12-0034

Docket No. SD-12-0035

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Respondents Carols Gregory Gaytan (hereinafter "Gaytan") and Pacific Investors, Inc. (hereinafter "Pacific") (hereinafter collectively referred to as "Respondents"), by and through their counsel of record, Douglas E. Griffith of Kesler & Rust, answers the Order to Show Cause filed by Utah Division of Securities (hereinafter "the Division") as follows:

1. Respondents deny the allegations contained in ¶ 1 of the Order to Show Cause.
2. Respondents admit the allegations contained in ¶¶ 2 and 3 of the Order to Show Cause.

3. Respondents deny the allegations contained in ¶¶ 4, 5 and 6 of the Order to Show Cause.

4. Respondents admit the allegations contained in ¶ 7 of the Order to Show Cause.

5. Respondents deny the allegations contained in ¶ 8 of the Order to Show Cause.

6. Respondents deny any and all allegations that this matter relates to an investment or investing, but admit the remaining allegations contained in ¶ 9 of the Order to Show Cause.

7. Respondents respond to the allegations contained in ¶ 10 by stating that the referenced document speaks for itself. Respondents deny all allegations not consistent with said document.

8. Respondents respond to the allegations contained in ¶¶ 11 and 12 by stating that the referenced document speaks for itself. Respondents deny all allegations not consistent with said document.

9. Respondents deny any and all allegations that this matter relates to an investment or investing, and responds to the remaining allegations contained in ¶ 13 of the Order to Show Cause by stating the referenced document speaks for itself. Respondents deny all allegations not consistent with said document.

10. Respondents admit the allegations contained in ¶ 14 of the Order to Show Cause.

11. Respondents respond to the allegations contained in ¶ 15 by stating that the referenced document speaks for itself. Respondents deny all allegations not consistent with said document.

12. Respondents deny any and all allegations that this matter relates to an investment or investing, and responds to the remaining allegations contained in ¶ 16 of the Order to Show Cause by stating the referenced document speaks for itself. Respondents deny all allegations not consistent with said document.

13. Respondents respond to the allegations contained in ¶ 17 by stating that the referenced document speaks for itself. Respondents deny all allegations not consistent with said document.

14. Respondents are without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained in ¶ 18 of the Order to Show Cause and therefore deny the same.

15. Respondents deny the allegations contained in ¶ 19 of the Order to Show Cause.

16. Respondents are without knowledge or information sufficient to form a belief as to the truthfulness of the allegations contained in ¶ 20 of the Order to Show Cause and therefore deny the same.

17. Respondents admit the allegations contained in ¶ 21 of the Order to Show Cause.

18. Respondents deny the allegations contained in ¶ 22 of the Order to Show Cause.

19. Respondents answer ¶ 23 to the same extent they have answered ¶¶ 1-22 herein.

20. Respondents deny the allegations contained in ¶¶ 24, 25 and 26 of the Order to Show Cause.

**AFFIRMATIVE DEFENSES**

Respondents asserts the following affirmative defenses to the Division's Order to Show Cause and reserves the right to amend their affirmative defenses as further information becomes available.

**FIRST AFFIRMATIVE DEFENSE**

Respondents alleges that Division has failed to state a claim or cause of action upon which relief may be granted as against the Respondents.

**SECOND AFFIRMATIVE DEFENSE**

Respondents allege that Division's claims are barred by reason of the Division's failure to plead fraud with particularity as to each of the Respondents.

**THIRD AFFIRMATIVE DEFENSE**

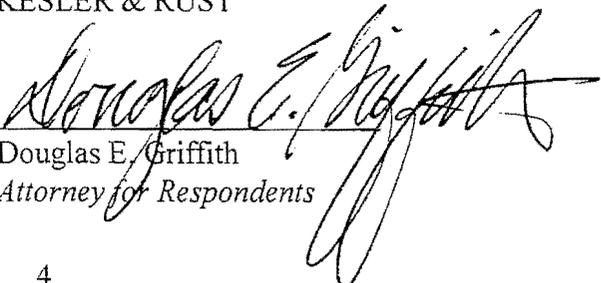
Respondents alleges that Division's claims are barred by any other matter constituting an avoidance or affirmative defense.

**PRAYER**

WHEREFORE, Respondents request that this Court dismiss the claims and causes of action filed by Division and deny the relief requested by the Division.

DATED this 21<sup>ST</sup> day of June, 2012.

KESLER & RUST

  
Douglas E. Griffith  
Attorney for Respondents

**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be delivered by the method indicated below a true and correct copy of the foregoing **ANSWER OF RESPONDENTS CAROLS GREGORY GAYTAN AND PACIFIC INVESTORS, INC.**, postage prepaid, this 21 day of June, 2012, to:

FEDERAL EXPRESS  
 U.S. MAIL  
 HAND DELIVERY  
 TELEFAX TRANSMISSION

Administrative Court Clerk  
c/o Julie Price  
Division of Securities  
160 East 300 South, 2<sup>nd</sup> Floor  
Box 146760  
Salt Lake City, Utah 84114-6760



D. Scott Davis  
Assistant Attorney General  
Utah Division of Securities  
160 East 300 South, 5<sup>th</sup> Floor  
Salt Lake City, Utah 84114-0872