

2007

# William R. Stratton v. JB Oxford Holdings : Brief of Appellant

Utah Court of Appeals

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Lincoln W. Hobbs; Hobbs & Olson; Attorney for Appellee.

Chad Steur; Attorney for Appellant.

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No. 20070855

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**IN THE UTAH COURT OF APPEALS**

---

WILLIAM R. STRATTON,

Plaintiff/Appellant ,

vs.

JB OXFORD HOLDINGS, INC.,

Defendant/Appellee,

---

**ADDENDUM TO BRIEF OF THE APPELLANT**

---

Appeal from Orders of the  
Third Judicial District Court, Salt Lake County, State of Utah,  
the Honorable Tyrone E. Medley, judge presiding

---

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Attorney for Appellant

**FILED**  
**UTAH APPELLATE COURTS**  
**FEB 26 2008**

No. 20070855

---

**IN THE UTAH COURT OF APPEALS**

---

WILLIAM R. STRATTON,

Plaintiff/Appellant ,

vs.

JB OXFORD HOLDINGS, INC.,

Defendant/Appellee,

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**ADDENDUM TO BRIEF OF THE APPELLANT**

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Appeal from Orders of the  
Third Judicial District Court, Salt Lake County, State of Utah,  
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**FILED DISTRICT COURT**  
Third Judicial District

**AUG 11 2005**

By  SALT LAKE COUNTY  
Deputy Clerk

LINCOLN W. HOBBS, ESQ. (4848)  
TAMARA K. PRINCE, ESQ. (5224)  
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525 South 300 East  
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Facsimile: (801) 519-2999

---

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

WILLIAM R. STRATTON,

Plaintiff,

v.

JB OXFORD HOLDINGS, INC.,

Defendant.

**ORDER ON DEFENDANT'S SECOND  
MOTION IN LIMINE**

Civil No. 970908225 CN

Judge Tyrone E. Medley

Defendant's Second Motion in Limine came before the Court for hearing, pursuant to notice, on November 29, 2004. Plaintiff was represented by his counsel, Mark O. Van Wagoner; Defendant was represented by its counsel, Lincoln W. Hobbs and Tamara K. Prince.

In addition to hearing arguments of counsel and reviewing the pleadings submitted in connection with the Motion, the Court also reviewed the Court's file, specifically including the Affidavit of William R. Stratton that had been filed with the Court in 1999 and the previously filed Motions to Strike in relation to that Affidavit.

Having reviewed the materials submitted to the Court and having heard and considered the arguments of counsel, the Court enters the following Order respecting the Defendant's Second Motion in Limine:

The Defendant presented undisputed evidence to the Court establishing that the Defendant had served discovery upon the Plaintiff early in this case that sought detailed information respecting the witnesses that the Plaintiff anticipated would testify and the information upon which they would testify. Defendant also requested thereafter, on numerous occasions, that the Plaintiff supplement his discovery responses.

Notwithstanding the Defendant's requests for specific information, and the requests that the information be supplemented, the Plaintiff and/or the Plaintiff's counsel failed or refused to identify many of the witnesses that were ultimately identified as potential witnesses for the trial. The Court finds that the Plaintiff had an obligation, pursuant to the Utah Rules of Civil Procedure (and irrespective of whether the Court analyzes the Rules as adopted at the commencement of this case or at the time of the Motion) to provide the information requested by the Defendant, and to see that the information was timely supplemented. The Plaintiff failed to provide this information without reasonable justification, his failure was willful, and it prejudiced the Defendant in light of the fact that potential witnesses were not identified in time for the Defendant to have had a reasonable opportunity to conduct discovery. The Plaintiff and/or his counsel failed to appropriately respond to discovery, and in light of the fact that this failure to appropriately respond to the discovery was willful, the Court finds that an appropriate sanction is to ex-

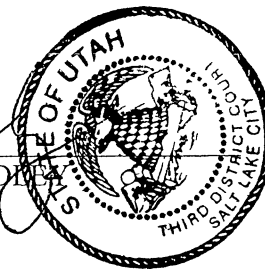
clude the testimony of those witnesses who were not identified in an appropriate and timely fashion in response to the Defendant's discovery. Based thereon, the Defendant's Second Motion in Limine is granted and the Plaintiff is precluded from introducing any evidence from any witnesses that were not disclosed in a timely and proper fashion in response to the Defendant's discovery herein. While Plaintiff did identify a few witnesses, those witnesses could testify, if there were to be a trial, only as to those limited areas that were identified.

DATED this 11 day of Aug, 2005.

*Plaintiff's Objections  
have been considered and  
are denied.*

BY THE COURT:

*[Signature]*  
HON. TYRONE E. MEDINA  
District Court Judge



**CERTIFICATE OF DELIVERY**


I hereby certify that on the 3 day of May, 2005, I caused a true and correct copy of the foregoing proposed ORDER ON DEFENDANT'S SECOND MOTION IN LIMINE to be mailed, first class, postage prepaid, to the following:

Mark O. Van Wagoner, Esq.  
Curtis L. Wenger, Esq.  
City Centre I, Suite 900  
175 East 400 South  
Salt Lake City, UT 84111  
Attorneys for Plaintiff

*[Signature]*

**FILED DISTRICT COURT**  
Third Judicial District

**AUG 11 2005**

By  SALT LAKE COUNTY  
Deputy Clerk

LINCOLN W. HOBBS, ESQ (4848)  
TAMARA K. PRINCE, ESQ (5224)  
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525 South 300 East  
Salt Lake City, Utah 84111  
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Facsimile: (801) 519-2999

---

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

WILLIAM R. STRATTON,

Plaintiff,

v.

JB OXFORD HOLDINGS, INC.,

Defendant.

**ORDER ON DEFENDANT'S MOTION  
FOR PARTIAL SUMMARY  
JUDGMENT RE: MITIGATION**

Civil No. 970908225 CN

Judge Tyrone E. Medley

Defendant's Motion for Partial Summary Judgment Re Mitigation came before the Court for hearing, pursuant to notice, on November 26, 2004. Plaintiff was represented by his counsel, Mark O. Van Wagoner; Defendant was represented by its counsel, Lincoln W. Hobbs and Tamara K. Prince.

The Court also considered, at the same hearing, and thereafter, the Defendant's Motion for Summary Judgment Re Defendant's Liability. The Court has granted that Motion via an Order entered contemporaneously herewith, Defendant's Motion for Partial Summary Judgment Re: Mitigation is granted, however, in the alternative and in the event that the Plaintiff success-

fully appeals the Court's ruling on that summary judgment. In the event that Order is not successfully appealed, this ruling is moot; in the event, however, that Order is successfully appealed, the Court enters the following Order.

Having reviewed the materials submitted to the Court and having heard and considered the arguments of counsel, the Court enters the following Order respecting the Defendant's Motion for Partial Summary Judgment Re: Mitigation:

Contemporaneously with the consideration of the Court's ruling respecting mitigation, the Court heard other motions respecting Defendant's second motion in limine, Defendant's motion to strike, and Defendant's motion for summary judgment regarding Defendant's liability. The Court has granted all of those motions.

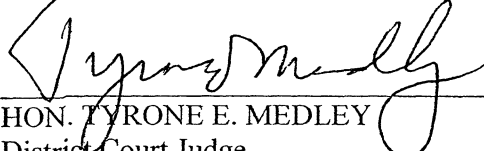
Despite the fact that the Court's ruling on all of those other motions may implicate the relevance of the motion for summary judgment re: mitigation, the Court enters this order to clarify its position in the event that some or all of those motions are successfully appealed and reversed.

The Court finds, as set forth in the arguments presented by Defendant's counsel, that the Plaintiff had a duty to mitigate the damages arising from the alleged breach of the contract. Assuming the Defendant in this action breached any obligation owed towards the Plaintiff, the Plaintiff had an obligation to take reasonable efforts to reduce the damages arising from that breach. It is undisputed that the Plaintiff in this case took no efforts to mitigate his damages and that he did so "because he didn't want to." Based thereon, in the event that this matter proceeds

to trial, the Defendant is entitled to have the damages that may be awarded against it reduced by the amount that the Plaintiff could have and/or did earn as a result of the breach of the Agreement. It was undisputed that the Plaintiff received substantial sums that the Plaintiff would not have received but for the incidents complained of in the Plaintiff's Complaint; in the event this matter is to proceed, the Defendant is entitled to an offset, against any damages awarded to the Plaintiff, in the amount of the sums received. The Court does find that there were disputed issues of fact between the parties as to the amounts that the Plaintiff actually received. That factual issue, which is not material as to the liability or the duty to mitigate, must be determined by the finder of fact in the event that this matter ultimately proceeds to trial.

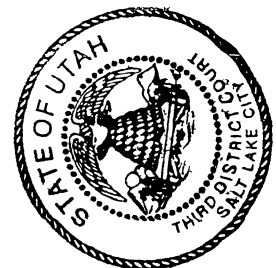
DATED this 11 day of Aug, 2005.

BY THE COURT:

  
HON. TYRONE E. MEDLEY  
District Court Judge

*Plaintiff's Objections  
have been considered  
and are denied*


*VB*



**CERTIFICATE OF DELIVERY**

I hereby certify that on the 3 day of May, 2005, I caused a true and correct copy of  
the foregoing proposed ORDER ON DEFENDANT'S MOTION FOR PARTIAL SUMMARY  
JUDGMENT RE: MITIGATION to be mailed, first class, postage prepaid, to the following:

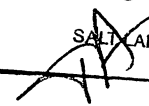
Mark O. Van Wagoner, Esq.  
Curtis L. Wenger, Esq.  
City Centre I, Suite 900  
175 East 400 South  
Salt Lake City, UT 84111  
Attorneys for Plaintiff



A handwritten signature in cursive script, appearing to read 'Mark O. Van Wagoner', is written over a horizontal line.

FILED DISTRICT COURT  
Third Judicial District

AUG 11 2005

By  SALT LAKE COUNTY  
Deputy Clerk

LINCOLN W. HOBBS, ESQ. (4848)  
TAMARA K. PRINCE, ESQ. (5224)  
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Attorneys for Defendant  
525 South 300 East  
Salt Lake City, Utah 84111  
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Facsimile: (801) 519-2999

---

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

WILLIAM R. STRATTON,

Plaintiff,

v.

JB OXFORD HOLDINGS, INC.,

Defendant.

**ORDER ON DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT RE:  
DEFENDANT'S LIABILITY**

Civil No. 970908225 CN

Judge Tyrone E. Medley

Defendant's Motion for Summary Judgment Re: Defendant's Liability came before the Court for hearing, pursuant to notice, on November 29, 2004. Plaintiff was represented by his counsel, Mark O. Van Wagoner; Defendant was represented by its counsel, Lincoln W. Hobbs and Tamara K. Prince.

Having reviewed the materials submitted to the Court, and having heard and considered the arguments of counsel, the Court enters the following Order respecting the Defendant's Motion for Summary Judgment Re: Defendant's Liability:

In connection with the Motion for Summary Judgment Re: Defendant's Liability, the Court considered and entered orders on the Defendant's Motion for Partial Summary Judgment Re: Mitigation and on the Defendant's Second Motion in Limine. Orders in connection with those motions have been entered contemporaneously herewith.

Based upon the exclusion of the evidence by virtue of granting the motion in limine and the motion to strike, the Court finds that the Defendant's Motion for Summary Judgment Re: Defendant's Liability should be granted. Because the Plaintiff failed to properly provide any documents in connection with his discovery obligations herewith that presented any disputed material facts relating to the issue of liability, the Court finds that there are no issues of admissible material fact related to the Defendant's liability under the Agreement. The Court specifically finds that pursuant to the terms of the parties' Agreement, there was no obligation on behalf of Defendant JB Oxford Holdings, Inc ; there was and is no basis to hold this Defendant, which is not a party to that Agreement, liable.

The Court further finds that there is no evidence that JB Oxford Holdings, Inc., as a company related to the entity that was a party to the lawsuit, ever consented to become liable on the Agreement that is the subject of this action. Absent a written acceptance of the obligation under the Agreement, JB Oxford Holdings, Inc. cannot be held liable under the Agreement because of the statute of frauds. The Court therefore enters summary judgment in favor of the Defendant and against the Plaintiff on the issue of liability; Plaintiff's claims herein and any claims that

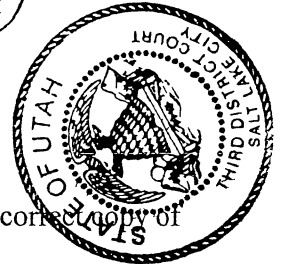
may have been brought against the Defendant and all others are hereby dismissed, with prejudice.

DATED this 11 day of Aug, 2005.

*Plaintiff's Objections  
have been considered  
and are denied  
for*

BY THE COURT:

*[Signature]*  
HON. TYRONE E. MEDLEY  
District Court Judge




**CERTIFICATE OF DELIVERY**

I hereby certify that on the 3 day of May, 2005, I caused a true and correct copy of the foregoing proposed ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT RE: DEFENDANT'S LIABILITY to be mailed, first class, postage prepaid, to the following:

Mark O. Van Wagoner, Esq.  
Curtis L. Wenger, Esq.  
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175 East 400 South  
Salt Lake City, UT 84111  
Attorneys for Plaintiff

*[Signature]*

LINCOLN W. HOBBS, ESQ. (4848)  
TAMARA K. PRINCE, ESQ. (5224)  
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525 South 300 East  
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Facsimile: (801) 519-2999

**FILED DISTRICT COURT**  
Third Judicial District  
**'AUG 11 2005**  
By  **SALT LAKE COUNTY**  
Deputy Clerk

---

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

WILLIAM R. STRATTON,

Plaintiff,

v.

JB OXFORD HOLDINGS, INC.,

Defendant.

**ORDER ON DEFENDANT'S MOTION  
TO STRIKE THE AFFIDAVITS OF  
J. GARRY McALLISTER AND  
JOHN M. WHITESIDES**

Civil No. 970908225 CN

Judge Tyrone E. Medley

Defendant's Motion to Strike the Affidavits of J. Garry McAllister and John M.

~~Whitesides~~ came before the Court for hearing, pursuant to notice, on November 29, 2004.

Plaintiff was represented by his counsel, Mark O. Van Wagoner; Defendant was represented by its counsel, Lincoln W. Hobbs and Tamara K. Prince.

Having reviewed the matter submitted to the Court, and having heard and considered the arguments of counsel, the Court enters the following Order respecting the Defendant's Motion to Strike:

Plaintiff's Motion to Strike the Affidavit of J. Garry McAllister is granted, based upon the materials and the following arguments as presented to the Court:

1. The Plaintiff sought to introduce the Affidavits of J. Garry McAllister and John M. Whitesides in opposition to the Defendant's Motion for Summary Judgment, despite the fact that neither of these witnesses had previously been identified as potential witnesses in the Plaintiff's discovery responses. It is apparent that the Affidavit of John M. Whitesides was in the possession of Plaintiff's counsel for a considerable period of time before being presented to Defendant's counsel; the Court finds that Plaintiff's counsel was aware of their intention to call Mr. Whitesides but neglected, despite interrogatory requests specifically seeking the information, to disclose Mr. Whitesides as a potential witness. Plaintiff's failure to disclose this fact was willful, and prejudiced the Defendant in preparing its defense.

2. Furthermore, the Court finds that J. Garry McAllister was never properly identified as a witness, as was required by the Defendant's discovery requests in this case. Neither Mr. McAllister's identity nor his Affidavit was produced until well after the discovery cut-off; Defendant was prejudiced by virtue of Mr. Whitesides' untimely disclosure and the Affidavit of J. Garry McAllister is stricken.

3. The Court also finds that certain portions of the Affidavit of John M. Whitesides, particularly paragraphs 6, 7, and 8, were not based upon personal knowledge, and thus there is inadequate foundation for those paragraphs to be admissible. The content of the conversation between Mr. Stratton and Mr. Whitesides constitutes inadmissible hearsay. Finally, paragraph

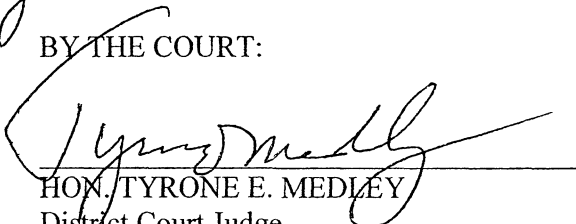
11 and other paragraphs of the Affidavit made reference to a Registration Agreement which was not attached to the Affidavit as required by Utah R. Civ. P. 56(e). That document, when proffered to the Court, was not as it had been represented by the Affidavit.

Based upon the failure to disclose these witnesses in a timely fashion, and based upon the fact that material portions of the Affidavits contain inadmissible information, Defendant's Motion to Strike the Affidavits of J. Garry McAllister and John M. Whitesides is granted.

The Court further finds, specifically, that the Plaintiff's failure or refusal to identify J. Garry McAllister and John M. Whitesides as witnesses in this case constituted at least willful noncompliance with the Plaintiff's discovery obligations.

DATED this 11 day of Aug., 2005.

BY THE COURT:

  
HON. TYRONE E. MEDLEY  
District Court Judge

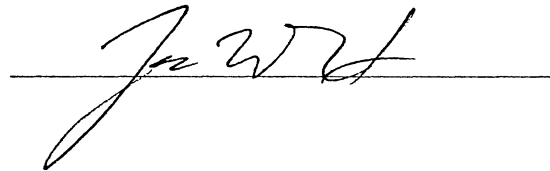


*Plaintiff's Objections  
have been considered and  
are denied*  
*for*

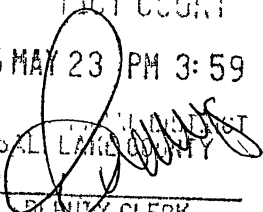
**CERTIFICATE OF DELIVERY**

I hereby certify that on the 3 day of May, 2005, I caused a true and correct copy of the foregoing proposed ORDER ON DEFENDANT'S MOTION TO STRIKE THE AFFIDAVITS OF J. GARRY McALLISTER AND JOHN M. WHITESIDES to be mailed, first class, postage pre-paid, to the following:

Mark O. Van Wagoner, Esq.  
Curtis L. Wenger, Esq.  
City Centre I, Suite 900  
175 East 400 South  
Salt Lake City, UT 84111  
Attorneys for Plaintiff

A handwritten signature in dark ink, appearing to read "Jm Whitesides", is written over a horizontal line.

Mark O. Van Wagoner (3323)  
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Telephone: (801) 524-1000  
Attorney for Plaintiff

FILED  
DISTRICT COURT  
05 MAY 23 PM 3:59  
BY   
PLAINTIFF CLERK

---

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

---

WILLIAM R. STRATTON,  
Plaintiff,

vs.

JB OXFORD HOLDINGS, INC.,  
Defendant.

**OBJECTION TO PROPOSED ORDER  
ON DEFENDANT'S SECOND MOTION  
IN LIMINE.**

Civil No. 970908225CN

Judge Tyrone E. Medley

---

Plaintiff enters the following objections to the Court's Proposed Order:

1. The Proposed Order fails to specify the rule under which plaintiff has obligation to provide the purported list of witnesses.

2. The Proposed Order fails to state that list was provided to defendant prior to then pending fact discovery cut-off date of September 1, 2004 and more than a month prior to the

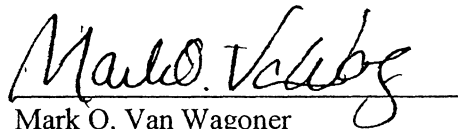
October 1, 2004 date for exchange of witnesses. Additionally, the Proposed Order fails to state that between that time and the time of the Court's ruling, Plaintiff had offered to permit Defendant to take such additional discovery as it wished and Defendant declined.

3. The Proposed Order Fails to identify the rule under which extreme sanction of exclusion of witnesses' testimony is imposed. Moreover, the Proposed Order fails to identify any rule that would permit the retroactive exclusion of witnesses produced by affidavit for the hearing on the Motion for Summary Judgment.

4. The Proposed Order fails to identify the rule under which these witnesses's testimony is circumscribed.

5. The Proposed Order misstates that defendant was prejudiced by failure to supply names, since discovery period had been expanded and because the witnesses excluded for purposes of the hearing on the Motion for Summary Judgment were, in fact identified in prior discovery, including the defendant's own Corporate Deposition.

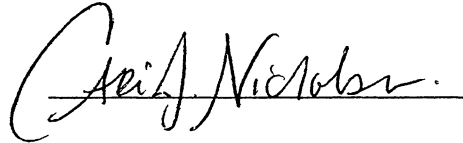
DATED this 23 day of May, 2005.

  
Mark O. Van Wagoner  
Attorney for Plaintiff

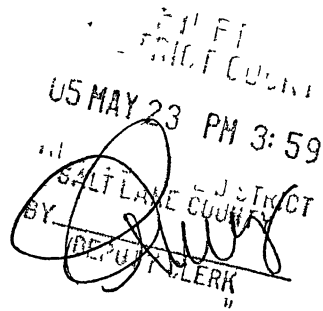
**CERTIFICATE OF SERVICE**

I hereby certify that on this 13 day of May, 2005, I caused a true and correct copy of the foregoing *OBJECTION TO PROPOSED ORDER ON DEFENDANT'S SECOND MOTION IN LIMINE* to be served via facsimile and regular U.S. mail, postage prepaid and addressed to the following:

Lincoln W. Hobbs  
HOBBS & ADONDAKIS  
341 South Main Street, Suite 208  
Salt Lake City, UT 84101  
Facsimile No. 519-2999

A handwritten signature in cursive script, reading "Craig J. Nielsen", is written over a horizontal line.

Mark O. Van Wagoner (3323)  
PRINCE, YEATES & GELDZAHLER  
City Centre I, Suite 900  
175 East Fourth South  
Salt Lake City, Utah 84111  
Telephone: (801) 524-1000  
Attorney for Plaintiff



---

**IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH**

---

WILLIAM R. STRATTON,  
  
Plaintiff,  
  
**vs.**

JB OXFORD HOLDINGS, INC.,  
  
Defendant.

**OBJECTION TO PROPOSED ORDER  
ON DEFENDANT'S MOTION FOR  
SUMMARY JUDGMENT RE  
DEFENDANT'S LIABILITY**

Civil No. 970908225CN

Judge Tyrone E. Medley

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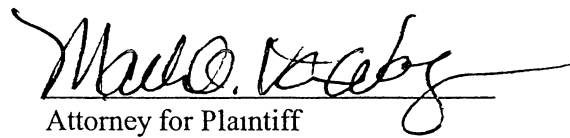
Plaintiff enters the following objections to the Court's Proposed Order.

1. The Proposed Order fails to make reference to or explain the Court's determination to ignore the affidavit of Mr. Stratton and the Defendant's filing with the Securities and Exchange Commission which directly contradict and dispute the assumed "undisputed" facts on which the Court must rely. The Court specifically noted that no sections of the Stratton affidavit were to be excluded based on hearsay, but there is no ruling on the affidavit and no basis upon which to exclude his evidence. Similarly, there was no dispute at the hearing that the Securities and Exchange filing presented to the Court was not authentic or was not created by the Defendant.

Both of those pieces of evidence preclude any grant of summary judgment. The Court must address these issues in any Order.

DATED this 23 day of May, 2005.

MARK O. VAN WAGONER

  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on this 23 day of May, 2005, I caused a true and correct copy of the foregoing *OBJECTION TO PROPOSED ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT RE DEFENDANT'S LIABILITY* to be served via facsimile and regular U.S. mail, postage prepaid and addressed to the following:

Lincoln W. Hobbs  
HOBBS & ADONDAKIS  
341 South Main Street, Suite 208  
Salt Lake City, UT 84101  
Facsimile No. 519-2999

Cynthia J. Nichols.

Mark O. Van Wagoner (3323)  
PRINCE, YEATES & GELDZAHLER  
City Centre I, Suite 900  
175 East Fourth South  
Salt Lake City, Utah 84111  
Telephone: (801) 524-1000  
Attorney for Plaintiff

FILED  
DISTRICT COURT  
05 MAY 23 PM 3:58  
U.S. DISTRICT  
SALT LAKE COUNTY  
BY [Signature]  
DEPUTY CLERK

---

**IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH**

---

WILLIAM R. STRATTON,

Plaintiff,

vs.

JB OXFORD HOLDINGS, INC.,

Defendant.

**OBJECTION TO PROPOSED ORDER  
ON DEFENDANT'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT RE:  
MITIGATION**

Civil No. 970908225CN

Judge Tyrone E. Medley

---

Plaintiff enters the following objections to the Court's Proposed Order:

1. The Proposed Order does not clearly set forth the breach for which plaintiff is required to mitigate his damages.

2. The evidence was not "undisputed" that "Plaintiff received substantial sums that the Plaintiff would not have received but for the incidents complained of in the Plaintiff's

Complaint.”

3. In order to decide that Plaintiff had a duty to mitigate damages, the Court must find that Plaintiff's right to a sum certain did not vest at termination as a matter of law. Additionally, the Order should set forth a clear legal holding that even though the contract sets forth a clear severance pay formula, the defendant need not pay it.

Respectfully submitted.

DATED this 23 day of May, 2005.

MARK O. VAN WAGONER

  
Attorney for Plaintiff

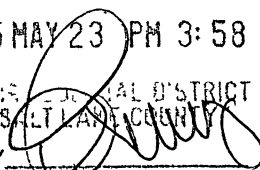
**CERTIFICATE OF SERVICE**

I hereby certify that on this 23 day of May, 2005, I caused a true and correct copy of the foregoing *OBJECTION TO PROPOSED ORDER ON DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE: MITIGATION* to be served via facsimile and regular U.S. mail, postage prepaid and addressed to the following:

Lincoln W. Hobbs  
HOBBS & ADONDAKIS  
341 South Main Street, Suite 208  
Salt Lake City, UT 84101  
Facsimile No. 519-2999

A handwritten signature in black ink, reading "Craig J. Nichols", is written over a horizontal line.

Mark O. Van Wagoner (3323)  
PRINCE, YEATES & GELDZAHLER  
City Centre I, Suite 900  
175 East Fourth South  
Salt Lake City, Utah 84111  
Telephone: (801) 524-1000  
Attorney for Plaintiff

FILED  
DISTRICT COURT  
05 MAY 23 PM 3:58  
U.S. FEDERAL DISTRICT  
SALT LAKE COUNTY  
BY   
DEPUTY CLERK

---

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

|                           |  |  |
|---------------------------|--|--|
| WILLIAM R. STRATTON,      |  | <b>OBJECTION TO PROPOSED ORDER<br/>ON DEFENDANT'S MOTION TO<br/>STRIKE AFFIDAVITS OF J. GARRY<br/>MCALLISTER AND JOHN M.<br/>WHITESIDES.</b> |
| Plaintiff,                |  |  |
| vs.                       |  |  |
| JB OXFORD HOLDINGS, INC., |  |  |
| Defendant.                |  | Civil No. 970908225CN  |
|                           |  | Judge Tyrone E. Medley   |

---

Plaintiff enters the following objections to the Court's Proposed Order:

1. The Proposed Order misstates Plaintiff's intention to call Mr. Whitesides as a witness, since Mr. Whitesides is dead.

2. The Proposed Order fails to state that Mr. McAllister was Defendant's own attorney and that his name was given to Defendant years prior to the discovery cut-off date.

3. The Proposed Order misstates that Paragraphs 6, 7, and 8 of Mr. Whitesides affidavit are not based upon personal knowledge. Mr. Whitesides states his position as founder, vice-president, and director of OSCI (defendant's former name). Additionally, he refers to his own knowledge as the basis if his affidavit, and he refers to conversations to which he was a party.

DATED this 43 day of May, 2005.

MARK O. VAN WAGONER

  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on this 23 day of May, 2005, I caused a true and correct copy of the foregoing *OBJECTION TO PROPOSED ORDER ON DEFENDANT'S MOTION TO STRIKE AFFIDAVITS OF J. GARRY MCALLISTER AND JOHN M. WHITESIDES* to be served via facsimile and regular U.S. mail, postage prepaid and addressed to the following:

Lincoln W. Hobbs  
HOBBS & ADONDAKIS  
341 South Main Street, Suite 208  
Salt Lake City, UT 84101  
Facsimile No. 519-2999

A handwritten signature in dark ink, appearing to read "C. J. Nicholson", is written over a horizontal line.

Mark O. Van Wagoner (3323)  
175 East fourth South, Suite 900  
Salt Lake City, Utah 84111  
Telephone: (801) 542-1000

Attorney for Plaintiff

FILED  
SALT LAKE COUNTY  
CLERK  
JUL 13 2005  
[Signature]

---

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

---

WILLIAM R. STRATTON,

Plaintiff,

v.

JB OXFORD HOLDINGS, INC.,

Defendant.

**MOTION TO STRIKE  
ORDERS AND SET HEARING  
DATE FOR A STATUS  
CONFERENCE AND FURTHER  
PROCEEDINGS**

Judge Tyrone E. Medley

Case No: 970908225CN

---

The Plaintiff, by and through his counsel of record, Mark O. Van Wagoner, hereby moves the Court to strike the orders entered in this case on August 11, 2005 and set a hearing date for a status conference and further proceedings.

**I. INTRODUCTION.**

On the eve of trial, the Defendant filed four motions: two Motions for Summary Judgment, a Motion to Strike and a Motion in Limine.

On December 2, 2004, the Court granted these Motions which effectively ended the case. Counsel for Defendant was directed to prepare the appropriate Orders. Approximately 5 months

later, on or about May 3, 2005, Defendant's counsel, Mr. Lincoln Hobbs, submitted proposed orders to Plaintiff's counsel and Judge Medley.

Plaintiff thought the motions improvidently granted and prepared objections to each of the orders and filed them timely, also in May 2005. However, the Plaintiff never received any further information from the Court. There was no hearing and no notice of any ruling on the motion or of the signing and entry of the orders.

According to the Court docket, on August 11, 2005 all the proposed orders were signed by Judge Medley and filed. Despite this and over a year later, on December 27, 2006, the Court set a hearing date for oral argument on the objections to the proposed orders. The hearing was set for January 22, 2007.

The hearing January 22, 2007, revealed the surprising existence of two separate and different sets of signed orders already entered in the Court record without a hearing on plaintiff's objections. One set of Orders, apparently without any certificate of service was in the possession only of Defendant's attorney. Another set, with different markings, was in the Court file. The set of orders in the possession of Defendant's attorney is dated August 11, 2005. Defendant's counsel claimed at the hearing that he received those Orders on August 15, 2005.

The second set of orders, those in the Court file, is also dated August 11, 2005, yet each order contains the following hand-written notation: "Plaintiff's Objections have been considered and are denied."

## II. THE ORDERS SHOULD BE STRICKEN

Utah Rules of Civil Procedure, Rule 60 (b)(6) provides that a party may seek relief from an order based upon “any . . . reason justifying relief from the operation of the judgment.”

The Court docket reflects that one set of orders was entered in this case, and that set was entered on August 11, 2005. That set of orders is not found in the Court file. It was sent to and is in the possession of Defendant’s attorney.

Those orders are clearly invalid and void because they were signed without consideration of the timely filed objections of Plaintiff’s counsel. This is known because the set of orders in the Court file contain the following handwritten ruling: “Plaintiff’s Objections have been considered and are denied.”

There is no entry in the Court docket showing that the set of orders with the handwritten ruling have been entered.

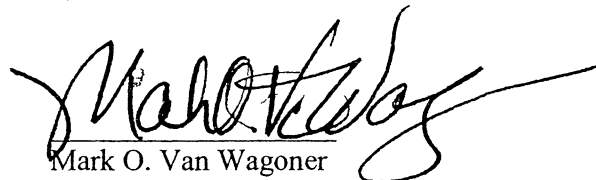
All of this information first came to light in January when the Court set a hearing on the Plaintiff’s objections to the proposed orders. The attached transcript of the hearing on January 22, 2007 establishes this, beginning on page 8 of the transcript:

21        Mr. Hobbs has copies of those orders, which  
22        have the insignia with the indication that they had  
23        been signed and entered, even though I don't believe  
24        his copies contain—  
25        MR. HOBBS: Your interlineation.

1        THE COURT: --my interlineation; but he does  
2        have the standard reference there that the orders were  
3        signed and entered.

Therefore, pursuant to Rule 60(b), other reasons justifying relief are present in this case. The Court should thus strike and void all the purported Orders at issue here and set a date for scheduling and further proceedings.

Dated this 21<sup>st</sup> day of February 2007.

  
Mark O. Van Wagoner  
Attorney for Plaintiff

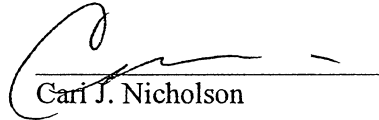
**CERTIFICATE OF SERVICE**

I hereby certify that on the 21<sup>st</sup> day of February, 2007, I served a true and correct copy of the foregoing **MOTION TO STRIKE ORDERS AND SET HEARING DATE FOR A STATUS CONFERENCE AND FURTHER PROCEEDINGS** upon the defendant JB Oxford Holdings, Inc. via:

☒ hand delivery  
☐ regular U.S. Mail, postage prepaid

to the following address:

Lincoln Hobbs  
Attorney for Defendant  
466 East 500 South, Suite 300  
Salt Lake City, UT 84111

  
Carl J. Nicholson

THIRD JUDICIAL DISTRICT COURT

07 MAR 12 AM 9:08

CLERK OF COURT DEPARTMENT

BY COS  
DEPUTY CLERK

LINCOLN W. HOBBS, ESQ. (4848)  
LISA M. McGARRY (5331)  
HOBBS & OLSON, L.C.  
Attorneys for Defendant  
466 East 500 South, Suite 300  
Salt Lake City, Utah 84111  
Telephone: (801) 519-2555  
Facsimile: (801) 519-2999

---

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

WILLIAM R. STRATTON,

Plaintiff,

v.

JB OXFORD HOLDINGS, INC.,

Defendant.

**DEFENDANT'S MEMORANDUM IN  
OPPOSITION TO PLAINTIFF'S  
MOTION TO STRIKE ORDERS AND  
SET HEARING DATE FOR A STATUS  
CONFERENCE AND FURTHER  
PROCEEDINGS**

Civil No. 970908225 CN

Judge Tyrone E. Medley

---

The Defendant, JB Oxford Holdings, Inc., respectfully submits this Memorandum in Opposition to the Plaintiff's Motion to Strike Orders and Set Hearing Date for a Status Conference and Further Proceedings ("Plaintiff's Motion to Strike Orders.")

**POINT I**

**PLAINTIFF'S MOTION IS UNTIMELY.**

Utah R. Civ. P. 60(b) requires that Motions for relief from a judgment or order "shall be made within a reasonable time and for reasons (1,) (2,) or (3) not more than three months after the judgment..." The Utah Courts have repeatedly held that Rule 60(b)(6) "may not be used to

circumvent the three months filing period where the basis for relief from judgment is based on mistake or inadvertence.” Pitts v. McLachlan, 567 P.2d 171 (Utah 1997).

The Plaintiff’s counsel neglected or failed to file a timely appeal or a Rule 60(b) motion, despite the fact that Plaintiff’s own Memorandum concedes that they had knowledge that “on December 2, 2004, the Court granted [Defendant’s Motions] which effectively ended the case.” (Plaintiff’s Motion to Strike Orders p.1.) Amazingly, notwithstanding the Plaintiff’s counsel’s admission that he knew the case was resolved against his client in December of 2004, the Plaintiff took no action on this case until over two years later when the Court noticed up the case on its Order to Show Cause calendar. Plaintiff’s pleadings offer no explanation for the two year lack of action in this case; he acknowledges that he received copies of the proposed Orders in May of 2005; he apparently never followed up after submitting his objections to those Orders in May of 2005. For inexplicable reasons, he allowed over 18 months to pass after filing these objections before he paid any attention to this case; in December 2006 the case was brought to his attention by an Order to Show Cause; even then he apparently failed to review the Court’s record before appearing and asserting (erroneously) that the Orders had not been entered.

The Plaintiff’s contention that his objections were not considered, and that this somehow reflected in the Court’s record is incomprehensible. The Court’s Orders dated, signed and entered on August 11, 2005, specifically state “Plaintiff’s objections have been considered and are denied.” Defendant cannot reasonably understand the Plaintiff’s position that this somehow

shows that the fact that the Court did not consider his objections.<sup>1</sup>

Plaintiff's contention that "The hearing January 22, 2007 [sic] revealed the surprising existence of two separate and different sets of signed Orders..." mischaracterizes the record. In fact, there are signed and entered Orders in the Court's file; there are also conformed copies of those Orders Order sent to Defendant's counsel. The Court signed and entered these Orders on August 11, 2005; Plaintiff's challenge to the validity of the Orders under Rule 60 should have been made within three months (or at any rate within a reasonable time which is not 18 months); and an appeal is also untimely.

## **POINT II**

### **THE ORDERS ARE NOT VOID.**

The Plaintiff, apparently in a further effort to avoid the timeliness problems of its Rule 60(b) challenge and its anticipated appeal, contends that the judgments are void based upon the Court's failure to consider the Plaintiff's objection. There is no evidence to support this contention; indeed the Court's record clearly indicates otherwise. The Court indicated that it reviewed the Plaintiff's objections and they were denied. The Plaintiff's implication that the Court entered its language on the Orders contrary to the actual facts is scandalous and impertinent and should be stricken. *See* Defendant's Motion to Strike Motion to Disqualify Judge and Supporting Memorandum filed herewith.

---


<sup>1</sup> Plaintiff's Memorandum asserts that the "one set of orders...was sent to and is in the possession of the Defendant's attorney," suggesting that the signed and entered Orders in the Court's files are not the Court's Orders. This is clearly not the case. The Orders entered by the Court, after review and rejection of Plaintiff's counsel's arguments, were entered and filed on August 11, 2005. On that same date, conformed copies of the Orders were sent to Plaintiff's counsel. *See* Exhibit "C" to the Affidavit of Crystal A. Stephen.

**CONCLUSION**

The Plaintiff's Motion to Strike Orders and Set Hearing is without foundation and should be denied. The Court should deny the Motion to Strike Orders and the accompanying Motion to Disqualify Judge and should enter a final Order concluding this case.

DATED this 9 day of March, 2007.

HOBBS & OLSON, L.C.

  
\_\_\_\_\_  
LINCOLN W. HOBBS  
LISA M. McGARRY  
Attorneys for Defendant

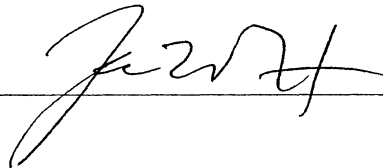
**CERTIFICATE OF SERVICE**

I hereby certify that on the 9 day of March, 2007, I caused a true and correct copy of the foregoing **DEFENDANT'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE ORDERS AND SET HEARING DATE FOR A STATUS CONFERENCE AND FURTHER PROCEEDINGS** to be served upon the following in the manner indicated:

- ☒ Mail
- ☐ Fax
- ☐ Fed Ex
- ☐ Hand Delivery
- ☐ Personally Served
- ☐ Email

Mark O. Van Wagoner  
PRINCE, YEATES & GELDZAHLER  
175 East Fourth South, Suite 300  
Salt Lake City, UT 84111  
Attorneys for Plaintiff

Facsimile #524-1098

  
\_\_\_\_\_

LINCOLN W. HOBBS, ESQ. (4848)  
LISA M. McGARRY (5331)  
HOBBS & OLSON, L.C.  
Attorneys for Defendant  
466 East 500 South, Suite 300  
Salt Lake City, Utah 84111  
Telephone: (801) 519-2555  
Facsimile: (801) 519-2999

FILED  
07 MAR 23 AM 9:54  
T. JUD  
FL  
B. J  
K

IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

WILLIAM R. STRATTON,

Plaintiff,

v.

JB OXFORD HOLDINGS, INC.,

Defendant.

**CERTIFICATE OF SERVICE**

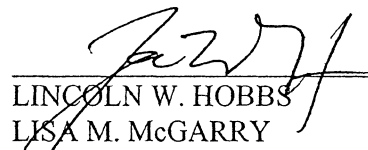
Civil No. 970908225 CN

Judge Tyrone E. Medley

I hereby certify that on the 15<sup>th</sup> day of March, 2007, I caused the original signed Affidavit of Crystal A. Stephen to be sent to the Third Judicial District Court and a true and correct copy of the Affidavit to be sent to the attorney for the Plaintiff, both by U.S. mail, postage prepaid, as set forth in the Certificate of Service set forth below.

DATED this 15 day of March, 2007.

HOBBS & OLSON, L.C.

  
\_\_\_\_\_  
LINCOLN W. HOBBS  
LISA M. McGARRY  
Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on the 15 day of March, 2007, I caused a true and correct copy of the foregoing Certificate of Service to be served upon the following in the manner indicated:

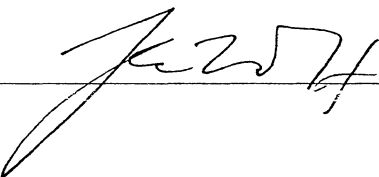
☒ Mail  
☐ Fax  
☐ Fed Ex  
☐ Hand Delivery  
☐ Personally Served  
☐ Email

Mark O. Van Wagoner  
PRINCE, YEATES & GELDZAHLER  
175 East Fourth South, Suite 300  
Salt Lake City, UT 84111  
Attorneys for Plaintiff

Facsimile #524-1098

☒ Mail  
☐ Fax  
☐ Fed Ex  
☐ Hand Delivery  
☐ Personally Served  
☐ Email

ORIGINAL TO  
Third Judicial District Court  
Clerk's Office  
450 South State Street  
Salt Lake City, UT 84111

  
\_\_\_\_\_

07 MAR 23 AM 6:54

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

**AFFIDAVIT OF CRYSTAL A. STEPHEN**

V.

Civil No. 970908225 CN

Judge Tyrone E. Medley

[illegible]

1 I am an adult, over the age of 18, and competent to testify. If called to testify in  
after I would testify in accordance with the contents of this Affidavit.

2947\006\Aff Crystal

3. I was Mr. Hobbs' principal assistant during all aspects of this case while it was being defended by the firm of Hobbs & Olson (formerly known as Hobbs, Adondakis & Olson).

4. During my tenure as an assistant at Hobbs & Olson, I had various regular practices and procedures respecting correspondence. One such practice was the habit of always mailing letters on the date reflected on the letter and always assuring that, when I mailed letters, copies were sent as indicated on the letters.

5. I have received and reviewed a copy of a letter dated May 3, 2005, a copy of which is attached as Exhibit "A;" that letter indicates that a copy of the letter was sent to Mark O. Van Wagoner, Esq. Pursuant to my custom and practice, a copy of that letter would have been sent on May 3, 2005 to Mr. Van Wagoner's address.

6. I am informed and believe that the business records of Hobbs & Olson reflect that Mr. Van Wagoner did in fact receive that letter and thereafter requested an extension of time to respond as was offered in that letter; this further confirmed that he received the letter advising him that the Orders had been submitted on May 2, 2005.

7. I am also informed that the business records of Hobbs & Olson indicate that Mr. Van Wagoner subsequently filed objections to the proposed Orders.

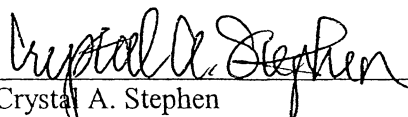
8. Attached hereto as Exhibit "B" is a copy of a note card which I prepared and included with the original Orders and copies of those Orders; the note requests (as was my custom and habit at the time) that the Court "return conformed copies of the Orders in the postage paid envelope provided for your convenience."

9. Pursuant to my regular practice and procedure while I was employed at the firm of Hobbs & Olson, I would have provided a self-addressed, stamped envelope to the Court with the blank Orders.

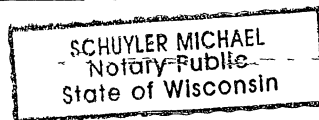
10. I am informed and believe that the files of Hobbs & Olson contain copies of Court Orders indicating they were signed on August 11, 2005, which were received by Hobbs & Olson on August 15, 2005. True and correct copies of these Orders as conformed, and received by Hobbs & Olson, L.C., are attached collectively as Exhibit "C."

Further the affiant sayeth not.

DATED this 12<sup>th</sup> day of March, 2007.

  
Crystal A. Stephen

SUBSCRIBED AND SWORN to before me this 12 day of March, 2007.



\_\_\_\_\_  
NOTARY PUBLIC

Mark O. Van Wagoner (3323)  
175 East Fourth South, Suite 900  
Salt Lake City, Utah 84111  
Telephone: (801) 542-1000  
Facsimile: (801) 355-3351

Attorney for Plaintiff

FILED  
DISTRICT COURT  
07 MAR 28 PM 5:33  
DISTRICT  
COUNTY  
CLERK

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

WILLIAM R. STRATTON,

Plaintiff,

v.

JB OXFORD HOLDINGS, INC.,

Defendant.

REPLY TO OPPOSITION TO  
MOTION TO STRIKE  
ORDERS AND SET STATUS  
CONFERENCE AND FURTHER  
PROCEEDINGS

Judge



Case No.: 970908225CN

The Plaintiff, by and through his counsel of record, Mark O. Van Wagoner, hereby  
replies to the Opposition to Motion to Strike and Set Status Conference and Further Proceedings.

I. **THE UTAH RULES OF CIVIL PROCEDURE REQUIRE THAT THESE  
ORDERS BE STRICKEN. THEY SHOULD NEVER HAVE BEEN ENTERED,  
MUCH LESS DISTRIBUTED ONLY TO DEFENDANT'S COUNSEL.**

This Motion must be seen in context with Plaintiff's Motion to Disqualify Judge  
Medley. There are at least two sets of Orders purportedly entered in this case. One set is being  
illegally withheld by counsel for the Defendant although he claims that the order he has is a  
valid, public document. A second set can be found in the Court's file. The exact differences

cannot be made clear here because of Mr. Hobb's obstruction of justice. What seems clear from the transcript of proceedings in open court, the Orders in the file contain certain handwritten entries not yet on Mr. Hobb's copies.

While these facts mandate Judge Medley's disqualification, they are less important to the granting of this motion than are the words of Rule 7(d) of the Utah Rules of Civil Procedure: "d) Request to submit for decision. When briefing is complete, either party may file a 'Request to Submit for Decision.'" The request to submit for decision shall state the date on which the motion was served, the date the opposing memorandum, if any, was served, the date the reply memorandum, if any, was served, and whether a hearing has been requested. If no party files a request, the motion will not be submitted for decision. (Emphasis Added)

It is indisputable that at the time these Orders were "signed" and "entered" neither party had filed a Rule 7(d) request.

**II. PLAINTIFF'S MOTION IS NOT UNTIMELY. THE ISSUANCE OF ANY OF THESE ORDERS WAS A WRONGFUL ACT DONE IN VIOLATION OF THE RULES. THE DEFENDANT AND ITS COUNSEL CANNOT HIDE THEIR OUTRAGEOUS BEHAVIOR BEHIND AN INVENTED PROCEDURAL DEFENSE.**

Certainly, one could simply argue that the Defendant's scheme here was to create a Order to which no appeal could be taken. At a later point there should be evidence taken under oath about the many factors here that fall outside the required procedures and that could have worked to deprive Mr. Stratton of his civil rights. The Defendant's reliance on "timeliness" rather than any meritorious defense to the actions here, suggest there is no meritorious defense.

These Orders are all invalid and wrongfully entered. The Defendant's arguments are without support and should be ignored.

**III. THE COURT SHOULD REFER MR. HOBBS' CONDUCT TO THE STATE BAR OFFICE OF ATTORNEY DISCIPLINE. MR. HOBBS HAS WRONGFULLY WITHHELD EVIDENCE CENTRAL TO A CRITICAL JUDICIAL FUNCTION.**

Counsel for Defendant should be sanctioned for several repeated violations of the rules of Professional Conduct. Rule 3.4 of the Utah Rules of Professional Conduct provides that a lawyer shall not "(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value." Utah R. Professional Conduct Rule 3.4(a).

These facts are clear. At the January 22, 2007 hearing, Mr. Hobbs had, in his possession and displayed to the Court signed Orders. Mr. Hobbs has taken the position that these are valid and enforceable public judicial documents.

When it became clear that these Orders were either counterfeit or worse, Mr. Hobbs simply refused to provide those copies to Plaintiff's counsel. That is an act of guilty knowledge. Mr. Hobbs has no claim of privilege or any other legitimate basis on which to withhold this evidence. After all, he claims it is a valid court order; a public document he refuses to reveal. By unlawfully obstructing access to evidence, counsel for Defendant violated the rules of professional conduct. Moreover, despite the clear statements in the hearing transcript that two different orders exist, counsel for Defendant has continued his attempt to conceal the record by arguing that counsel for Plaintiff has mischaracterized the record. Mr. Hobbs' actions have

infected the entire process. The Court should refer the matter to the Utah State Bar for disciplinary consideration.


#### IV. CONCLUSION

The attempt to win-at-all-costs posture of counsel for Defendant has resulted in violations of both the Rules of Professional Conduct and the Standards of Professionalism and Civility. Much more significantly, it has compromised the administration of justice. Defendant's counsel has in his possession Orders that are different than the Orders contained in the Court file. This is not speculation or conjecture. It is supported by the hearing transcript and counsel for Plaintiff's Affidavit based on personal observation. It is also logically reflected in the Court docket which sets a hearing date on the objections 18 months after the docket reflects the Orders were entered. Nevertheless, despite a request, counsel for Defendant has refused to provide those Orders.

Instead, he calls said arguments "incomprehensible" and "scandalous." This matter should be referred by the Court to the Utah Bar for disciplinary consideration based upon an unlawful attempt to conceal the record.

As to the merits, it is clear that Defendant's Motion is timely under either 60(b)(1) or 60(b)(6).

Dated this 29<sup>th</sup> day of March, 2007.

  
Mark O. Van Wagoner  
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 28 day of March, 2007, a true and correct copy of the  
**REPLY TO OPPOSITION TO MOTION TO STRIKE ORDERS AND SET STATUS  
CONFERENCE AND FURTHER PROCEEDINGS** upon the defendant JB Oxford Holdings,  
Inc. via:

☐ hand delivery  
☒ regular U.S. Mail, postage prepaid

to the following address:

Lincoln Hobbs  
Attorney for Defendant  
466 East 500 South, Suite 300  
Salt Lake City, UT 84111



7/20

FILED  
DISTRICT COURT

07 JUN 25 PM 4:55

THIRD JUDICIAL DISTRICT  
SALT LAKE COUNTY

BY COA  
DEPUTY CLERK

Mark O. Van Wagoner (3323)  
175 East fourth South, Suite 900  
Salt Lake City, Utah 84111  
Telephone: (801) 578-3286  
Facsimile: (801) 355.3351  
Attorney for Plaintiff

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**IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH**

---

WILLIAM R. STRATTON,

Plaintiff,

v.

JB OXFORD HOLDINGS, INC.,

Defendant.

**MOTION TO RE-OPEN  
DISCOVERY FOR THE LIMITED  
PURPOSE OF ADDUCING  
EVIDENCE REGARDING THE  
CREATION, SIGNING, ENTRY  
AND DISSEMINATION OF  
CERTAIN ORDERS IN THIS  
PROCEEDING**

Judge Tyrone E. Medley

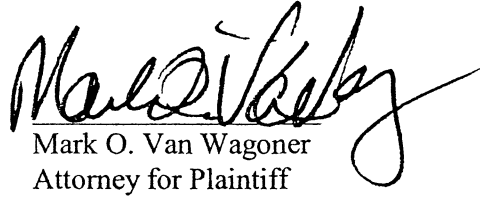
Case No.:970908225CN

The Plaintiff, by and through his counsel of record, Mark O. Van Wagoner, hereby moves the Court to permit discovery of the facts underlying and related to the creation, signing, entry and dissemination of the Court's Orders on defendant's two Motions for Summary Judgment, its Motion to Strike and its Motion in Limine.

1503

This Motion is based on the Plaintiff's supporting memorandum, all the pleadings and papers on file in this case and the Ruling and Order of Robert K. Hilder, Associate Presiding Judge.

Dated this 25th day of June 2007.

  
Mark O. Van Wagoner  
Attorney for Plaintiff

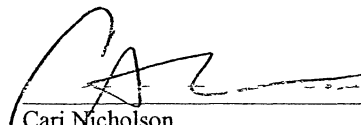
CERTIFICATE OF SERVICE

I hereby certify that on the 25 day of June, 2007, a true and correct copy of **MOTION TO RE-OPEN DISCOVERY FOR THE LIMITED PURPOSE OF ADDUCING EVIDENCE REGARDING THE CREATION, SIGNING, ENTRY AND DISSEMINATION OF CERTAIN ORDERS IN THIS PROCEEDING** the upon the defendant JB Oxford Holdings, Inc. via:

☐ hand delivery  
☒ regular U.S. Mail, postage prepaid

to the following address:

Lincoln Hobbs  
Attorney for Defendant  
466 East 500 South, Suite 300  
Salt Lake City, UT 84111

  
Cari Nicholson  
Secretary to Mark O Van Wagoner

7/20  
O/A

FILED  
DISTRICT COURT  
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THIRD JUDICIAL DISTRICT  
SALT LAKE COUNTY  
BY CSG  
DEPUTY CLERK

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Attorney for Plaintiff

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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

---

WILLIAM R. STRATTON,

Plaintiff,

v.

JB OXFORD HOLDINGS, INC.,

Defendant.

MEMORANDUM IN SUPPORT OF  
PLAINTIFF'S MOTION TO RE-  
OPEN DISCOVERY FOR THE  
LIMITED PURPOSE OF  
ADDUCING EVIDENCE  
REGARDING THE CREATION,  
SIGNING, ENTRY AND  
DISSEMINATION OF CERTAIN  
ORDERS IN THIS PROCEEDING

Judge Tyrone E. Medley

Case No.:970908225CN

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I. TO PROCEED FAIRLY WITH THIS CASE, THERE MUST BE A RESOLUTION  
TO THE INCONSISTENCY PRESENTED BY THE EXISTENCE OF TWO DIFFERENT,

**AND QUITE DISTINCT SETS OF ORDERS ON MOTIONS THAT COULD END THE  
CASE.**

First and foremost, Plaintiff brings this Motion most reluctantly. Plaintiff and his counsel believe that resolving the inconsistency here places the Court in the awkward and uncomfortable position of having to rule on a motion that seeks discovery of the Court's own actions. Plaintiff and his counsel believed such a motion would present an untenable position for any Judge and sought to avoid this situation but, most unfortunately, the Order of the Associate Presiding Judge does not permit a different resolution.

The Court clearly recognized a problem in the hearing in which the competing Orders were presented in open Court.

THE COURT: And I must say that I was somewhat surprised when I opened the file and saw the orders there because-- and I say only surprised, because I had no memory, a year-and-a-half memory, that I had signed and entered the orders; but I--I will tell you, from my review of the file, there is no question that I signed and entered the orders. And not only did I sign and enter them, but in my own handwriting, by way of interlineation on each of the orders, I have written that plaintiff's objections to the

proposed orders are denied. And the orders were signed and entered on August the 11th of 2005.

Mr. Hobbs has copies of those orders, which have the insignia with the indication that they had been signed and entered, even though I don't believe his copies contain--

MR. HOBBS: Your interlineation.

THE COURT: --my interlineation; but he does have the standard reference there that the orders were signed and entered.

(Transcript of Hearing of January 22, 2007 at pp 8-9, hereinafter, Transcript. )

The Court also correctly recognized that the existence of these two orders required resolution and, while not approving such a solution, suggested the possibility of filing a motion to set aside the Orders: -

THE COURT: So, in light of Mr. Van Wagoner's request and the notice to submit for decision regarding the objections and the fact that this matter was on the Court's order to show cause calendar, I put the matter on for today, so we can figure out what's going on with this particular case. (Transcript, pp. 3-4)

THE COURT: I don't know if I can help or not, Mr. Van Wagoner, at this point. You're going to have to take the next appropriate step on this particular case. That may very well be filing a motion to set aside the orders. I'm not going to sua sponte change the orders . . . .(Transcript, p.7)

Plaintiff filed a Motion to Strike the Orders and requested a status conference for further proceedings. That Motion was filed but not set for a hearing pending the determination of the Motion to Disqualify. The Associate Presiding Judge's Order seems to suggest that evidence must be adduced on these matters.

It seems certain, moreover, that unless there is a full evidentiary record on the creation, signing, entry and dissemination of these Orders, the Motion to Strike will have to be argued and decided based on what Judge Hilder characterized as "speculation."

The signing and entry of the orders in this case were irregular and these irregularities require resolution:

1. To the extent that there was any Order entered, Plaintiff did not receive a copy of the order although the Defendant apparently did receive something Defendant claims to be a legitimate document from the Court;
2. The court file contains no proof of mailing of the order to either party;

3. According to the transcript, in open court, Mr. Hobbes presented an order which differs from that in the file. That means there are at least two;

4. Again, the transcript shows that the Court had seen the order in Hobbes possession and recognized that it was different from the one in the file although, according to the Court, they “have the insignia.” That is a significant and irregular fact.

These irregularities require discovery and evidence. Without this evidentiary basis, moreover, an appellate court may be unable to determine even the most fundamental of appellate issues, timeliness. The Defendant is admittedly in the possession of one of two very different signed orders, which are not private documents but public records. Although it is a public document counsel has wrongly refused to provide it, even though it is apparent the Associate Presiding Judge’s decision was affected by its absence. It seems most unlikely that he would forego the argument that the Order he received was ineffective or could be stricken. Indeed, counsel had already argued in his opposition to the Motion to Strike that any such motion would be “untimely.” Moreover, while he hides the very document he once proudly displayed in Court, he characterizes it as a “conformed” copy, seemingly without significance. The “insignia” on the Order refute that characterization.

Even if the Court were to Strike both Orders and hear the objections filed and give the notice that would permit further pleading, the Defendant will argue his timeliness position to the

appellate courts. Only an evidentiary record can permit a fair and reviewable record of these two Orders.

II. **THERE ARE FUNDAMENTAL QUESTIONS OF FACT THAT NEED RESOLUTION BEFORE THE COURT CAN APPROPRIATELY CONSIDER THE MOTION TO STRIKE.**

In Beddoes v. Giffin, 2007 UT 35 (April 2007), the Utah Supreme Court addressed the issue of the finality of a judgment that is subsequently amended. The Court cited with approval the case of Neilson v. Gurley, 888 P.2d 130 (Utah Ct. App. 1994), which looked to whether the amendment “change(d) the character of the judgment” or “affect(ed) any substantive rights running to the litigants.” Id. at 38.

In this case, the amendments (interlineations) to the Orders affected the substantive rights of the Plaintiff, and thus they were not final Orders upon the signing on August 11, 2005. It is therefore paramount to establish the time the interlineations were made.

The interlineations affected the Plaintiff’s substantive rights in numerous respects. First, it is axiomatic that the failure to object not only waives the objection but waives the right to raise the objection on appeal. Plaintiffs timely made his objections to important evidentiary issues, including: a 1-the portion of the Order excluding portions of Mr. Whiteside’s affidavit for lack of foundation; 2-the portion of the Order excluding the affidavit of J. Garry McAllister, defendants’ own attorney; 3-the fact that an Order failed to include the Court’s specifically ruling that no

sections of the STRATTON affidavit were to be excluded based on hearsay; 4-the fact that the Order failed to include the Court's specific ruling that the Securities and Exchange filing was inauthentic, among others. The rulings on those objections were not merely ministerial in nature; they go directly to the existence of disputed material facts that should have precluded the Orders. As a result, the date and manner of the making of the interlineations are necessary to determine when the Orders were finally finished.

Judge Hilder, in his Ruling and Order, stated:

"Plaintiff is understandably concerned that he has apparently not yet seen the copies of the Orders obtained by defense counsel, which apparently do not contain the interlineations, but everything presented to Judge Medley and to me allows nothing more than speculation regarding what is in the possession of defense counsel, and how it was received".

The questions raised by Judge Hilder cannot be resolved in the absence of facts. Although the Rules of Professional Practice require it, Defendant's counsel will not voluntarily produce the Orders. Since January 2007, Plaintiff's written request for these Orders has been ignored. Moreover, nowhere in Defendant's vigorous opposition to the Motion to Disqualify are the Orders attached or submitted.

It seems unreasonable to conclude that the Orders were first signed and later interlineated on the same day. Counsel for Defendant has in his possession copies of the Orders without the interlineations but with the insignia indicating that the Orders have been signed and entered. The reasonable inference is that the Orders were signed and entered, and that sometime thereafter the

interlineations were made. The only reasonable conclusion is that they were made after August 11, 2005.

The Court has no recollection of the events, but there are other means to determine the dates of the original signature and the interlineations. The Plaintiff should be given that opportunity. It should be noted that the case was not removed from the active case list, which indicates that further activity was anticipated by either the Court or the Court staff. Since the Orders and Objections, together with the letter from Mr. Hobbs were submitted three months prior to the Orders being signed, it is not at all clear what prompted the Court to sign any orders on August 11.

Simply put, there are numerous material and fundamental factual questions that substantially affect Plaintiff's substantive rights. Therefore, it is respectfully requested that an order be issued permitting limited discovery on these issues.

### **III. PLAINTIFF IS ENTITLED TO RELIEF BASED UPON RULE 60(b)**

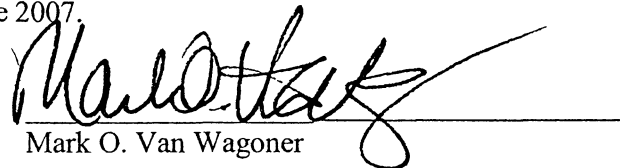
If the Court finds that the interlineations to be purely clerical in nature, Plaintiff is still entitled to relief. According to the transcript of the hearing on January 22, 2007, and the Court docket, notice that the Orders were signed on August 11, 2005 was never provided to Plaintiff. Thus, Plaintiff first learned that the Orders had been signed on January 22, 2007. Thirty days thereafter, pursuant to the Court's direction, Plaintiff timely filed for relief pursuant to URCP Rule 60(b).

### **IV. CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that the Court issue an Order permitting limited discovery on the issue of when the Orders were signed and how and when

Defendant's counsel came into possession of the Orders. In the alternative, Plaintiff requests that the Court grant its Motion to Strike and enter final Orders in this case.

Dated this 28 day of June 2007.

A handwritten signature in black ink, appearing to read "Mark O. Van Wagoner", written over a horizontal line.

Mark O. Van Wagoner  
Attorney for Plaintiff

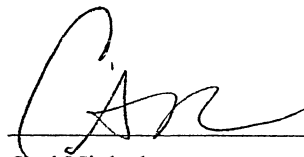
CERTIFICATE OF SERVICE

I hereby certify that on the 25 day of June, 2007, a true and correct copy of the **MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO RE-OPEN DISCOVERY FOR THE LIMITED PURPOSE OF ADDUCING EVIDENCE REGARDING THE CREATION, SIGNING, ENTRY AND DISSEMINATION OF CERTAIN ORDERS IN THIS PROCEEDING** upon the defendant JB Oxford Holdings, Inc. via:

- ☐ hand delivery  
☒ regular U.S. Mail, postage prepaid

to the following address:

Lincoln Hobbs  
Attorney for Defendant  
466 East 500 South, Suite 300  
Salt Lake City, UT 84111



Cari Nicholson

Secretary to Mark O. Van Wagoner

**FILED DISTRICT COURT**  
Third Judicial District

**SEP 21 2007**

SALT LAKE COUNTY

By                      Deputy Clerk

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LISA M. McGARRY (5331)  
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IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

WILLIAM R. STRATTON,

Plaintiff,

v.

JB OXFORD HOLDINGS, INC.,

Defendant.

**ORDER ON MOTION  
TO STRIKE ORDERS**

Civil No. 970908225 CN

Judge Tyrone E. Medley

Plaintiff's Motion to Strike Orders came before the Court for hearing, pursuant to notice, on July 20, 2007. Plaintiff was represented by his counsel, Mark O. Van Wagoner; Defendant was represented by its counsel, Lincoln W. Hobbs and Julie Ladle of the firm of Hobbs & Olson, L.C.

Having reviewed the pleadings, having considered the record and heard the arguments of counsel,

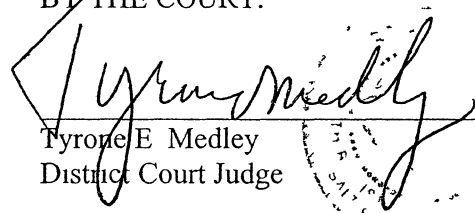
THE COURT HEREBY ORDERS AS FOLLOWS:

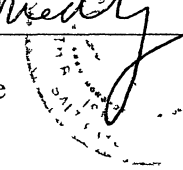
The Plaintiff's Motion to Strike Orders is denied. The Court finds that the Motion to Strike Orders, filed in excess of one (1) year after the entry of the Orders, was untimely pursuant

to Rule 60(b)(6) The Court further finds, in addition to the untimeliness of the Motion, that the Plaintiff has failed to present any cognizable reason pursuant to Rule 60(b)(6) or otherwise, as to why the Orders should be stricken or set aside.

DATED this 21 day of Sept, 2007

BY THE COURT:

  
Tyrone E Medley  
District Court Judge



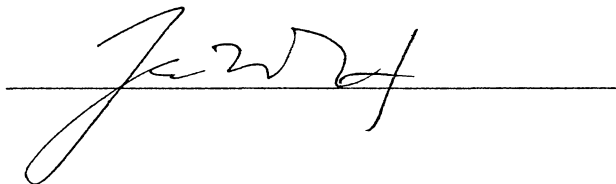
### CERTIFICATE OF SERVICE

I hereby certify that on the 17 day of August, 2007, I caused a true and correct copy of the foregoing ORDER ON MOTION TO STRIKE ORDERS to be served upon the following in the manner indicated:

- ☒ Mail
- ☐ Fax
- ☐ Fed Ex
- ☐ Hand Delivery
- ☐ Personally Served
- ☐ Email

Mark O. Van Wagoner  
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Salt Lake City, UT 84111  
Attorneys for Plaintiff

Facsimile #355-3351



**FILED DISTRICT COURT**  
Third Judicial District

**SEP 21 2007**

SALT LAKE COUNTY

By                      Deputy Clerk

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IN THE THIRD JUDICIAL DISTRICT COURT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

---

WILLIAM R. STRATTON,

Plaintiff,

v.

JB OXFORD HOLDINGS, INC.,

Defendant.

**ORDER ON MOTION  
TO REOPEN DISCOVERY**

Civil No. 970908225 CN

Judge Tyrone E. Medley

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Plaintiff's Motion to Reopen Discovery, which was filed on June 25, 2007, was unopposed by the Defendant. At a hearing on July 30, 2007, counsel for the Defendant indicated they did not intend to file a response and thus the matter was fully briefed.

Having reviewed the pleadings, and having heard arguments from counsel, the Court finds that there is no basis to reopen discovery and therefore denies the request to reopen discovery. Furthermore, in light of the Court's ruling in connection with the Motion to Strike, the Motion respecting additional discovery is moot.

DATED this 21 day of Sept, 2007

BY THE COURT,

  
Tyrone E Medley  
District Court Judge

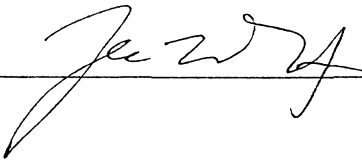
**CERTIFICATE OF SERVICE**

I hereby certify that on the 17 day of August, 2007, I caused a true and correct copy of the foregoing ORDER ON MOTION TO REOPEN DISCOVERY to be served upon the following in the manner indicated:

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☐ Email

Mark O. Van Wagoner  
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Attorneys for Plaintiff

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\_\_\_\_\_