Jeffrey Buckner (4546)
Assistant Attorney General
Mark L. Shurtleff (4666)
Utah Attorney General
Utah Attorney General's Office
Commercial Enforcement Division
P. O. BOX 140872
160 East 300 South, Fifth Floor
Salt Lake City, Utah 84114-0872
Telephone: (801) 366-0310
Facsimile: (801) 366-0315

Attorneys for Division of Securities

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

IN THE MATTER OF: **COCAPITAL, LLC** **COBY TIPPETTS** **RESPONDENTS.**	**OPPOSITION TO MOTION TO DISMISS** **Docket No. 08-0107** **Docket No. 08-0108**

STATEMENT OF RELEVANT FACTS

On July 6, 2007, CoCapital, LLC filed a Form D, "Notice of Sale of Securities" with the Division of Securities (Division). CoCapital filed the Form D in order to correct the sale of unregistered securities by way of rescission. The Form D was signed by Coby Tippetts. In the promissory notes that were part of the rescission offer, CoCapital described itself as a Nevada limited liability company with a principal place of business in Utah. *Exhibit A, A01 83.* In a letter accompanying the rescission offer, however, CoCapital also described itself as a *Utah*

limited liability company. *Exhibit A, A01 86-87.*

Regardless of where the company was formed, in the Form D filing, CoCapital repeatedly used a Utah business address. In the Notice of Sale, for example, CoCapital said its executive offices were 51 West Center Street, #404, Orem, Utah 84057, telephone 801.623.4684. *Exhibit A, A01 37.* The same address was given for Coby Tippetts. *Id.* A "confidential memorandum" accompanying the Notice of Sale also listed the same Orem address and Utah telephone number for CoCapital on the cover sheet as were on the Form D. *Exhibit A, A01 46.* Elsewhere in confidential memorandum, CoCapital repeated the same information in a description of the company as follows:

> **The Company**: CoCapital, LLC, is a Nevada Limited Liability Company duly organized under the laws of said state. The contact information for CoCapital, LLC, is as follows: 51 West Center Street, #404, Orem, Utah 84057; Telephone: (801) 623-4684.

Exhibit A, A01 48.

> CoCapital, LLC (hereinafter referred to as 'CoCapital' or the 'Company') is a private bridge lending company that buys and sells promissory notes for property transactions. About 60% of assets are allocated to real estate developers or the bridge lenders that serve them. The Company is owned by Mr. Colby Tippetts. CoCapital specializes in financing residential real estate, much of which has historically been in Utah. CoCapital provides a high rate of return to private investors who lend the Company money. The Company pools this money and then extensively researches deal opportunities within the state of Utah where it can make short-term loans to business and other ventures.

A01 66.

The Orem address and Utah operations of CoCapital were again cited in the description of the company's management at another place in the confidential memorandum as follows:

> **MANAGEMENT**
>
> CoCapital is located at 51 West Center Street, #404, Orem, Utah and has an additional office in Las Vegas, Nevada. The Company has a limited history of operations and intends to maintain an active role in the lending on or the acquisition of both Residential Properties, and Commercial Paper Properties.
>
> The Manager of the Company will devote such time and effort to the business as deemed necessary in order to properly conduct and administer the business and affairs of the Company. The Manager of the Company has several years of successful experience in business management, real estate finance and acquisition, and hard money lending. The following is a short biographical sketch of the Manager:
>
> **Coby Tippetts** – has successfully owned and managed many companies. He began owning and managing companies in 1996 when he started a construction company based out of Las Vegas. He began investing in real estate in 2001, personally owning properties across the United States and residential developments in Utah. Coby also has many years experience in personal finance and business development. He currently owns a real estate investing company where he coaches investors and develops business systems.

Exhibit A, A01 69.

The confidential memorandum also mentioned Utah law. Securities were being offered under an exemption under Utah law, *Exhibit A, A01 56*; and in the event of a lawsuit with an investor, "Borrower and Lender agree to submit to the jurisdiction of the courts in Salt Lake County, State of Utah. This Note shall be governed and construed in accordance with the laws

of the State of Utah." *Exhibit A, A01 84.*

As part of the Form D filing, CoCapital provided the names investors. *Exhibit A, A01 105.* Only Utah investors were identified. *Id.* The Division then received a complaint from Nevada investors, and filed an order to show cause on December 30, 2008. Respondents moved for dismissal on February 23, 2009. While CoCapital had earlier identified a Utah address and a Utah principal place of business, in its motion to dismiss, CoCapital now claims the business operations, the parties and the entire transaction occurred in Nevada.

LAW AND ARGUMENT

The Division concedes CoCapital, LLC is a Nevada limited liability company, and the investors are residents of Nevada. However, Tippetts was and is a resident of Utah County and CoCapital had its principal place of business in Utah County. *OSC, ¶¶ 2-3.* CoCapital's bank account was in Utah. *Exhibit A, A01 19-20.* Money was wired to that bank by the Nevada investors. *Id. ¶ 12, 20.* While the Division does not know where the telephone calls, e-mail or other mails were from, it is a fair inference that the calls were to or from here because money was wired to a bank in Utah, the company ran its business here and Tippetts lived here. *OSC ¶¶ 4-12, 26-27, 29.* For this same reason, even if the offer and sale occurred in Nevada, Utah has jurisdiction simply because the money was wired to an account in Utah. Because Respondents admitted the business operations of CoCapital were here, they have waived their present claim otherwise.

Even if they had not already conceded the issue, this Court cannot consider any of the

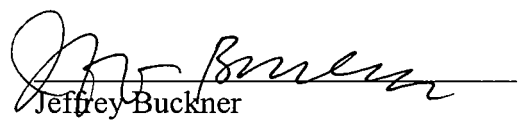
statements to the contrary in the motion to dismiss because they are not supported by affidavit or other document. Moreover, the complaint referred to does not support the allegations in the motion. *Exhibit A, A01 08-13*. The complaint says nothing about whether transactions, the parties and so on occurred in Nevada.

CONCLUSION

For these reasons, the motion to dismiss should be denied.

Respectfully submitted this March 4, 2009.

MARK L. SHURTLEFF
UTAH ATTORNEY GENERAL



Jeffrey Buckner
Assistant Attorney General

MAILING CERTIFICATE

I, Shayla Shephered, hereby certify that I served the foregoing **Opposition to Motion to Dismiss upon CoCapital, LLC** and **Coby Tippetts** by mailing a copy to Bryce B. Higby, attorney for Respondents, at 727 N. 1550 East, Suite 410, Orem, UT 84097

Dated this 4th day of March 2009.

Shayla Shepherd

Shayla Shepherd