

Jacob K. Cooper
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pro se

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

<p>In the Matter of</p> <p>TOTAL WEALTH MANAGEMENT, INC., JACOB KEITH COOPER, NATHAN MCNAMEE, AND DOUGLAS DAVID SHOEMAKER</p> <p>Respondents.</p>	<p>JACOB KEITH COOPER'S VERIFIED BRIEF RE: ORDER DIRECTING THE FILING OF BRIEFS</p> <p>File No. 3-15842</p>
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Jacob Keith Cooper hereby submits this brief as requested by the Commission in its Order Directing the Filing of Briefs, dated November 20, 2015. In that Order, the Commission requested the views of the parties as to whether Cooper's appeal should be dismissed as untimely. The Commission should not dismiss the Petition for Review as untimely because it would be inequitable to do so given the extraordinary circumstances at play, including the fact that Cooper's former attorney went missing during the pivotal period when the petition should have been filed.

On April 15, 2014, the Commission commenced these proceeding with its Order Instituting Administrative and Cease-and-Desist Proceedings. A four-day hearing was conducted from March 30 through April 2, 2015. I was represented by Vincent Brown at those hearings. Since the hearing, I have had virtually no success communicating with my attorney. Following the hearing, Mr. Brown communicated with me regarding the payment of attorneys'

fees, which were paid, and to forward to me the Initial Decision issued on August 17, 2015, by Chief Administrative Law Judge Brenda P. Murray, which I received Monday, August 24, 2015. I have tried to reach Mr. Brown repeatedly and regularly following the hearing and following the publication of the Initial Decision, but Mr. Brown has not responded to my requests. I have no idea where he is located currently and have had no way of reaching him for many months.

In separate proceedings pending in the United States District Court for the Southern District of California, 3:15-cv-226, Mr. Brown failed to appear on my behalf at an August 28, 2015 scheduling conference. Dkt. 46. The hearing was rescheduled to September 8, 2015, and Mr. Brown again failed to appear on my behalf. Dkt 48. The Court also issued an Order to Show Cause, requiring Mr. Brown to appear on September 10, 2015. Dkt. 47. Mr. Brown did not appear at either the September 8th or 10th hearings. Dkt. 52. The Court issued another Order to Show Cause and set a new hearing date of October 13, 2015. Dkt. 52. Again, Mr. Brown did not appear before the Court and was, therefore, sanctioned by the Court. Dkt. 56.

Mr. Brown has not communicated with me for many months. He has also not withdrawn from representing me in these proceedings or in the District Court proceedings. His failure to represent my interests caused me to miss various deadlines, including the deadline to file a Petition for Review. It was only after the deadline to file a Petition for Review that I began to understand that Mr. Brown was not communicating with me. I am now in the process of attempting to locate a new attorney, but the process has been difficult because it is not possible to communicate with Mr. Brown and the late stage of these proceedings. I hope to retain new counsel that will represent me in these proceedings in the coming weeks.

For the foregoing reasons, the Securities and Exchange Commission should not dismiss my Petition for Review as untimely and should further allow me to supplement the Petition for

Review if I am able to obtain new counsel.

Grounds for allowing the Petition for Review to not be dismissed include SEC Rule of Practice 100(c), which allows the Commission to alter deadlines where “to do so would serve the interests of justice and not result in prejudice to the parties to the proceeding.” The interests of justice are served because I hired Mr. Brown to represent me before the SEC, and he has disappeared without explaining his absence or withdrawing from his representation. The SEC is not prejudiced by the extension.

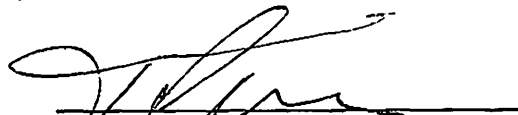
The Petition for Review should also not be dismissed because of extraordinary circumstances similar to those permitted for extension of decisions by self-regulatory organizations. SEC Rule of Practice 420(b). Here, it is extraordinary for Mr. Brown to simply disappear. He has not responded to my efforts to communicate with him, told me that he is no longer my attorney, withdrawn from representing me, or appeared on my behalf in a separate District Court case (or responded to Orders to Show Cause against him personally). The circumstances are certainly extraordinary and justify the untimeliness of the Petition for Review.

Finally, the doctrine of equitable tolling should apply here to excuse the timeliness issue. This doctrine applies where a petitioner shows “(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing.” *Holland v. Florida*, 560 U.S. 631, 649 (2010) (quotation marks omitted). This doctrine has been held to apply in cases where an attorney has abandoned his client because “a client cannot be charged with the acts or omissions of an attorney who has abandoned him. Nor can a client be faulted for failing to act on his own behalf when he lacks reason to believe his attorneys of record, in fact, are not representing him.” *Maples v. Thomas*, 132 S. Ct. 912, 924, 181 L. Ed. 2d 807 (2012). As demonstrated above, Mr. Brown abandoned me at a crucial time in these

proceedings without informing me that he was no longer representing me. It was only after the deadline to file the petition for review was missed that I realized he was no longer acting as my attorney.

For the foregoing reasons, the Petition for Review should not be dismissed, and I should be given an opportunity to supplement the Petition for Review if I am able to hire a new attorney. I declare under penalty of perjury that the foregoing factual statements are true and correct.

DATED this 7th day of December, 2015.



Jacob K. Cooper
pro se

CERTIFICATE OF SERVICE

Pursuant to Commission Rule of Practice 151 (17 C.F.R. § 201.151), I certify that the attached: **JACOB KEITH COOPER'S VERIFIED BRIEF RE: ORDER DIRECTING THE FILING OF BRIEFS** was filed with the Office of the Secretary of the Commission and caused to be served upon the following parties as indicated below:

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Brent J. Fields, Secretary () U.S. Mail, Postage Prepaid
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Washington, DC 20549-1090 () Facsimile


Honorable Brenda P. Murray () E-mail
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