

1990

# Vitamin Products Inc. v. Spectrumedical Inc., a Utah Corporation, J. E. Dresel and Patricia M. Wolff : Brief of Appellant

Utah Court of Appeals

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Dale M. Dorius; Attorney at Law; Attorney for Appellee.

Brenda L. Flanders; Attorney at Law; Attorney for Appellant.

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## Recommended Citation

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**UTAH COURT OF APPEALS**

**BRIEF**

UTAH

DOCKET

K F U

50

.A10

DOCKET NO.

900208CA

IN THE COURT OF APPEALS

FOR THE STATE OF UTAH

VITAMIN PRODUCTS, INC.

:

Appellee/Plaintiff,

:

v.

:

SPECTRUMEDICAL, INC., a Utah  
Corporation, J. E. DRESEL and  
PATRICIA M. WOLFF,

:

:

Case No. 900208-CA

Appellant/Defendants.

:

**ADDENDUM TO  
BRIEF OF APPELLANT**

BRENDA L. FLANDERS (3795)  
Attorney at Law  
1111 Brickyard Road  
Suite 200  
Salt Lake City, Utah 84106  
Telephone: (801) 466-6660

Attorney for J. E. Dresel

DALE M. DORIUS (0903)  
Attorney at Law  
P.O. Box U  
29 South Main Street  
Brigham City, Utah 84302  
Telephone (801) 723-5219

Attorney for Vitamin Products,  
Incorporated

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THIRD CIRCUIT COURT - SLC

MONDAY RIL 30, 1990

11:36 AM

Case.....: 860049146 CV Civil

Filing Date: 07/18/86

Case Title:

Judge: Floyd H. Gowans

VITAMIN PRODUCTS INC VS SPECTRUMEDICAL INC

Cause of Action:

GOODS &amp; SERVICES

#1

Amount of Suit.: \$6317.13

#2

Return Date.....:

Judgment.....: SJ Summary judgment

Date: 01/25/90

Amt: \$8163.50

Disposition.....:

Date:

Court Set: SUPPLEMENTAL ORDER

on 10/29/86 at 0200 P in room L with CV4

SUPPLEMENTAL ORDER

on 03/27/90 at 0200 P in room S with FHG

No Tracking Activity.

No Accounts Payable Activity.

Transaction:	Date:	Cash	Check	Credit	Total
Civil File Fee	07/18/86	.00	35.00	.00	35.00
Civil File Fee	09/25/86	.00	2.50	.00	2.50
Civil File Fee	12/22/86	.00	2.50	.00	2.50
Civil File Fee	02/27/90	.00	2.50	.00	2.50
Civil File Fee	04/17/90	.00	25.00	.00	25.00
Civil File Fee	04/30/90	.00	2.50	.00	2.50

Party...: PLA Plaintiff

Name...:

VITAMIN PRODUCTS INC

Home Phone.: ( ) -

Work Phone.: ( ) -

SSN # - -

Party...: DEF Defendant

Name...:

SPECTRUMEDICAL INC

Home Phone.: ( ) -

Work Phone.: ( ) -

SSN # - -

## D O C K E T

Page 2

THIRD CIRCUIT COURT - SLC

MONDAY

RIL 30, 1990

11:36 AM

Case.....: 860049146 CV Civil

Filing Date: 07/18/86

Case Title:

Judge: Floyd H. Gowans

VITAMIN PRODUCTS INC VS SPECTRUMEDICAL INC

Party...: ATP Atty for Plaintiff

Name....:

DORIUS, DALE M

Home Phone.: ( ) -

Work Phone.: ( ) -

SSN # - -

07/18/86	Case filed on 07/18/86.	MKJ	#3
	FILED TEN DAY SUMMONS ON RETURN	MKJ	
	Began tracking	Review on 09/16/86 MKJ	
	861370270 Civil filing fee received	35.00 MKJ	
07/28/86	Began tracking Civil Rule 4.1	Review on 09/16/86 DEC	
I 08/26/86	SPAINHOWER ENTERED DEFAULT JUDGMENT, 6317.13 PRINCIPAL, 64.53	JDB	#4
I	INTEREST, 56.75 COSTS. TOTAL 6438.41.	JDB	
08/27/86	Case judgment is Default - clerk	JDB	
	Ended tracking of Civil Rule 4.1	JDB	
09/25/86	ISSUED SUPP ORDER RETURNABLE 10-29-86	PAH	#5
	861830136 Miscellaneous civil fee received	2.50 PAH	
I	FILED NOTICE OF JUDGMENT	MRS	#6
I 10/10/86	FILED SUPP ORDER ON RETURN HEARING SET FOR 10-29-86	MRS	#7
	10/17/86 SUP scheduled for 10/29/86 at 2:00 P in room L with CV4	SGL	
I 10/29/86	T2252/C539, JONES, BOTH PARTIES PRESENT, COURT ORDERED SUPP	MRS	
I	ORDER DISMISSED	MRS	#8
12/22/86	ISSUED SUPP ORDER RETURNABLE 01-07-87	PAH	#9
	862430061 Miscellaneous civil fee received	2.50 PAH	
12/23/86	FILED NOTICE OF JUDGMENT	MRS	#10
I 09/23/87	FILED ANSWER OF DEFENDANT J E DRESEL	AK	#11
I 09/28/87	FILED AMENDED SUMMONS ON RETURN (PATRICIA M WOLFF)	MRS	#12
I	FILED AMENDED COMPLAINT	AK	#13
I 10/08/87	FILED ANSWER OF DEFENDANT PATRICIA M WOLFF	AK	#14
I 03/18/88	FILED REQUEST FOR ADMISSION AND INTERROGATORIES	MRS	#15
I 05/12/88	FILED APPEARANCE OF COUNSEL - DEFENDANT PATRICIA WOLFF	MRS	#16
I	FILED DEFENDANT PATRICIA M WOLFF'S RESPONSE TO PLAINTIFF'S	MRS	
I	REQUEST FOR ADMISSIONS AND INTERROGATORIES	MRS	#17
I 05/26/88	FILED MOTION FOR SUMMARY JUDGMENT POINTS AND AUTHORITIES	CPN	#18
I 05/31/88	FILED AFFIDAVIT OF DALE M DORIUS FOR SUMMARY JUDGMENT	MRS	#19
I 06/01/88	FILED NOTICE OF DEPOSITION	MRS	#20
I 06/09/88	FILED DEFENDANT, PATRICIA M WOLFF'S MEMORANDUM IN OPPOSITION TO	MRS	
I	PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, FILED AFFIDAVIT OF	MRS	
I	PATRICIA M WOLFF	MRS	#21
I 06/22/88	FILED PLAINTIFF'S REPLY TO DEFENDANT'S OBJECTION TO SUMMARY	MRS	
I	JUDGMENT	MRS	#22
12/09/88	FHG ENTERED STIP, MOTION AND ORDER FOR DISMISSAL WITH PREJUDICE	DAG	
	AS TO PATRICIA M. WOLFF ONLY	DAG	#23
I 05/30/89	FILED REQUEST FOR ADMISSIONS TO DEFENDANT, J E DRESEL	MKK	
I	INDIVIDUALLY	MKK	#24
I 09/25/89	FILED: REQUEST FOR RULING ON MOTION FOR SUMMARY JUDGMENT	WLP	#25
	09/26/89 Ended tracking of Return Date	WLP	
10/06/89	**FILE TAKEN TO JUDGE GOWANS**	CPN	

## D O C K E T

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THIRD CIRCUIT COURT - SLC

MONDAY

'RIL 30, 1990

11:36 AM

Case.....: 860049146 CV Civil

Filing Date: 07/18/86

Case Title:

Judge: Floyd H. Gowans

VITAMIN PRODUCTS INC VS SPECTRUMEDICAL INC

-----

10/10/89	**FILE RETURNED TO CIVIL DEPARTMENT**	CPN	
	COURT ORDERED PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT GRANTED	CPN	
	BOTH PARTIES NOTIFIED (COPY OF DOCKET ENTRY SENT TO EACH PARTY)	CPN	#26
I 11/20/89	FILED NOTICE OF APPEARANCE	SSJ	#27
I	FILED MOTION TO SET ASIDE DEFAULT JUDGMENT	SSJ	#28
I	FILED MEMORANDUM OF PIONTS AND AUTHORITIES IN SUPPORT	SSJ	#29
I	OF DEFENDANT DRESEL'S MOTION TO SET ASIDE	SSJ	
I	FILED AFFIDAVIT OF J E DRESEL	SSJ	#30
I 12/01/89	OBJECTION TO MOTION TO SET ASIDE SUMMARY JUDGMENT	MEM	#31
I 12/11/89	FILED: REPLY IN SUPPORT OF J.E. DRESEL'S MOTION TO SET ASIDE	MEM	
I	SUMMARY JUDGMENT	MEM	#32
01/19/90	FILED: REQUEST TO CLERK TO SUMMIT TO JUDGE FOR DECISION	MM	#33
01/25/90	GOWANS ENTERS SUMMARY JUDGMENT 8000.00 PRINCIPAL, 163.50	MEM	
	COSTS,	MEM	
	TOTAL JUDGMENT \$8,163.50	MEM	#34
	Case judgment is Summary judgment	MEM	
02/27/90	ISSUED SUPP ORDER RETURNABLE MAR 27 1990	BMC	#35
	900390252 Miscellaneous civil fee received 2.50	BMC	
03/19/90	FILED: MOTION AND ORDER IN SUPPLEMENTAL PROCEEDINGS	MEM	#36
	SUP scheduled for 3/27/90 at 2:00 P in room S with FHG	MEM	
I 03/27/90	GOWANS T617C485 BOTH PRESENT C/O STRICKEN	WLP	#37
I 04/12/90	FILED EX PARTE MOTION TO STAY TIME FOR FILING APPEAL	SMH	#38
I	FILED AFFIDAVIT OF BRENDA L FLANDERS IN SUPPORT OF EX PARTE	SMH	
I	MOTION TO STAY TIME FOR FILING APPEAL	SMH	#39
I	FILED NOTICE OF APPEAL	SMH	#40
I	RECEIVED \$125 CHECK PAYABLE TO COURT OF APPEALS	SMH	
I	FROM ATTORNEY FOR DEFENDANT J E DRESEL	SMH	
I	RECEIVED \$25 CHECK FOR FILING NOTICE OF APPEAL FROM ATD DRESEL	SMH	
I 04/16/90	GOWANS ENTERS ORDER GRANTING EX PARTE MOTION TO STAY TIME	SMH	
I	FOR FILING APPEAL	SMH	#41
04/17/90	900750039 Notice of Appeal fee received 25.00	SMH	
	SENT CERTIFIED COPY OF NOTICE OF APPEAL AND 125.00 FILING FEE TO	CJC	
	THE COURT OF APPEALS	CJC	
I 04/23/90	FILED CERTIFICATE REGARDING TRANSCRIPT FOR APPEAL	LKC	#42
04/30/90	ISSUED SUPP ORDER RETURNABLE MAY 29 1990	BMC	#43
	900840090 Miscellaneous civil fee received 2.50	BMC	

End of the docket report for this case.

DALE M. DORIUS #0903

Attorney at Law

P. O. Box U

29 South Main Street

Brigham City, Utah 84302

Phone: (801) 723-5219

## Circuit Court, State of Utah

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

VITAMIN PRODUCTS, INC.,

Plaintiff

vs.

SPECTRUMEDICAL, INC., a Utah Corporation,  
J. E. DRESEL and PATRICIA M. WOLFF,

Defendant(s)

AMENDED  
COMPLAINT

Civil No. 8649146CV

Plaintiff alleges:

1. That the amount in controversy in this action does not exceed \$10,000.00.

2. That defendant is presently indebted to plaintiff in the sum of \$ 6,317.13. This debt arose on the date of 7-17-85 as follows:

for merchandise and/or services purchased or rendered from Plaintiff, together with attorney fees on an insufficient funds check, interest and costs of court.



Plaintiff demands judgment against defendant\_\_\_\_ for the above sum, together with costs, interest, and attorney's fees.

DATED September 10, 1987

/s/ Dale M. Dorius  
DALE M. DORIUS  
Attorney for Plaintiff  
29 South Main Street  
P. O. Box "U"  
Brigham City, UT 84302  
723-5219

I hereby certify that I mailed a true and correct copy of the foregoing Complaint to the above-named Defendant\_\_\_\_ at \_\_\_\_\_

195 West Cottage Avenue, Sandy, UT 84070

This 10th day of September, 1987.

/s/ Dale M. Dorius  
DALE M. DORIUS

9-22-87

Rale M. Morin  
Attorney at Law  
90 Box 21  
29 South Main Street  
Brigham City Ut 84302

Dear Attorney Morin,

In response to the summons I received yesterday I summarize the following.

1. On May 29, 1986 I wrote to you concerning the fate of Spectra Medical (copy attached)
2. The shipment in question was transacted prior to my employment with Spectra Medical
3. In October 1986 Zion Bank closed Spectra Medical down. Took control of inventory and all assets. Zion had a security interest. All employees were terminated at that time. The business was closed down.
4. I personally was the largest unsecured creditor. \$97,000. No one except Zion received any money. As a result I had to file personal bankruptcy in Feb 1987

I suggest you notify your client there are no means of being paid.



3. Defendant J. E. DRESEL is requested to admit there is due and owing to the Plaintiff the sum of \$8,000.00 represented by the insufficient fund checks marked Exhibit "A" and "B" attached hereto and by this reference incorporated herein.

4. If Defendant J. E. DRESEL denies Request for Admission No. 3, Defendant J. E. DRESEL is requested to state the factual basis of said denial.

DATED this 26th day of May, 1989.

~~757~~ DALE M. DORIUS

---

DALE M. DORIUS  
Attorney for Plaintiff  
29 South Main  
P. O. Box U  
Brigham City, UT 84302

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Request for Admission to Defendant J. E. Dresel, Individually to the Defendant, J. E. DRESEL at 8396 South Supernal Way, Salt Lake City, UT 84121, this 26th day of May, 1989.

~~757~~ DALE M. DORIUS

---

DALE M. DORIUS

*I discussed with Alonzo  
that these checks were replaced & we continued to do  
business with Vilamier Products well into 1986. When we went  
out of business there was money owed but not due to these  
checks in question.*

EXHIBIT "A"

584

SPECTRUMEDIC INC.  
195 WEST COTTAGE AVENUE (801) 255-5775  
SANDY, UTAH 84070

NO 2017

SANDY STATE BANK  
140 West 9000 South  
Sandy, Utah 84070  
97-247/1243

PAY Three thousand and no/100 DATE 8-30-85 AMOUNT \$ 3000.00

TO THE ORDER OF Vitamin Products, Inc.

*Patricia H. Wolf* **REFER TO MAKER**

⑈0002017⑈ ⑆124302477⑆ 91013813⑈ ⑈0000300000⑈

VPR Rocky Mountain Bank Note

584

SPECTRUMEDICAL, INC.  
195 WEST COTTAGE AVENUE (801) 255-5775  
SANDY, UTAH 84070

01962

SANDY STATE BANK  
140 West 9000 South  
Sandy, Utah 84070  
97-247/1243

PAY Five thousand and no/100 DATE 7-17-85 AMOUNT \$ 5000.00

TO THE ORDER OF Vitamin Products, Inc.

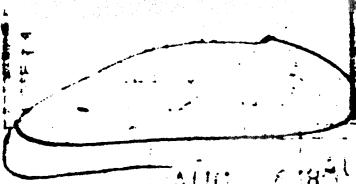
*Patricia H. Wolf* **REFER TO MAKER**

⑈0001962⑈ ⑆13017⑆ 91013813⑈ ⑈0000500000⑈

VPR Rocky Mountain Bank Note

AT 12 12 P  
SALT LAKE CITY  
PAY ANY BANK  
1240-0031-7

AG 8 12



AUG 8 1985

AUG 8 1985  
55-101  
CANCELLED

AUG 16 1985  
55-101  
CANCELLED

AG 85 30

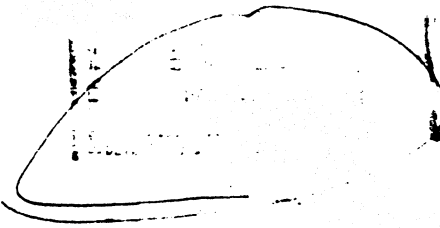
PAY ANY BANK E.E.B.  
UNITED CALUMET TR. CO.  
ELIZABETH, NEW JERSEY

55-101

FOR DEPOSIT ONLY  
VITAMIN PRODUCTS, INC  
02-22-114-1

14, 1

SE 8 12 P  
SALT LAKE CITY  
PAY ANY BANK  
1240-0031-7



SE 85 00

101-53

00005631  
1240-0031-7

00005631  
1240-0031-7

FOR DEPOSIT ONLY  
VITAMIN PRODUCTS, INC  
02-22-114-1

DALE M. DORIUS  
Attorney for Plaintiff  
29 South Main Street  
P. O. Box U  
Brigham City, Utah 84302  
Phone: 801-723-5219

CIRCUIT COURT, STATE OF UTAH

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

VITAMIN PRODUCTS, INC.

Plaintiff,

MOTION FOR  
SUMMARY JUDGMENT

SPECTRUM<sup>VS</sup>MEDICAL, INC., a Utah  
Corporation, J.E. DRESEL and  
PATRICIA M. WOLFF,

Civil No. 860049146 CV

Defendant.

TO THE HONORABLE COURT AND TO THE DEFENDANT\_\_\_\_ABOVE-NAMED ~~AND TO~~  
~~ATTORNEY.~~ J.E. DRESEL

Pursuant to the Utah Rules of Civil Procedure, 1953, as amended, Plaintiff hereby moves the Honorable Court for Summary Judgment against Defendant\_\_\_\_ above named on the grounds and for the following reasons. That Defendant\_\_\_\_ has not answered Plaintiff's Interrogatories and Request for Admissions on file herein as required by law; that the time for answering the same has expired; that the said failure constitutes the admission of the allegations contained therein; that there is no legitimate issue of law or fact remaining to be tried. This Motion will be based upon the pleadings and papers on file in the above-entitled cause.

-2-

DATED this 20th day of September, 19 89

/s/ DALE M. DORIUS

DALE M. DORIUS  
Attorney for Plaintiff  
29 South Main Street  
P. O. Box U  
Brigham City, Utah 84302

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of  
the foregoing document to the Defendant J.E. DRESEL at 8396

South Supernal Way, Salt Lake City, Utah 84121

this 20th day of September, 19 89

/s/ DALE M. DORIUS

DALE M. DORIUS



DALE M. DORIUS  
Attorney for Plaintiff  
29 South Main Street  
P. O. Box U  
Brigham City, Utah 84302  
Phone: 723-5219

CIRCUIT COURT, STATE OF UTAH

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

VITAMIN PRODUCTS, INC.

Plaintiff,

vs.

SPECTRUMEDICAL, INC., a Utah  
Corporation, J.E. DRESEL and  
PATRICIA M. WOLFF,  
Defendant.

POINTS AND AUTHORITY  
FOR SUMMARY JUDGMENT

Civil No. 860049146 CV

1. Rule 33 of Utah Rules of Civil Procedures requires a party that has been served with written Interrogatories to answer the same within fifteen (15) days (now thirty (30) days after the service of said Interrogatories). In the present, these Interrogatories were served upon the Defendant\_\_\_ on the 26th day of May, 1989, and Defendant\_\_\_ has have failed to answer the same as of the date of this motion.

2. Rule 36 (a) of Utah Rules of Civil Procedure requires the Defendant\_\_\_ to answer Request for Admissions within ten (10) days after service of the same. That the Defendant\_\_\_ was ~~were~~ served Request for Admissions in the instant case on the 26th day of May, 1989, and has have failed to answer the same. That

Paragraph 3 of said Request for Admissions asks the Defendant\_\_ to admit being indebted to the Plaintiff in the sum of \$8,000.00.

3. Rule 37 (d) of Utah Rules of Civil Procedure allows the Court on motion to strike out any part of the pleadings or to enter a Judgment by Default against the Defendant\_\_ having failed to answer.

DATED this 20th day of September, 1989.

/S/ DALE M. DORIUS

DALE M. DORIUS  
Attorney for Plaintiff  
29 South Main Street  
P. O. Box U  
Brigham City, Utah 84302

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Points in Authority for Summary Judgment to the Defendant\_\_  
J.E. DRESEL at 8396 South Supernal Way, Salt Lake City, Utah 84121

this 20th day of September, 1989.

/S/ DALE M. DORIUS

DALE M. DORIUS

DALE M. DORIUS #0903  
Attorney for:  
P.O. Box U  
29 South Main Street  
Brigham City, Utah 84302  
723-5219

CIRCUIT COURT, STATE OF UTAH

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

VITAMIN PRODUCTS, INC.

Plaintiff,

vs.

SPECTRUMEDICAL, INC., a Utah  
Corporation, J.E. DRESEL and  
PATRICIA M. WOLFF, Defendant.

REQUEST FOR RULING ON  
MOTION FOR SUMMARY  
JUDGMENT

Civil No. 860049146 CV

COMES NOW DALE M. DORIUS, Attorney for the Plaintiff and requests the court rule on Plaintiff's Motion for Summary Judgment inasmuch as no opposition has been filed and as a matter of law the Motion for Summary Judgment must be granted.

DATED this 20th day of September, 1989.

/S/ DALE M. DORIUS  
DALE M. DORIUS

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Request for Ruling to the Defendant J.E. DRESEL at 8396 South Supernal Way,  
Salt Lake City, Utah 84121

this 20th day of September, 1989.

/S/ DALE M. DORIUS  
DALE M. DORIUS  
ATTORNEY FOR PLAINTIFF

9-25-89

Dale M. Dorius Attorney at Law  
PO Box 2  
Brigham City Utah 84302

Dear Attorney Dorius,

I am responding again - after our phone conversation this AM in reference to the Request for Ruling Case # 860049146 CV.

I have responded to your correspondence in the past outlining the circumstances that put me in the position.

I went to work to Spectramedical in mid year 1985. Vitamin Products was a vendor prior to that time. There was product bought & paid for prior to my employment but in July & Aug of 85 the checks did not clear. Checks later were issued & I believe to cover & I believe some product was returned when Spectramedical went out of business.

As a result of Spectramedical problems I was forced into personal bankruptcy in Feb. 1987. Case # 87A 00853. In addition I had a long marriage go on the rocks as a result of the bankruptcy which years later I am trying to rebuild. All of this I have brought to your attention in the past.

After talking to you today I called  
Rex Groberman President of Vitamin Products.  
He informed me they are not interested in  
pressing this matter and had not requested  
you send me your request of 9 20.59.

Since your client is not after me please  
put this matter to rest so I may get  
on with my life. I have no way of  
making settlement.

Yours truly,

J Edresell

VAN WAGONER & STEVENS  
 Brenda L. Flanders (3795)  
 Christopher J. Condie (5267)  
 215 South State Street  
 Suite 500  
 Salt Lake City, Utah 84111  
 Telephone: (801) 532-1036

Attorneys for J.E. Dresel

CIRCUIT COURT, STATE OF UTAH

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

VITAMIN PRODUCTS, INC.	)	
	)	AFFIDAVIT OF J.E. DRESEL
Plaintiff,	)	
	)	
vs.	)	
	)	
SPECTRUMEDICAL, INC., a Utah	)	Civil No. 860049146 CV
Corporation, J.E. DRESEL and	)	
PATRICIA M. WOLFF,	)	
	)	
Defendants.	)	

I, J.E. Dresel, having been duly sworn, depose and state as follows:

1. I am a named defendant in the above-captioned matter. I make this affidavit of my own personal knowledge and can testify to the matters herein if called as a witness.

2. At various times during the pendency of the above-captioned matter, I spoke with plaintiff and its

attorney of record regarding the returned checks which are at issue in this matter.

3. Upon receipt of plaintiff's Interrogatories and Requests for Admissions, I spoke by telephone with Ron Groberman, president of plaintiff Vitamin Products. He informed me that plaintiff was no longer interested in pressing the matter against me and further that plaintiff had not requested its attorney to send me the Interrogatories and Requests for Admissions. I was told that I did not need to answer because plaintiff would no longer proceed against me.

4. Relying on the representations of plaintiff, I have not taken any action to defend myself in this matter thinking that such was unnecessary and that plaintiff would release me from the dispute without further action.


5. In repeated conversations with plaintiff and plaintiff's counsel, I stated that the checks at issue were replaced with sufficient checks and such was agreed to by Vitamin Products with its agreement to continue to do business

with Spectrumedical well into 1986.

6. I signed the checks at issue in this case as an officer of Spectrumedical and not individually. I had no personal access to the funds contained in the Spectrumedical account on which the checks were written, except in my capacity as an officer of Spectrumedical.

7. Prior to being served with the amended complaint in the above-captioned matter, I did not receive written notice of plaintiff's intent to sue me which follows substantially the form given at Utah Code Annotated, §7-15-2(2).

DATED this 15 day of November, 1989.

  
J.E. DRESEL



STATE OF IDAHO            )  
                                  : ss.  
County of Bonneville    )

On this 15 day of November, 1989, personally appeared before me, J.E. Dresel, the signor of the above instrument, who duly acknowledged to me that he executed the same.

My Commission Expires

7-10-92

Carol J. Free  
NOTARY PUBLIC residing in  
Bonneville, County, Idaho

#### CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing AFFIDAVIT OF J.E. DRESEL to be mailed this 20 day of November, 1989, by depositing the same in the United States mail, postage prepaid, to:

Dale M. Dorius (0903)  
Attorney for Plaintiff  
P.O. Box U  
29 South Main Street  
Brigham City, Utah 84302

750.dre

Carol M. Coppola

FILE COPY

VAN WAGONER & STEVENS  
Brenda L. Flanders (3795)  
Christopher J. Condie (5267)  
215 South State Street  
Suite 500  
Salt Lake City, Utah 84111  
Telephone: (801) 532-1036

Attorneys for J.E. Dresel

CIRCUIT COURT, STATE OF UTAH

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

---

VITAMIN PRODUCTS, INC.	)	
	)	
Plaintiff,	)	MEMORANDUM OF POINTS
	)	AND AUTHORITIES IN SUPPORT
vs.	)	OF DEFENDANT DRESEL'S
	)	MOTION TO SET ASIDE
	)	
SPECTRUMEDICAL, INC., a Utah	)	Civil No. 860049146 CV
Corporation, J.E. DRESEL and	)	
PATRICIA M. WOLFF,	)	
	)	
Defendants.	)	

---

Defendant J.E. Dresel respectfully submits the following memorandum of points and authorities in support of his motion to set aside.

FACTS

1. On or about August 26, 1986, plaintiff obtained default judgment against Spectrumedical, Inc. in the amount of six thousand three hundred seventeen dollars and thirteen cents (\$6,317.13) principal, sixty four dollars and fifty

three cents (\$64.53) interest, and fifty six dollars and seventy five cents (\$56.75) costs for a total of six thousand four hundred thirty eight dollars and forty one cents (\$6,438.41).

2. Judgment against Spectrumedical was based on a claim of payment by Spectrumedical to plaintiff "for merchandise and/or services purchased or rendered from Plaintiff" paid by check on an account with insufficient funds.

3. Being unable to collect judgment against Spectrumedical, plaintiff amended its complaint to add J.E. Dresel and Patricia M. Wolff as party defendants.

4. As with its complaint against Spectrumedical, plaintiff sought judgment against Dresel and Wolff for six thousand three hundred seventeen dollars and thirteen cents (\$6317.13) "for merchandise and/or services purchased or rendered from Plaintiff" paid by check on an account with insufficient funds.

5. On September 22, 1987, Dresel wrote Dale M. Dorius, attorney for plaintiff, stating that the shipment of

merchandise in question "was transacted prior to my employment with Spectrumedical".

6. On May 26, 1988, plaintiff filed a motion for summary judgment against defendants Dresel and Wolff. On May 31, 1988, Dale M. Dorius, attorney for plaintiff, filed an affidavit stating that defendants Dresel and Wolff signed the Spectrumedical checks at issue in the case.

7. On May 30, 1989, plaintiff filed its first set of requests for admissions to defendant J.E. Dresel individually.

8. On or about September 20, 1989, plaintiff filed its second motion for summary judgment against defendant Dresel together with a memorandum of points and authorities and a request for ruling.

9. Apparently on October 10, 1989, the Court granted plaintiff's motion for summary judgment against defendant Dresel. Although the Court's order granting plaintiff's motion for summary judgment appears on the docket sheet, no minute entry or order signed by the Court appears in the file maintained by the Court.

10. Throughout the above proceedings, defendant Dresel was told by plaintiff that plaintiff would not proceed further against defendant Dresel. In particular, on or about September 25, 1989, defendant Dresel spoke with a Ron Groberman, president of plaintiff Vitamin Products. Dresel was informed by Mr. Groberman that plaintiff was not interested in pressing the matter further and had not requested its attorney to send the requests for admissions dated September 20, 1989. (Affidavit of J.E. Dresel, ¶¶ 2, 3).

11. Relying on the representations made by plaintiff, Dresel did not respond to the discovery requests served on him by plaintiff. (Affidavit of J.E. Dresel, ¶ 4).

12. The Spectrumedical checks to Vitamin Products, signed by Dresel, were signed by him in his corporate capacity and not individually. (Affidavit of J.E. Dresel, ¶ 6).

13. The Spectrumendical checks were replaced by subsequent checks and Vitamin Products thereby was paid.

14. Dresel did not receive notice in the form required by Utah Code Annotated, §7-15-2(2), prior to

plaintiff filing its complaint against him. (Affidavit of J.E. Dresel, ¶ 7).

### ARGUMENT

I. THE COURT HAS BROAD DISCRETION TO SET ASIDE ITS PRIOR JUDGMENT.

Rule 60(b) of the Utah Rules of Civil Procedure provides that

on motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; ... (5) the judgment is void; ... or (7) any other reason justifying relief from the operation of the judgment.

Where a reasonable excuse is offered by the judgment debtor, courts generally tend to favor granting relief from judgment unless it appears that to do so would result in substantial injustice to the judgment creditor. Westinghouse Electric Supply, Co. v. Paul W. Larsen, Contractor, 544 P.2d 876 (Utah 1975). The trial court is given broad discretion in determining whether a movant has shown "mistake,

inadvertence, surprise or excusable neglect," and the supreme court will reverse the trial court's ruling only when there has been an abuse of discretion. Larsen v. Colina, 684 P.2d 52 (Utah 1984).

For a judgment debtor to be relieved from a judgment, he must show not only that the judgment was entered against him through any reason specified in subdivision (b), but also that his motion to set aside the judgment was timely, and that he has a meritorious defense to the action. A meritorious defense is one which sets forth specific and sufficiently detailed facts which, if proven, would result in a judgment different from the one entered. State ex rel. Utah State Dep't of Social Services v. Musselman, 667 P.2d 1053 (Utah 1983).

Rule 60(b) provides that a motion to set aside must be filed not more than three months after the judgment, order, or proceeding was entered or taken. Defendant Dresel has complied with this requirement of Rule 60(b) by filing his motion approximately one month after the judgment was entered. Excusable neglect is present due to the representations made to defendant Dresel by plaintiff and its counsel of record. Throughout the proceedings, Dresel spoke with plaintiff and

plaintiff's counsel regarding the checks at issue in this case. During such discussions, defendant Dresel was told that plaintiff did not intend to proceed further against Dresel on the disputed checks. Relying on the representations made by plaintiff, Dresel believed that the matter would be resolved without further participation on his part and, therefore, Dresel did not respond or answer the discovery requests submitted to him by plaintiff. Defendant Dresel was not represented by counsel and did not understand the implications of his failure to respond to the discovery propounded by plaintiff. Dresel's actions clearly constitute excusable neglect under Rule 60(b).

Other reasons justifying relief from the operation of the judgment include the fact that the judgment entered is substantially greater than the amount claimed to be owing by plaintiff. Furthermore, the judgment appears to be based on the fact that Dresel failed to respond to plaintiff's Interrogatories and Requests for Admissions. Request for Admission No. 3 states as follows:

Defendant J.E. Dresel is requested to admit there is due and owing to the Plaintiff the sum of \$8,000 represented by the insufficient fund checks marked Exhibit "A" and "B" attached hereto and by this reference incorporated herein.



Even assuming, arguendo, that defendant Dresel admitted Request No. 3, such an admission would not entitle plaintiff to judgment against Dresel individually. Request No. 3 does not, in any way, request Dresel to admit who is liable for the amount of the checks. Dresel could admit Request No. 3 on the basis that some person, other than Dresel, owes the money which is the subject of Request No. 3. In at least one telephone conversation with plaintiff's counsel, Dresel stated that the checks which are the subject of Request No. 3 were replaced by sufficient checks and that Vitamin Products continued to do business with Spectrumedical well into 1986. Furthermore, the hand written letter from Dresel to plaintiff's counsel dated September 22, 1987 - which apparently was treated as an answer to plaintiff's amended complaint filed September 28, 1987 - states that he is not liable on the insufficient checks because the transactions supporting the checks took place prior to his employment with Spectrumedical.

The meritoriousness of Dresel's potential defense is discussed in Section II which follows. Dresel is entitled to have the summary judgment set aside.

II. DEFENDANT HAS NOT HAD AN OPPORTUNITY TO PRESENT HIS MERITORIOUS DEFENSES.

Dresel, relying on representations made to him by plaintiff that plaintiff would not proceed further against Dresel, failed to take any action in defense to plaintiff's claim. Dresel, however, has the following defenses which, if allowed to be presented to the court, may give merit to a dismissal of plaintiff's action against him:

1. Failure to give proper notice.

Plaintiff's claim against Dresel is based on Utah Code Annotated, §7-15-1 et seq. Section 7-15-2(2) provides that notice in substantially the form set forth in subparagraph (2) shall be given to the defendant prior to bringing action against him. Such a notice was never given to Dresel. Plaintiff's failure to give Dresel sufficient notice requires that plaintiff's complaint be barred.

## 2. Individual v. Corporate entity distinction.

Plaintiff obtained judgment against Spectrumedical in or about August of 1986. Judgment apparently was granted based on checks drawn on Spectrumedical's account, returned unpaid due to insufficient funds. Unable to collect its judgment against Spectrumedical, plaintiff amended its complaint adding defendants Dresel and Wolff individually. No claim is made by plaintiff that the checks at issue were signed by Dresel in his individual capacity rather than in his corporate capacity. Plaintiff does not allege that the court should pierce Spectrumedical's corporate veil, nor does plaintiff give any justification for doing so. The checks signed by Dresel were signed by him in his corporate capacity as an officer of the corporation. Dresel has no individual liability for the corporate checks that were dishonored.

Dresel's reliance on the representations made to him by plaintiff has precluded any opportunity to defend against plaintiff's claim. To allow plaintiff to obtain judgment against Dresel without Dresel having an opportunity to defend the action constitutes an injustice that should not be allowed by this court.


This Court should set aside the summary judgment entered against defendant Dresel in the above-captioned matter.

CONCLUSION

Based on the arguments and authorities cited above, the summary judgment entered against defendant Dresel should be set aside by this Court.

RESPECTFULLY SUBMITTED this 20th day of November, 1989.

VAN WAGONER & STEVENS  
Brenda L. Flanders  
Christopher J. Condie

By:   
Attorneys for Defendant  
J.E. Dresel

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT DRESEL'S MOTION TO SET ASIDE to be mailed this 20 day of November, 1989, by depositing the same in the United States mail, postage prepaid, to:

Dale M. Dorius (0903)  
Attorney for Plaintiff  
P.O. Box U  
29 South Main Street  
Brigham City, Utah 84302

Carrie M. Coppola

700.spe

VAN WAGONER & STEVENS  
 Brenda L. Flanders (3795)  
 Christopher J. Condie (5267)  
 215 South State Street  
 Suite 500  
 Salt Lake City, Utah 84111  
 Telephone: (801) 532-1036

Attorneys for J.E. Dresel

## CIRCUIT COURT, STATE OF UTAH

### SALT LAKE COUNTY, SALT LAKE DEPARTMENT


VITAMIN PRODUCTS, INC.	)	
	)	
Plaintiff,	)	MOTION TO SET ASIDE
	)	DEFAULT JUDGMENT
vs.	)	
	)	
SPECTRUMEDICAL, INC., a Utah	)	Civil No. 860049146 CV
Corporation, J.E. DRESEL and	)	
PATRICIA M. WOLFF,	)	
	)	
Defendants.	)	

Pursuant to Rule 60 of the Utah Rules of Civil Procedure, defendant J.E. Dresel respectfully moves the Court for an order setting aside the summary judgment entered against him on or about October 10, 1989. This motion is based on the pleadings and papers on file herein as well as

the affidavit and memorandum of points and authorities filed herewith.

DATED this 20<sup>th</sup> day of November, 1989.

VAN WAGONER & STEVENS  
Brenda Flanders  
Christopher J. Condie

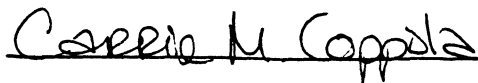
By:   
Attorneys for Defendant  
J.E. Dresel

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing to be mailed this 20 day of November, 1989, by depositing the same in the United States mail, postage prepaid, to:

Dale M. Dorius (0903)  
Attorney for Plaintiff  
P.O. Box U  
29 South Main Street  
Brigham City, Utah 84302

400.dre



VAN WAGONER & STEVENS  
Brenda L. Flanders (3795)  
Christopher J. Condie (5267)  
215 South State Street  
Suite 500  
Salt Lake City, Utah 84111  
Telephone: (801) 532-1036

Attorneys for J.E. Dresel

CIRCUIT COURT, STATE OF UTAH

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

---

VITAMIN PRODUCTS, INC.	)	
	)	NOTICE OF APPEARANCE
Plaintiff,	)	
	)	
vs.	)	
	)	
SPECTRUMEDICAL, INC., a Utah	)	Civil No. 860049146 CV
Corporation, J.E. DRESEL and	)	
PATRICIA M. WOLFF,	)	
	)	
Defendants.	)	

---


Brenda L. Flanders, Esq., and Christopher J. Condie, Esq., for Van Wagoner & Stevens, hereby enter their appearance as counsel for defendant J.E. Dresel in the above-captioned matter. All pleadings, notices and other communications directed to the aforementioned in regard to this matter should



be forwarded to the address indicated above.

DATED this 20<sup>th</sup> day of November, 1989.

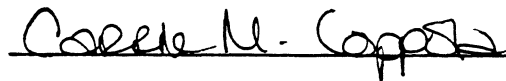
VAN WAGONER & STEVENS  
Brenda L. Flanders  
Christopher J. Condie

By:   
Attorneys for Defendant

#### CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing NOTICE OF APPEARANCE to be mailed this 20 day of November, 1989, by depositing the same in the United States mail, postage prepaid, to:

Dale M. Dorius (0903)  
Attorney for Plaintiff  
P.O. Box U  
29 South Main Street  
Brigham City, Utah 84302



DALE M. DORIUS #0903  
 Attorney for: Plaintiff  
 P.O. Box U  
 29 South Main Street  
 Brigham City, Utah 84302  
 723-5219

CIRCUIT COURT, STATE OF UTAH  
 SALT LAKE COUNTY, SALT LAKE DEPARTMENT

---

VITAMIN PRODUCTS, INC.,	)	
	)	
Plaintiff,	)	OBJECTION TO MOTION TO SET
	)	ASIDE SUMMARY JUDGMENT
vs.	)	
	)	
SPECTRUMEDICAL, INC., a Utah	)	
Corporation, J. E. DRESEL and	)	Civil No. 860049146CV
PATRICIA M. WOLFF,	)	
	)	
Defendants.	)	

---

COMES NOW Plaintiff and objects to Defendant's Motion to Set  
 Aside Summary Judgment on the following grounds:

1. Defendant, J. E. DRESEL, has signed checks marked  
 Exhibit "A" and "B", which checks did not clear the bank for "insufficient  
 funds".

POINTS AND AUTHORITIES

2. Section 7-15-1-(1), Utah Code Annotated provides:

(1) Any person who makes or ...issues any check...  
 whether as corporate agent or otherwise...which  
 is not honored...and marked "refer to maker"  
 shall be liable to the holder of the check.


3. Defendant, J.E. DRESEL, is a maker of the insufficient  
 funds checks marked Exhibit "A" and "B" and is personally liable under  
 Utah law.

4. Defendant failed to answer Plaintiff's Request for Admissions on May 26, 1989. The Court granted a Summary Judgment on October 10, 1989.

5. The Court has no Jurisdiction to reconsider its granting of a Summary Judgment. Defendant's only remedy is to appeal as provided by statute.

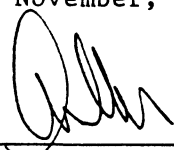
WHEREFORE, Plaintiff prays Defendant's Motion to Set Aside Summary Judgment be denied.

DATED this 29th day of November, 1989.

  
\_\_\_\_\_  
DALE M. DORIUS  
Attorney for Plaintiff  
P. O. Box U  
Brigham City, UT 84302

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing Motion to Set Aside Summary Judgment to Defendants' attorneys, BRENDA L. FLANDERS and CHRISTOPHER J. CONDIE at 215 South State Street, Suite 500, Salt Lake City, UT 84111, this 29th day of November, 1989.

  
\_\_\_\_\_  
DALE M. DORIUS

EXHIBIT

27 A

SPECTRUMEDIC INC.

195 WEST COTTAGE AVENUE (801) 255-5775  
SANDY, UTAH 84070

No 2017

584

SANDY STATE BANK  
140 West 9000 South  
Sandy, Utah 84070  
97-247/1243

PAY ----- Three thousand and no/100 -----

DATE

AMOUNT

8-30-85

\$ 3000.00

Vitamin Products, Inc.

*John*  
*Patricia*

⑈0002017⑈ ⑆124302477⑆ 91013813⑈

⑈0000300000⑈

SE 8 10 2  
SALT LAKE CITY  
PAY ANY BANK  
1240 0021-2

SE 8 11

FOR DEPOSIT ONLY  
VITAMIN PRODUCTS, INC  
02-22-114-1

10-55

SE 85 00

⑈207104⑈

⑈40512455⑈

15-52

**SANDY STATE BANK**  
140 West 9000 South  
Sandy, Utah 84070  
97-247/1243

584

PAY ----- Five thousand and no/100

DATE

A M O U N T

TO  
THE  
ORDER  
OF

7-17-85

**\$ 5000.00**

Vitamin Products, Inc.

3 10000.00  
REFER TO MAKER  
REFER TO MAKER

"0001962" : .3C ,7 1 91013813"

0000500000

VPR Rocky Mountain Bank Note

AG 'A' 12

ENC 3

55-101  
CANCELLED  
8-85

CANCELLED  
55-101  
AUG 16 '85

42 35 30

THE NEW YORK PUBLIC LIBRARY  
ASTOR LENOX TILDEN FOUNDATION  
125 WEST 4TH STREET  
NEW YORK, N. Y.

5570

FOR DEPOSIT ONLY  
VITAFIN PRODUCTS, INC.  
62-27-114-1

FILE COPY

VAN WAGONER & STEVENS  
Brenda L. Flanders (3795)  
Christopher J. Condie (5267)  
215 South State Street  
Suite 500  
Salt Lake City, Utah 84111  
Telephone: (801) 532-1036

Attorneys for J.E. Dresel

CIRCUIT COURT, STATE OF UTAH  
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

VITAMIN PRODUCTS, INC.	:	REPLY IN SUPPORT OF
	:	J.E. DRESEL'S MOTION TO
Plaintiff,	:	SET ASIDE SUMMARY JUDGMENT
	:	
v.	:	Civil No. 860049146 CV
	:	
SPECTRUMEDICAL, INC., a Utah	:	
corporation, J.E. DRESEL and	:	
PATRICIA M. WOLFF,	:	
<u>Defendants.</u>	:	

J.E. Dresel, a defendant herein, respectfully  
submits this reply in support of his motion to set aside  
summary judgment as follows:

STATEMENT OF FACTS

Dresel hereby incorporates the Statement of Facts  
provided in his Memorandum of Points and Authorities in  
Support of Dresel's Motion to Set Aside Summary Judgment and  
his Affidavit filed therewith.

## ARGUMENT

CONTRARY TO PLAINTIFF'S ASSERTION, THE COURT HAS JURISDICTION TO SET ASIDE ITS SUMMARY JUDGMENT.

In plaintiff's objection to the motion to set aside judgment, plaintiff states that "[t]he Court has no Jurisdiction to reconsider its granting of a Summary Judgment." Obviously, this is incorrect. Rule 60(b), Utah Rules of Civil Procedure, provides that

On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; . . . (5) the judgment is void; . . . or (7) any other reason justifying relief from the operation of the judgment.

Where a reasonable excuse is offered by the judgment debtor, courts generally tend to favor granting relief from judgment unless it appears that to do so would result in substantial injustice to the judgment creditor. Westinghouse Electric Supply Co. v. Paul W. Larsen, Contractor, 544 P.2d 876 (Utah 1975).

To relieve a judgment debtor from the judgment, he must show not only that the judgment was entered against him

through any reason specified in subdivision (b), but also that his motion to set aside the judgment was timely and that he has a meritorious defense to the action. A meritorious defense is one that sets forth specific and sufficiently detailed facts which, if proven, would result in a judgment different from the one entered. State ex rel. Utah State Dep't of Social Services v. Musselman, 667 P.2d 1053 (Utah 1983).

**POINT I. DRESEL FILED HIS MOTION TO SET ASIDE THE JUDGMENT IN A TIMELY MANNER.**

Rule 60(b) provides that a motion to set aside must be filed not more than three (3) months after the judgment, order, or proceeding was entered or taken. Dresel filed his motion approximately one (1) month after the judgment was entered.

**POINT II. THE JUDGMENT WAS ENTERED AGAINST DRESEL THROUGH A REASON SPECIFIED IN SUBDIVISION (b).**

Certainly, excusable neglect exists in this situation because Dresel disputed the allegations made by plaintiff's counsel in the complaint, he communicated that dispute, but he relied on the representations made by



plaintiff that the matter would be resolved without further participation on his part. Accordingly, Dresel did not respond or answer plaintiff's discovery requests.

Further, other reasons justify relief from the operation of the judgment, including entry of a judgment in an amount substantially greater than the sum claimed to be owing by plaintiff. Furthermore, the judgment appears to be based on the failure of Dresel to respond to plaintiff's interrogatories and requests for admissions. Contrary thereto, however, the interrogatories and requests for admissions do not support the judgment. Request for Admission No. 3 states as follows:

Defendant J.E. Dresel is requested to admit there is due and owing to the plaintiff the sum of \$8,000.00 represented by the insufficient fund checks marked Exhibit "A" and "B" attached hereto and by this reference incorporated herein.

Even assuming, arguendo, that Dresel admitted Request No. 3, this admission would not entitle plaintiff to judgment against Dresel individually. Request No. 3 does not, in any way, request Dresel to admit who is liable for the amount of the checks.

Further, in at least one telephone conversation with plaintiff's counsel, Dresel stated that the relevant checks were replaced by sufficient checks and that Vitamin Products continued to do business with Spectrumedical well into 1986. Finally, Dresel's answer states that he is not liable on the insufficient checks because the transaction supporting the checks took place prior to his employment with Spectrumedical.

POINT III. DRESEL HAS PROVIDED A MERITORIOUS DEFENSE, I.E., ONE THAT SETS FORTH SPECIFIC AND SUFFICIENTLY DETAILED FACTS, WHICH, IF PROVEN, WOULD RESULT IN A JUDGMENT DIFFERENT FROM THE ONE ENTERED.

First, plaintiff failed to provide the mandatory notice pursuant to § 7-15-2(2), Utah Code Annotated. Plaintiff's failure to give Dresel sufficient notice requires that plaintiff's complaint be barred.

Second, the checks Dresel signed were executed in his corporate capacity as an officer of the corporation, and he has no individual liability for them.

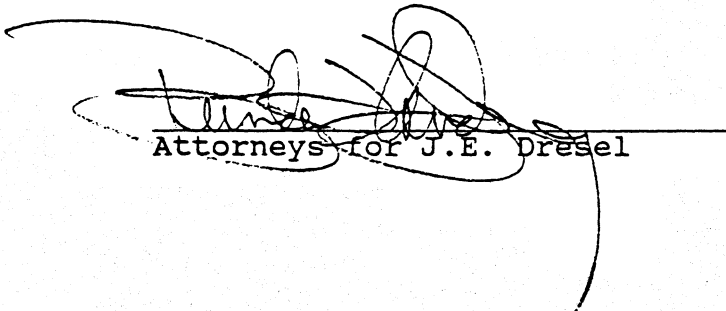
Third, the requests for admissions and interrogatories do not support the judgment granted to plaintiff.

Accordingly, Dresel has satisfied Rule 60(b), Utah Rules of Civil Procedure. This Court has jurisdiction to set aside its order granting summary judgment to plaintiff and should do so.

WHEREFORE, Dresel respectfully requests that this Court set aside its order granting summary judgment to plaintiff and grant such further relief as it deems proper.

DATED this 11th day of December, 1989.

VAN WAGONER & STEVENS  
Brenda L. Flanders

  
Attorneys for J.E. Dresel

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing REPLY IN SUPPORT OF J.E. DRESEL'S MOTION TO SET ASIDE SUMMARY JUDGMENT to be mailed this 11th day of December, 1989, by depositing the same in the United States mail, postage prepaid to:

Dale M. Dorius  
Attorney for Plaintiff  
P.O. Box U  
29 South Main Street  
Brigham City, Utah 84302

Beckie Thompson

**DALE M. DORIUS** #0903  
 Attorney for: Plaintiff  
 P.O. Box U  
 29 South Main Street  
 Brigham City, Utah 84302  
 723-5219

CIRCUIT COURT, STATE OF UTAH  
 SALT LAKE COUNTY, SALT LAKE DEPARTMENT

VITAMIN PROJECTS, INC.,	)	<u>REQUEST TO CLERK TO SUMMIT</u>
	)	<u>TO JUDGE FOR DECISION</u>
Plaintiff,	)	
-vs-	)	
SPECTRUMEDICAL, INC., a Utah	)	
Corporation, J. E. DRESEL and	)	
PATRICIA M. WOLFF,	)	Civil No. 860049146 CV
Defendants.	)	Judge: Floyd H. Gowans

COMES NOW, DALE M. DORIUS, attorney for the Plaintiff, and requests  
 that the Clerk submit the motion to the Judge for decision.

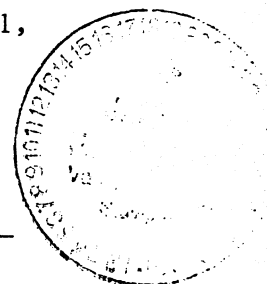
DATED this 17th day of January, 1990.

/s/ Dale M. Dorius  
 DALE M. DORIUS  
 Attorney for Plaintiff  
 P. O. Box "U"  
 29 South Main Street  
 Brigham City, Utah 84302

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing  
 document to Defendants' attorneys, BRENDA L. FLANDERS and CHRISTOPHER J.  
 CONDIE at 215 South State Street, Suite 500, Salt Lake City, Utah 84111,  
 this 17th day of January, 1990.

/s/ Dale M. Dorius  
 DALE M. DORIUS



FILE COPY

DALE M. DORIUS #0903  
Attorney for: Plaintiff  
P.O. Box U  
29 South Main Street  
Brigham City, Utah 84302  
723-5219

CIRCUIT COURT, STATE OF UTAH  
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

-----

VITAMIN PROJECTS, INC.,	)	<u>SUMMARY JUDGMENT</u>
Plaintiff,	)	
-vs-	)	
SPECTRUMEDICAL, INC., a Utah	)	
corporation, J. E. DRESEL and	)	Civil No. 860049146 CV
PATRICIA M. WOLFF,	)	
Defendants.	)	Judge: Floyd H. Gowans

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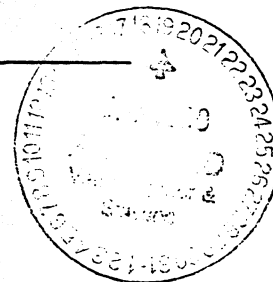
This matter having come on regularly before the above-entitled court on Plaintiff's Motion for Summary Judgment and the court having entered its Order granting said Judgment and the court being fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff is granted Judgment against the Defendant, J. E. DRESEL, in the sum of \$8,000.00 together with interest at the rate of 12% per annum from date of Judgment and costs of court expended in the sum of \$163.50.

DATED this \_\_\_\_ day of January, 1990.

BY THE COURT:

\_\_\_\_\_  
FLOYD H. GOWANS  
CIRCUIT JUDGE



**DALE M. DORIUS** #0903  
Attorney for: Plaintiff  
P.O. Box U  
29 South Main Street  
Brigham City, Utah 84302  
723-5219

- 2 -

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing  
Summary Judgment to Defendants' attorney, BRENDA L. FLANDERS and CHRISTOPHER J.  
CONDIE at 215 South State Street, Suite 500, Salt Lake City, Utah 84111,  
this 18th day of January, 1990.

/s/ Dale M. Dorius  
DALE M. DORIUS  
Attorney for Plaintiff  
P. O. Box "U"  
29 South Main Street  
Brigham City, Utah 84302

Dorius  
P O Box 11  
Brigham Ut

See this ORDER on the within  
name of defendant.

Spectrumedical, INC.

# Circuit Court, State of Utah

SALT LAKE COUNTY, SALT LAKE DEPARTMENT at Salt Lake County, Utah

N. D. "PETE" HAYWARD  
Sheriff, Salt Lake County, Utah

VITAMIN PRODUCTS, INC.

Plaintiff(s)

By

MOTION AND  
ORDER IN  
SUPPLEMENTAL  
PROCEEDINGS

vs

SPECTRUMEDICAL, INC., a Utah

Defendant(s)

corporation, J.E.DRESEL and

PATRICIA M. WOLFF,

Case No. 860049146 CV

Judge: Floyd H. Gowans

Room 202

## MOTION

In the above entitled action, plaintiff(s) move(s) the court for an order requiring defendant to appear before this court to answer questions under oath concerning his property, and to restrain defendant from disposing of his non-exempt property pending the hearing. Judgment was entered against defendant on the date of 1-25-90 in the amount of \$ 8,163.50 of which \$ 8,163.50 is still unpaid.

DATED February 23, 19 90

DALE M. DORIUS  
Attorney at Law

## ORDER

### THE STATE OF UTAH TO DEFENDANT(S)

IT IS ORDERED that, pursuant to the foregoing motion and good cause appearing, you appear in person before this court at the time and place shown below to answer questions under oath concerning your property.

DATE March 27, 19 90

TIME 2:00 p.m.

PLACE: 451 South 2nd East  
Salt Lake City, Utah 84111

YOU ARE FURTHER ORDERED not to sell, loan, give away, or otherwise dispose of your non-exempt property pending this hearing.

If you have been personally served with this order and you fail to appear, the court may order a warrant for your arrest.

DATED Feb 27 19 90

Attest Clerk of the Circuit Court

By

Deputy Clerk



BRENDA L. FLANDERS (3795)  
Attorney at Law  
1111 Brickyard Road  
Suite 200  
Salt Lake City, Utah 84106  
Telephone: (801) 466-6660

Attorney for Defendant, J. E. Dresel

CIRCUIT COURT, STATE OF UTAH  
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

VITAMIN PRODUCTS, INC.	:	
Plaintiff,	:	EX PARTE MOTION TO STAY
	:	TIME FOR FILING APPEAL
v.	:	
SPECTRUMEDICAL, INC., a Utah	:	
Corporation, J. E. DRESEL and	:	
PATRICIA M. WOLFF,	:	Civil No. 860049146 CV
Defendants.	:	Judge Floyd H. Gowans

---

Defendant, J.E. Dresel, by and through his attorney, Brenda L. Flanders, Esq., hereby respectfully requests that this Court stay the time for filing an appeal on the denial of defendant's Motion to Set Aside Summary Judgment, nunc pro tunc, in the above-references case until thirty (30) days after receipt of notice of judgment, on the grounds as follow:

1. On March 12, 1990, defendant's attorney, Brenda L. Flanders, Esq., telephoned the clerk of this Court to determine the status of this case and then was notified that defendant's Motion to Set Aside Summary Judgment had been denied.

2. Plaintiff's attorney, Dale M. Dorius, Esq., has not maintained any correspondence or communication with defendant and his attorney, and has not sent notice of any written order denying defendant's motion.

3. As of April 11, 1990, no written notice of judgment has been received by the defendant or his attorney.

WHEREFORE, the defendant respectfully requests that this Court stay the time for filing the appeal on the order denying defendant's Motion to Set Aside Summary Judgment until thirty (30) days after receipt of notice of judgment, and grant such further relief as the Court deems proper.

DATED this 11<sup>th</sup> day of April, 1990.

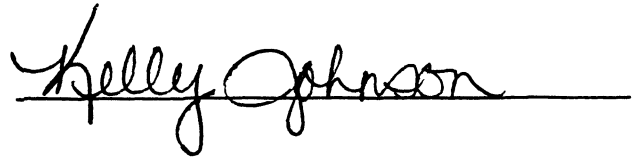
  
Brenda L. Flanders  
Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 11<sup>th</sup> day of April, 1990, I served a copy of the foregoing Ex Parte Motion to Stay Time for

Filing Appeal on the following, by depositing a copy thereof in  
the United States Mail, postage prepaid, addressed as follows:

Dale M. Dorius  
P.O. Box U  
29 South Main Street  
Brigham City, Utah 84070

A handwritten signature in cursive script, reading "Kelly Johnson", is written over a horizontal line.

BRENDA L. FLANDERS (3795)  
Attorney at Law  
1111 Brickyard Road  
Suite 200  
Salt Lake City, Utah 84106  
Telephone: (801) 466-6660

Attorney for Defendant, J. E. Dresel

CIRCUIT COURT, STATE OF UTAH  
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

VITAMIN PRODUCTS, INC.	:	
Plaintiff,	:	AFFIDAVIT OF BRENDA L.
	:	FLANDERS IN SUPPORT OF
v.	:	EX PARTE MOTION TO STAY
	:	TIME FOR FILING APPEAL
SPECTRUMEDICAL, INC., a Utah	:	
Corporation, J. E. DRESEL and	:	
PATRICIA M. WOLFF,	:	Civil No. 860049146 CV
Defendants.	:	Judge Floyd H. Gowans

---

STATE OF UTAH            )  
                              :   ss.  
COUNTY OF SALT LAKE )

I, Brenda L. Flanders, being duly sworn, depose and state  
as follows:

1. On March 12, 1990, I telephoned the clerk of the  
Circuit Court to determine the status of this case and was  
notified at that time that my client's motion to set aside  
summary judgement had been denied.

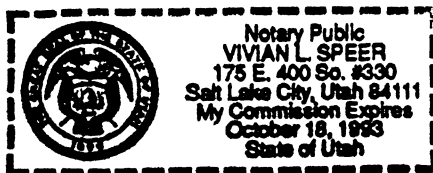
2. Opposing counsel, Dale M. Dorius, has not been in correspondence or communication with myself or my client, J. E. Dresel, or sent notice or copies, regarding the entry of any order or judgment denying defendant's Motion to Set Aside Summary Judgment in this matter.


3. As of April 11, 1990, I have not received any written notice of judgement.

DATED this 11th day of April, 1990.

  
Brenda L. Flanders

SUBSCRIBED AND SWORN TO before me this 11th day of April, 1990.



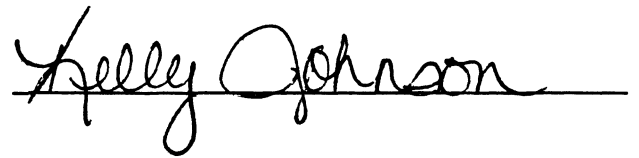
  
NOTARY PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of April, 1990, I served a copy of the foregoing Affidavit of Brenda L. Flanders in Support of Ex Parte Motion to Stay Time for Filing Appeal on

the following, by depositing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

Dale M. Dorius  
P.O. Box U  
29 South Main Street  
Brigham City, Utah 84070

A handwritten signature in cursive script, reading "Kelly Johnson", is written over a horizontal line.

BRENDA L. FLANDERS (3795)  
Attorney at Law  
1111 Brickyard Road  
Suite 200  
Salt Lake City, Utah 84106  
Telephone: (801) 466-6660

Attorney for Defendant, J. E. Dresel

CIRCUIT COURT, STATE OF UTAH  
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

VITAMIN PRODUCTS, INC.	:	
Plaintiff,	:	
v.	:	ORDER GRANTING
	:	EX PARTE MOTION TO STAY
	:	TIME FOR FILING APPEAL
SPECTRUMEDICAL, INC., a Utah	:	
Corporation, J. E. DRESEL and	:	
PATRICIA M. WOLFF,	:	Civil No. 860049146 CV
Defendants.	:	Judge Floyd H. Gowans

---

Upon consideration of defendant's Ex Parte Motion to Stay Time for Filing Appeal, the Affidavit in Support thereof, and the pleadings on file herein, and good cause appearing therefor, it is hereby

ORDERED, that the time for filing an appeal from the order denying defendant's Motion to Set Aside Summary Judgment, in the above-referenced case shall be, and hereby is, stayed

until thirty (30) days after receipt of notice of judgment by  
counsel for defendant.

DATED this \_\_\_\_ day of April, 1990.

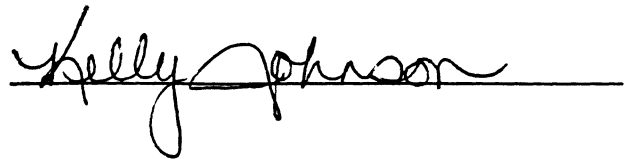
---

Floyd H. Gowans  
Third Circuit Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 11<sup>th</sup> day of April, 1990, I  
served a copy of the foregoing Order Granting Ex Parte Motion  
to Stay Time for Filing Appeal on the following, by depositing  
a copy thereof in the United States Mail, postage prepaid,  
addressed as follows:

Dale M. Dorius  
P.O. Box U  
29 South Main Street  
Brigham City, Utah 84070



A handwritten signature, "Kelly Johnson", written in cursive over a horizontal line.



BRENDA L. FLANDERS (3795)  
Attorney at Law  
1111 Brickyard Road  
Suite 200  
Salt Lake City, Utah 84106  
Telephone: (801) 466-6660

Attorney for Defendant, J. E. Dresel

CIRCUIT COURT, STATE OF UTAH

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

VITAMIN PRODUCTS, INC.	:	
Plaintiff and Respondent,	:	NOTICE OF APPEAL
v.	:	
SPECTRUMEDICAL, INC., a Utah Corporation, J. E. DRESEL and PATRICIA M. WOLFF,	:	Civil No. 860049146 CV
Defendants and Appellant.	:	Judge Floyd H. Gowans

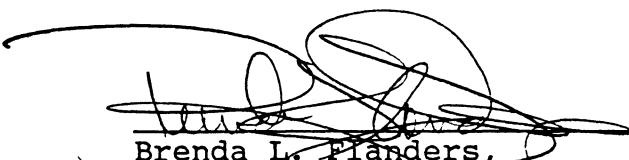
---

NOTICE is hereby given that J. E. Dresel, defendant above named, hereby appeals to the Utah Court of Appeals from the Order granting judgment in the amount of \$8,163.50 entered by the Third Circuit Court, State of Utah, Honorable Judge Floyd H. Gowans presiding, in the above captioned matter, on February

27, 1990. The party to the judgement appealed from and the name of their respective attorney is as follows:

Vitamin Products, Inc.  
Dale M. Dorius  
Attorney for Plaintiff and Respondent  
P. O. Box "U"  
29 South Main Street  
Brigham City, Utah 84302

Dated this 11th day of April, 1990.

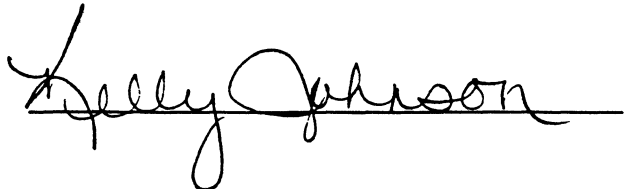


Brenda L. Flanders,  
Attorney for Appellant  
1111 Brickyard Road,  
Suite 200  
Salt Lake City, Utah 84106

CERTIFICATE OF SERVICE

I hereby certify that on the 11<sup>th</sup> day of April, 1990, I served a copy of the foregoing Notice of Appeal on the following, by depositing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

Dale M. Dorius  
P.O. Box U  
29 South Main Street  
Brigham City, Utah 84070



BRENDA L. FLANDERS  
Attorney at Law  
1111 Brickyard Road  
Suite 200  
Salt Lake City, Utah 84106  
Telephone: (801) 466-6660

Attorney for J.E. Dresel

CIRCUIT COURT, STATE OF UTAH

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

VITAMIN PRODUCTS, INC.

:

Plaintiff,

:

DOCKETING STATEMENT

v.

:

SPECTRUMEDICAL, INC., a Utah  
Corporation, J. E. DRESEL and  
PATRICIA M. WOLFF,

:

Civil No. 860049146 CV

:

Defendants.

:

DATES

The events in this case, regarding those as shown by the docket, are somewhat perplexing. The Summary Judgment was allegedly entered on October 10, 1989. Yet, the docket shows it as having been entered on January 25, 1990. J.E. Dresel filed his Motion to Set Aside the Summary Judgment on November 20, 1989. Upon a telephone conference with the Court, counsel for J.E. Dresel was informed that the Motion to Set Aside had been denied. Due to lack of notice thereof, the Court executed an Order extending the time within which to file an appeal. To the

contrary, however, the Order denying the Motion to Set Aside was just executed by the Honorable Floyd Gowans on April 30, 1990. This is the Order from which J.E. Dresel filed his appeal. If the timeliness is at issue, as it appears to be, however, J.E. Dresel will include in his appeal argument on the merits of the entry of the Summary Judgment. The questions regarding this timeliness issue were raised only upon examination of the actual Court docket sheet.

April 12, 1990 - Notice of Appeal.

#### JURISDICTIONAL AUTHORITY

§ 78-4-11, Utah Code Annotated.

#### NATURE OF PROCEEDING

This appeal is from an Order Denying Defendant's Motion to Set Aside Summary Judgment. As explained above, the merits of the entry of Summary Judgment may be at issue.

#### STATEMENT OF FACTS

Defendant J.E. Dresel respectfully submits the following statement of facts.

1. On or about August 26, 1986, plaintiff obtained default judgment against Spectrumedical, Inc. in the amount of

six thousand three hundred seventeen dollars and thirteen cents (\$6,317.13) principal, sixty four dollars and fifty three cents (\$64.53) interest, and fifty six dollars and seventy five cents (\$56.75) costs, for a total of six thousand four hundred thirty eight dollars and forty cents one cents (\$6,438.41).

2. Judgment against Spectrumedical was based on a claim of payment by Spectrumedical to plaintiff "for merchandise and/or services purchased or rendered from plaintiff" paid by check on an account with insufficient funds.

3. Being unable to collect judgment against Spectrumedical, plaintiff amended its complaint to add J.E. Dresel and Patricia M. Wolff as party defendants.

4. As with its complaint against Spectrumedical, plaintiff sought judgment against Dresel and Wolff for six thousand three hundred seventeen dollars and thirteen cents (\$6,317.13) "for merchandise and/or services purchased or rendered from plaintiff" paid by check on an account with insufficient funds.

5. On September 22, 1987, Dresel wrote Dale M. Dorius, attorney for plaintiff, stating that the shipment of

merchandise in question "was transacted prior to my employment with Spectrumedical."

6. On May 26, 1988, plaintiff filed a motion for summary judgment against defendants Dresel and Wolff. On May 31, 1988, Dale M. Dorius, attorney for plaintiff, filed an affidavit stating that defendants Dresel and Wolff signed the Spectrumedical checks at issue in this case. See Affidavit of J.E. Dresel at page 3, paragraph 6.

7. On May 30, 1989, plaintiff filed its first set of requests for admissions to defendant J.E. Dresel individually.

8. On or about September 20, 1989, plaintiff filed its second motion for summary judgment against defendant Dresel together with a memorandum of points and authorities and a request for ruling.

9. Apparently on October 10, 1989, the Court granted plaintiff's motion for summary judgment against defendant Dresel.

10. Throughout the above proceedings, defendant Dresel was told by plaintiff that plaintiff would not proceed further against defendant Dresel. In particular, on or about September 25, 1989, defendant Dresel spoke with a Ron Groberman, president

of Vitamin Products. Dresel was informed by Mr. Groberman that plaintiff was not interested in pressing the matter further and had not requested its attorney to send the requests for admissions dated September 20, 1989,. See J.E. Dresel's affidavit page 2, paragraph 3.

11. Relying on the representations made by plaintiff, Dresel did not respond to the discovery requests served on him by plaintiff. See J.E. Dresel's affidavit page 2, paragraph 4.

12. The Spectrumedical checks to Vitamin Products signed by Dresel, were signed by him in his corporate capacity and not individually. See J.E. Dresel's affidavit page 3, paragraph 6.

13. The Spectrumedical checks were replaced by subsequent checks and Vitamin Products thereby was paid. See J.E. Dresel affidavit page 2 paragraph 5.

14. Dresel did not receive notice in the form required by Utah Code Annotated, § 7-15-2(2), prior to plaintiff filing its complaint against him. See J.E. Dresel affidavit page 3 paragraph 7.

## ISSUES

1. Whether the Circuit Court erred in refusing to set aside the entry of Summary Judgment in favor of Vitamin Products?

2. Whether the Circuit Court abused its discretion in refusing to set aside the entry of Summary Judgment that had been entered in favor of Vitamin Products and against J.E. Dresel?

3. Whether the Circuit Court abused its discretion in refusing to modify the Summary Judgment entered in favor of Vitamin Products and against J.E. Dresel?

4. Whether J.E. Dresel provided a reasonable excuse for the setting aside of the Summary Judgment entered in favor of Vitamin Products and against J.E. Dresel?

5. Whether J.E. Dresel demonstrated that the judgment was entered against him through a reason specified in subdivision (b) of Rule 60(b), Utah Rules of Civil Procedure.

6. Whether the motion to set aside filed by J.E. Dresel was timely?

7. Whether J.E. Dresel has a meritorious defense to the action filed by Vitamin Products?



8. Whether J.E. Dresel has a meritorious defense to the action filed by Vitamin Products based on the failure of Vitamin Products to give proper notice?

9. Whether J.E. Dresel has a meritorious defense to the action filed by Vitamin Products based on the distinction between the individual versus corporate capacity?

10. Whether J.E. Dresel has a meritorious defense to the action filed by Vitamin Products based on the payment of the debt through subsequent checks made payable on account?

11. Whether the Circuit Court had jurisdiction to set aside its Summary Judgment?

#### AUTHORITY

1. Utah Code Annotated, § 7-15-1 et seq
2. Utah Code Annotated, § 7-15-2(2)
3. Utah Rules of Civil Procedure, Rule 60(b)
4. Westinghouse Electric Supply, Co. v. Paul W. Larsen, Contractor, 544 P.2d 876 (Utah 1975)
5. Larsen v. Colina, 684 P.2d 52 (Utah 1984)
6. State ex rel. Utah State Dept. of Social Services v. Musselman, 667 P.2d 1053 (Utah 1983)

DATED this 2nd day of May, 1990.



Brenda L. Flanders  
Attorney for J.E. Dresel

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing Docketing Statement to be mailed this 2nd day of May, 1990, by depositing the same in the United States Mail, postage prepaid, to:

Dale M. Dorius (0903)  
Attorney for Plaintiff  
P.O. Box U  
29 South Main Street  
Brigham City, Utah 84302

DALE M. DORIUS #0903  
Attorney for: Plaintiff  
P.O. Box U  
29 South Main Street  
Brigham City, Utah 84302  
723-5219

CIRCUIT COURT, STATE OF UTAH  
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

-----  
VITAMIN PRODUCTS, INC.,

)

ORDER

Plaintiff,

)

-vs-

)

SPECTRUMEDICAL, INC., a Utah  
corp., J.E. DRESEL and  
PATRICIA M. WOLFF,

)

)

Defendants.

)

Judge Floyd H. Gowans  
Civil No. 860049146 CV

-----  
This matter having come on regularly before the above-entitled court  
on Defendants' Motion to Set Aside Summary Judgment and the court being  
fully advised in the premises,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants' Motion  
is hereby denied.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 1990.

BY THE COURT:

\_\_\_\_\_  
FLOYD H. GOWANS  
CIRCUIT JUDGE

DALE M. DORIUS #0903  
Attorney for: Plaintiff  
P.O. Box U  
29 South Main Street  
Brigham City, Utah 84302  
723-5219

- 2 -

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing  
Order Denial Order to Defendants' attorney, BRENDA L. FLANDERS, at 1111  
Brickyard Road, Suite 200, Salt Lake City, Utah 84106, this 23rd day of  
April, 1990.

/s/ Dale M. Dorius  
DALE M. DORIUS  
Attorney for Plaintiff  
P. O. Box "U"  
29 South Main Street  
Brigham City, Utah 84302

BRENDA L. FLANDERS (3795)  
Attorney at Law  
1111 Brickyard Road  
Suite 200  
Salt Lake City, Utah 84106  
Telephone: (801) 466-6660

Attorney for Defendant, J. E. Dresel

CIRCUIT COURT, STATE OF UTAH  
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

VITAMIN PRODUCTS, INC.	:	
Plaintiff and Respondent,	:	NOTICE OF APPEAL
v.	:	
SPECTRUMEDICAL, INC., a Utah Corporation, J. E. DRESEL and PATRICIA M. WOLFF,	:	Civil No. 860049146 CV
Defendants and Appellant.	:	Judge Floyd H. Gowans


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NOTICE is hereby given that J. E. Dresel, defendant above named, hereby appeals to the Utah Court of Appeals from the Order granting judgment in the amount of \$8,163.50 entered by the Third Circuit Court, State of Utah, Honorable Judge Floyd H. Gowans presiding, in the above captioned matter, on February

27, 1990. The party to the judgement appealed from and the name of their respective attorney is as follows:

Vitamin Products, Inc.  
Dale M. Dorius  
Attorney for Plaintiff and Respondent  
P. O. Box "U"  
29 South Main Street  
Brigham City, Utah 84302

Dated this 11th day of April, 1990.

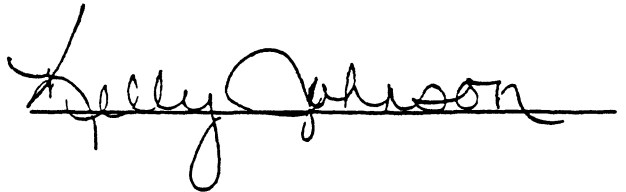


Brenda L. Flanders,  
Attorney for Appellant  
1111 Brickyard Road,  
Suite 200  
Salt Lake City, Utah 84106

CERTIFICATE OF SERVICE

I hereby certify that on the 11<sup>th</sup> day of April, 1990, I served a copy of the foregoing Notice of Appeal on the following, by depositing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

Dale M. Dorius  
P.O. Box U  
29 South Main Street  
Brigham City, Utah 84070



BRENDA L. FLANDERS (3795)  
Attorney at Law  
1111 Brickyard Road  
Suite 200  
Salt Lake City, Utah 84106  
Telephone: (801) 466-6660

Attorney for Defendant, J. E. Dresel

CIRCUIT COURT, STATE OF UTAH  
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

VITAMIN PRODUCTS, INC.	:	
Plaintiff,	:	EX PARTE MOTION TO STAY
	:	TIME FOR FILING APPEAL
v.	:	
SPECTRUMEDICAL, INC., a Utah	:	
Corporation, J. E. DRESEL and	:	
PATRICIA M. WOLFF,	:	Civil No. 860049146 CV
Defendants.	:	Judge Floyd H. Gowans

---

Defendant, J.E. Dresel, by and through his attorney, Brenda L. Flanders, Esq., hereby respectfully requests that this Court stay the time for filing an appeal on the denial of defendant's Motion to Set Aside Summary Judgment, nunc pro tunc, in the above-references case until thirty (30) days after receipt of notice of judgment, on the grounds as follow:

1. On March 12, 1990, defendant's attorney, Brenda L. Flanders, Esq., telephoned the clerk of this Court to determine the status of this case and then was notified that defendant's Motion to Set Aside Summary Judgment had been denied.

2. Plaintiff's attorney, Dale M. Dorius, Esq., has not maintained any correspondence or communication with defendant and his attorney, and has not sent notice of any written order denying defendant's motion.

3. As of April 11, 1990, no written notice of judgment has been received by the defendant or his attorney.

WHEREFORE, the defendant respectfully requests that this Court stay the time for filing the appeal on the order denying defendant's Motion to Set Aside Summary Judgment until thirty (30) days after receipt of notice of judgment, and grant such further relief as the Court deems proper.

DATED this 11<sup>th</sup> day of April, 1990.

  
Brenda L. Flanders  
Attorney for Defendant

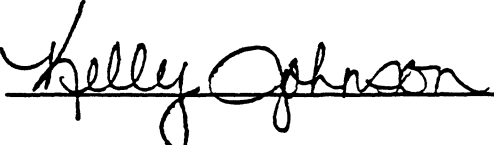
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Filing Appeal on the following, by depositing a copy thereof in  
the United States Mail, postage prepaid, addressed as follows:

Dale M. Dorius  
P.O. Box U  
29 South Main Street  
Brigham City, Utah 84070

  
\_\_\_\_\_

BRENDA L. FLANDERS (3795)  
Attorney at Law  
1111 Brickyard Road  
Suite 200  
Salt Lake City, Utah 84106  
Telephone: (801) 466-6660

Attorney for Defendant, J. E. Dresel

CIRCUIT COURT, STATE OF UTAH  
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

VITAMIN PRODUCTS, INC.	:	
Plaintiff,	:	AFFIDAVIT OF BRENDA L.
	:	FLANDERS IN SUPPORT OF
v.	:	EX PARTE MOTION TO STAY
	:	TIME FOR FILING APPEAL
SPECTRUMEDICAL, INC., a Utah	:	
Corporation, J. E. DRESEL and	:	
PATRICIA M. WOLFF,	:	Civil No. 860049146 CV
Defendants.	:	Judge Floyd H. Gowans

---

STATE OF UTAH            )  
                              :   ss.  
COUNTY OF SALT LAKE )

I, Brenda L. Flanders, being duly sworn, depose and state  
as follows:

1. On March 12, 1990, I telephoned the clerk of the  
Circuit Court to determine the status of this case and was  
notified at that time that my client's motion to set aside  
summary judgement had been denied.

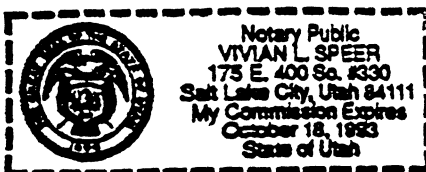
2. Opposing counsel, Dale M. Dorius, has not been in correspondence or communication with myself or my client, J. E. Dresel, or sent notice or copies, regarding the entry of any order or judgment denying defendant's Motion to Set Aside Summary Judgment in this matter.

3. As of April 11, 1990, I have not received any written notice of judgement.

DATED this 11th day of April, 1990.

  
Brenda L. Flanders

SUBSCRIBED AND SWORN TO before me this 11<sup>th</sup> day of  
April, 1990.



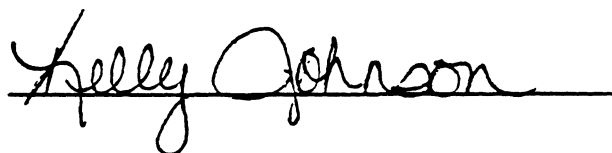
  
NOTARY PUBLIC

CERTIFICATE OF SERVICE

I hereby certify that on the 11<sup>th</sup> day of April, 1990, I served a copy of the foregoing Affidavit of Brenda L. Flanders in Support of Ex Parte Motion to Stay Time for Filing Appeal on

the following, by depositing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

Dale M. Dorius  
P.O. Box U  
29 South Main Street  
Brigham City, Utah 84070

A handwritten signature in cursive script, reading "Kelly Johnson", is written over a horizontal line.

BRENDA L. FLANDERS (3795)  
Attorney at Law  
1111 Brickyard Road  
Suite 200  
Salt Lake City, Utah 84106  
Telephone: (801) 466-6660

Attorney for Defendant, J. E. Dresel

CIRCUIT COURT, STATE OF UTAH  
SALT LAKE COUNTY, SALT LAKE DEPARTMENT

VITAMIN PRODUCTS, INC.	:	
Plaintiff,	:	
v.	:	ORDER GRANTING
	:	EX PARTE MOTION TO STAY
	:	TIME FOR FILING APPEAL
SPECTRUMEDICAL, INC., a Utah	:	
Corporation, J. E. DRESEL and	:	
PATRICIA M. WOLFF,	:	Civil No. 860049146 CV
Defendants.	:	Judge Floyd H. Gowans

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Upon consideration of defendant's Ex Parte Motion to Stay Time for Filing Appeal, the Affidavit in Support thereof, and the pleadings on file herein, and good cause appearing therefor, it is hereby

ORDERED, that the time for filing an appeal from the order denying defendant's Motion to Set Aside Summary Judgment, in the above-referenced case shall be, and hereby is, stayed

until thirty (30) days after receipt of notice of judgment by counsel for defendant.

DATED this \_\_\_\_ day of April, 1990.

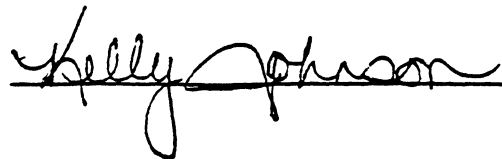
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Floyd H. Gowans  
Third Circuit Court Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 11<sup>th</sup> day of April, 1990, I served a copy of the foregoing Order Granting Ex Parte Motion to Stay Time for Filing Appeal on the following, by depositing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

Dale M. Dorius  
P.O. Box U  
29 South Main Street  
Brigham City, Utah 84070

  
\_\_\_\_\_

FILE

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CIRCUIT COURT

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BRENDA L. FLANDERS (3795)  
Attorney at Law  
1111 Brickyard Road  
Suite 200  
Salt Lake City, Utah 84106  
Telephone: (801) 466-6660

APR 23 1 01 PM '90

CLERK OF THE CIRCUIT COURT  
SALT LAKE DEPARTMENT

THU  
BY  
FILE

Attorney for Defendant, J. E. Dresel

CIRCUIT COURT, STATE OF UTAH

SALT LAKE COUNTY, SALT LAKE DEPARTMENT

VITAMIN PRODUCTS, INC.

:

Plaintiff,

:

CERTIFICATE REGARDING  
TRANSCRIPT FOR APPEAL

v.

:

SPECTRUMEDICAL, INC., a Utah  
Corporation, J. E. DRESEL and  
PATRICIA M. WOLFF,

:

:

Civil No. 860049146 CV

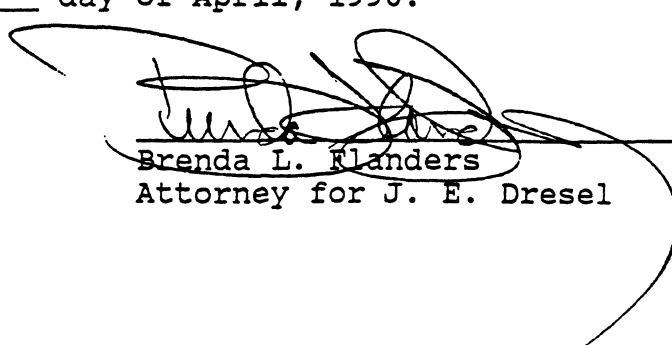
Defendants.

:

Judge Floyd H. Gowans

Defendant, J.E. Dresel, respectfully certifies that a transcript will not be filed for the appeal filed in the above-referenced action due to the lack of oral argument on the Motion to Set Aside Summary Judgment. It is the Order denying the same from which defendant appeals.

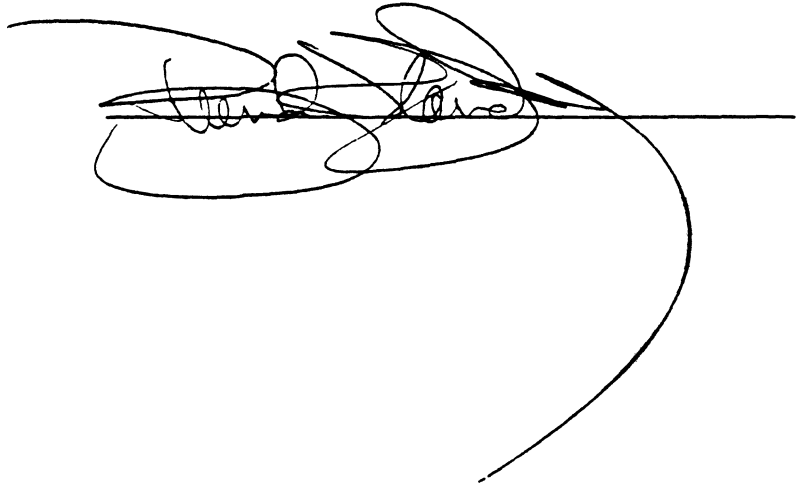
DATED this 23<sup>rd</sup> day of April, 1990.

  
Brenda L. Flanders  
Attorney for J. E. Dresel

CERTIFICATE OF SERVICE

I hereby certify that on the 23<sup>rd</sup> day of April, 1990, I served a copy of the foregoing Certificate Regarding Transcript for Appeal on the following, by depositing a copy thereof in the United States Mail, postage prepaid, addressed as follows:

Dale M. Dorius  
P.O. Box U  
29 South Main Street  
Brigham City, Utah 84070

A handwritten signature in dark ink, appearing to read "Dale M. Dorius", is written over a horizontal line. The signature is stylized with loops and flourishes. A long, curved line extends from the bottom of the signature, sweeping downwards and to the right.



FILED

IN THE UTAH COURT OF APPEALS

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MAY 4 1990

*Mary Noonan*  
Clerk of the Court  
Utah Court of Appeals

Vitamin Products, Inc.,	)	ORDER OF TRANSFER
	)	
Plaintiff and Appellee,	)	
	)	
v.	)	Case No. 900208-CA
	)	
Spectrumedical, Inc., a Utah	)	
corporation, J. E. Dresel and	)	
Patricia M. Wolff,	)	
	)	
Defendants and Appellant.	)	

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Upon the court's own motion, it appearing that this appeal is within the original jurisdiction of the Utah Supreme Court under Utah Code Annot. §§ 78-2-2(3)(j) and 78-2a-3(2) (1989),

The above-entitled appeal is transferred to the Utah Supreme Court pursuant to Rule 44, Utah Rules of Appellate Procedure.

Dated this 4th day of May, 1990.

FOR THE COURT

*Mary Noonan*  
\_\_\_\_\_  
Mary V. Noonan, Clerk