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FACSIMILE TRANSMISSION COVER SHEET

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FROM: KATIE COPE	DATE: SEPTEMBER 13, 2010
FOR ATTORNEY: TYNA-MINET ANDERSON	NO. OF PAGES: 50 (including cover sheet)
RE: MEMO AND MOTION FOR STAYING PENDING RESOLUTION OF CRIMINAL PROCEEDINGS	

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Attorneys for Respondents.

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

<p>IN THE MATTER OF: BURNS & BURNS ASSOCIATES, INC. ANTHONY JAMES BURNS,</p>	<p>MEMORANDUM IN SUPPORT OF MOTION FOR STAY PENDING RESOLUTION OF CRIMINAL PROCEEDINGS</p>
<p>Respondents.</p>	<p>Nos. SD-10-0057 SD-10-0058</p>

Respondents Burns and Burns Associates, Inc. and Anthony James Burns (collectively, "Respondents"), by and through their undersigned attorney, hereby move for a stay of these proceedings until the final resolution of *State v. Anthony J. Burns*, Case No. 101905324, a criminal proceeding currently pending before the Third District Court in Salt Lake County. The parallel criminal and civil proceedings represented by that case and this case threaten to

~~undermine and burden the right against self-incrimination provided under the Fifth Amendment~~
to the United States Constitution.

This Motion is accompanied by a supporting legal memorandum. For the reasons stated therein, this Motion should be granted.

DATED AND SIGNED this 10 of September, 2010.

ASCIONE AND ASSOCIATES

Tyna-Minet Anderson
Tyna-Minet Anderson

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Attorneys for Respondents.

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

IN THE MATTER OF:

BURNS & BURNS ASSOCIATES, INC.
 ANTHONY JAMES BURNS,

Respondents.

**MEMORANDUM IN SUPPORT OF
 MOTION FOR STAY PENDING
 RESOLUTION OF CRIMINAL
 PROCEEDINGS**

Nos. SD-10-0057
 SD-10-0058

Respondents Burns and Burns Associates, Inc. and Anthony James Burns (collectively, "Respondents") file this memorandum in support of their Motion for Stay Pending Resolution of Criminal Proceedings ("Motion"). Specifically, Respondents are requesting that this matter be stayed until *State v. Anthony J. Burns*, Case No. 101905324, a criminal proceeding currently

~~pending before the Third District Court in Salt Lake County ("the Criminal Matter"), is fully~~

resolved. For the following reasons, the Motion should be granted.

FACTUAL BACKGROUND

The Criminal Matter includes the following counts:

- Count 1 – Securities Fraud (Michael Griffiths as alleged victim)
- Count 2 – Securities Fraud (Mathew Parsons as alleged victim)
- Count 3 – Securities Fraud (Brenden White as alleged victim)
- Count 4 – Theft
- Count 5 – Theft
- Count 6 – Pattern of Unlawful Activity

Although Respondents deny all allegations in the Criminal Matter, a comparison of the allegations in the Criminal Information (attached hereto as Exhibit 1) and Affidavit of Probable Cause (attached hereto as Exhibit 2) with those in the Order to Show Cause (attached hereto as Exhibit 3) establish beyond question that the two proceedings are based upon the same alleged facts. In both proceedings, the promotion and lease of ophthalmic equipment to three Utah residents (Michael Griffiths, Mathew Parsons, Brenden White) form the basis for the charges against Respondents.¹

¹ The Order to Show Cause refers to these individuals by their respective initials, "M.G.," "M.P." and "B.W."

~~DISCUSSION~~

This motion is based upon the fact that any statements made in the course of this proceeding may be used in the criminal proceedings, thereby impinging on the Fifth Amendment rights against self-incrimination; conversely, if, in an effort to preserve such Fifth Amendment rights, Respondents make no statements in these proceedings, Respondents' defense will be significantly undermined. *United States v. Kordel*, 397 U.S. 1, 7-8 (1970). As shown below, courts have been receptive to granting stays in civil proceedings in an effort to prevent defendants from facing the Hobson's choice that now faces Respondents.

In determining a motion such as this, courts look not only to the timeliness of the motion, but also to the following five factors.

(1) the private interests of the plaintiffs in proceeding expeditiously with the civil litigation as balanced against the prejudice to the plaintiffs if delayed; (2) the private interests of and burden on the defendants; (3) the interests of the courts; (4) the interests of persons not parties to the civil litigation; and (5) the public interest.

Volmar Distributors, Inc. v. New York Post Co., Inc., 152 F.R.D. 36, 39 (S.D.N.Y. 1993).²

In this case, the timeliness factor weighs in favor of granting the request for stay. The Motion has been filed in a timely manner. Indeed, it is being filed within the time for

² Respondents are not aware of any case law from Utah courts addressing the propriety of staying civil or administrative proceedings during the pendency of related criminal proceedings. (This may be because an order granting a stay is not a final order and therefore is not appealable. *In re J.W.*, 950 P.2d 939, 940 (Utah App. 1997).) Therefore, Respondents rely on federal case law to support their Motion.

----- Respondents to file their initial response to the Notice of Agency Action and prior to the first hearing before the Division. -----

Turning to the balancing of interests prong, delaying this proceeding will not significantly impair the Division's ability to proceed with this matter. First, Respondent is not involved in securities at this time, which is the core of the allegations in both this and the criminal proceedings. Furthermore, Respondents are not promoting the product that is the subject of this litigation to anyone at this time. Accordingly, there is no concern that Respondents are making false statements to the investing public. *Cf. Brock v. Tolkow*, 109 F.R.D. at 120 (noting that denial of a stay is more appropriate where there is "a tangible threat of immediate and serious harm to the public at large").

Second, the criminal proceedings are aimed at enforcing nearly identical interests, and there is no indication that further alleged harm to the public will occur due to a stay of the civil proceedings. *SEC v. Google*, 1997 U.S. Dist Lexis 20878 (D. Conn. April 30, 1997). Indeed, the Utah Attorney General's Office is the office prosecuting both actions. *SEC v. Graystone Nash, Inc.* 285 F.3d 187, 193-94 (3d Cir. 1994) ("Courts must bear in mind that when the government is a party in a civil case and also controls the decision as to whether criminal proceedings will be initiated, special consideration must be given to the plight of the party asserting the Fifth Amendment.") Because there are no Defendants in either matter, there is no adverse interest to protect. Moreover, in the event the criminal case is decided against Respondents, the civil

~~proceeding will be substantially simplified for the State since the Division would be able to~~

assert collateral estoppel against those convicted.

In contrast, Respondents are now facing these proceedings while being distracted by the pending Criminal Matter. Even were there no Fifth Amendment issues, the simple inability to focus all efforts on one case severely undermines Respondents' ability to fully defend this matter. As the Second Circuit held concerning instances where there are parallel criminal and civil proceedings:

More generally, because all parties—those who invoke the Fifth Amendment and those who oppose them—should be afforded every reasonable opportunity to litigate a civil case fully and because exercise of Fifth Amendment rights should not be made unnecessarily costly, courts, upon an appropriate motion, should seek out those ways that further the goal of permitting as much testimony as possible to be presented in the civil litigation, despite the assertion of the privilege. Thus, if there is a timely request made to the court, the court should explore all possible measures in order to select that means which strikes a fair balance and accommodates both parties.

United States v. 4003-4005 5th Ave., 55 F.3d 78, 83-84 (2d Circuit 1995). Similarly, the court in *Brock v. Tolkow*, 109 F.R.D. 116 (E.D.N.Y. 1985), held that:

A stay of civil proceedings is most likely to be granted where the civil and criminal actions involve the same subject matter . . . and is even more appropriate when both actions are brought by the government.

The noncriminal proceeding, if not deferred, might undermine the party's Fifth Amendment privilege against self-incrimination, expand rights of criminal discovery beyond the limits [allowed by the rules governing discovery in criminal case], expose the basis of the defense to the prosecution in advance of criminal trial, or otherwise prejudice the case. If delay of the noncriminal

~~proceeding would not seriously injure the public interest, a court~~
may be justified in deferring it.

Id. at 119 (quoting *SEC v. Dresser Indus.*, 628 F.2d 1368, 1375-76 (footnotes omitted by *Brock* court)).

This case falls squarely within the ambit of those in which a stay of the civil proceedings has been granted. It is a case brought based upon the same alleged facts by the same government office as in the criminal proceeding. There is no threatened future harm to the public that will be caused or allowed by a stay. At most, there may be some inconvenience to the Division. Such inconvenience, however, cannot be seriously equated with the burden otherwise being placed by these dual proceedings on the constitutional right against self-incrimination presented.

CONCLUSION

Accordingly, for the foregoing reasons, Respondents request that the Motion be granted and that these proceedings be stayed pending the resolution on *State v. Anthony J. Burns*, Case No. 101905324.

DATED AND SIGNED this 10 of September, 2010.

ASCIONE AND ASSOCIATES

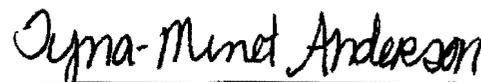

Tyna-Minet Anderson

Exhibit "1"

FILED
THIRD DISTRICT COURT
10 JUL 29 PM 2: 17
SALT LAKE DEPARTMENT
BY DA
DEPUTY CLERK

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

THE STATE OF UTAH, : Bail \$ _____
Plaintiff, :
vs. : **CRIMINAL INFORMATION**
ANTHONY J. BURNS, : Case No: 101905324
DOB: December 14, 1969 :
Defendant : Judge _____

The undersigned, JEFFERY NIELSEN, upon oath, states on information and belief
that the defendant has committed the following crimes:

SECURITIES FRAUD
a second degree felony (3counts)

THEFT
a second degree felony (2 counts)

PATTERN OF UNLAWFUL ACTIVITY
a second degree felony (1 count)

COUNT 1
SECURITIES FRAUD
a second degree felony

Commencing on or about March 2006, in the State of Utah, Salt Lake County and elsewhere, the defendant, in connection with the offer or sale of a security, directly or indirectly, to **MICHAEL GRIFFETH**, made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit, in violation of Utah Code Ann. §§61-1-1 and 61-1-21. This violation is a second degree felony under Utah Law.

COUNT 2
SECURITIES FRAUD
a second degree felony

Commencing on or about July 2006, in the State of Utah, Salt Lake County and elsewhere, the defendant, in connection with the offer or sale of a security, directly or indirectly, to **MATTHEW PARSONS**, made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit, in violation of Utah Code Ann. §§61-1-1 and 61-1-21. This violation is a second degree felony under Utah Law.

COUNT 3
THEFT
a second degree felony

From on or about August 2006, the defendant obtained or exercised unauthorized control over the property of **MATTHEW PARSONS**, with a purpose to deprive him thereof. The value of the property is or exceeds \$5,000.00. This is a violation of Utah Code Ann. § 76-6-404, a second degree felony.

COUNT 4
SECURITIES FRAUD
a second degree felony

Commencing on or about July 2006, in the State of Utah, Salt Lake County and elsewhere, the defendant, in connection with the offer or sale of a security, directly or indirectly, to **BRENDEN WHITE**, made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit, in violation of Utah Code Ann. §§61-1-1 and 61-1-21. This violation is a second degree felony under Utah Law.

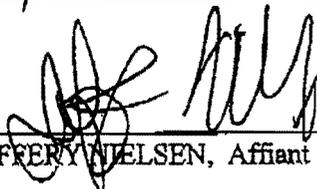
COUNT 5
THEFT
a second degree felony

From on or about August 2006, the defendant obtained or exercised unauthorized control over the property of **BRENDEN WHITE**, with a purpose to deprive him thereof. The value of the property is or exceeds \$5,000.00. This is a violation of Utah Code Ann. § 76-6-404, a second degree felony.

COUNT 6
PATTERN OF UNLAWFUL ACTIVITY
a second degree felony

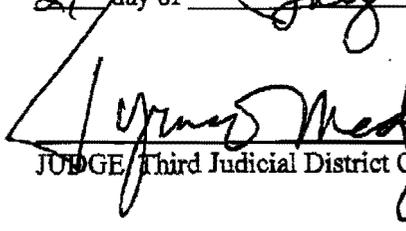
Commencing on or about March 2006, the defendant has engaged in conduct which
~~constituted the commission of at least three episodes of unlawful activity as defined in Utah~~
 Code Ann. § 76-10-1601. The defendant: (1) received proceeds derived, directly or indirectly,
 from a pattern of unlawful activity as more fully defined in Counts 1 through 5 above, in which
 he participated as a principal, or he used or invested, directly or indirectly, any part of that
 income, or the proceeds of the income, or the proceeds derived from the investment or use of
 those proceeds, in the acquisition of any interest in, or establishment or operation of, any
 enterprise; (2) through a pattern of unlawful activity acquired or maintained, directly or
 indirectly, any interest in or control of any enterprise; or (3) was employed by, or associated with
 any enterprise and conducted or participated, whether directly or indirectly, in the conduct of that
 enterprise's affairs through a pattern of unlawful activity. The unlawful activity included three
 or more violations of securities fraud and theft. This is a violation of Utah Code Ann. §76-10-
 1601 and § 76-10-1603(5) (1995), et seq. a second degree felony.

DATED this 29 day of July, 2010.

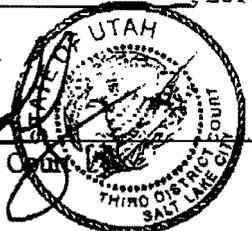


 JEFFERY NIELSEN, Affiant

SUBSCRIBED AND SWORN to before me on this
29 day of July, 2010.



 JUDGE Third Judicial District Court



This CRIMINAL INFORMATION is based upon evidence from the following witnesses:

- 1. Matt Parsons
- 2. Brenden White
- 3. Michael Griffeth
- 4. Jon Heitzman
- 5. Brett Benard
- 6. And Others.

AUTHORIZED for presentment and filing this 29th day of July
2010.

MARK L. SHURTLEFF
Utah Attorney General

By: Charlene Barlow
CHARLENE BARLOW
Assistant Attorney General

Exhibit "2"

Eastern studies in Spring 2008. I am currently investigating possible violations of securities fraud statutes and related criminal code violations by ANTHONY BURNS.

2. The facts set forth in this affidavit are based upon the results of an investigation during which I have collected and reviewed records from witnesses and other sources. I have received information from Matt Parsons, Brenden White, Michael Griffeth, Jon Heitzman, Brett Benard, and others.

PARTIES

3. ANTHONY J. BURNS, at all pertinent times, resided in both Idaho and Utah. BURNS' last known address is 512 Sunset Dr., Trafford, PA 15085. BURNS has never held a securities license.
4. Burns & Burns Associates, Inc. (B&B) registered with the Idaho Secretary of State on November 1, 2004. Anthony J. Burns was listed as Incorporator and President. Burns' wife, Loriann Burns (LA), was listed as Registered Agent, Secretary, and Incorporator. B&B's status is dissolved as of August 10, 2007. B&B is not registered with the Utah Division of Corporations. B&B has never held any securities licenses, nor has B&B made any filings with the Utah Division of Securities.
5. Southern Idaho Vision Alliance, PLLC, (SIVA) registered with the Idaho Secretary of State on August 15, 2003, and is an existing company as of June 23, 2010. Jon Heitzman is listed as the Registered Agent, President, and Member.

BACKGROUND

6. Burns offered an investment opportunity to a few associates starting in or about March 2006. Burns said he was putting together a lease deal, whereby Burns was raising funds to purchase 10 lanes of ophthalmic equipment,¹ which Burns would subsequently lease to an optometrist in Idaho. Burns said the optometrist would pay about \$600 per month per lane leased, which would be provided to the investors whose funds had purchased each lane. The offering of profit in return for the use of another person's funds could be an investment contract. Investment contracts are securities as defined by Utah Code Annotated §61-1-13.
7. Burns provided some of the investors with copies of the lease documents and other related documents. Some of the documents represent the lease deal was between B&B and SIVA. According to SIVA's owner, SIVA never had any lease deal with B&B.
8. Burns provided one of the investors with a copy of a lease agreement between B&B and Christine LeDeux, PLLC, when in fact, there is not a Christine LeDeux PLLC registered in either Idaho or Utah.
9. Prior to any investments, Burns did not provide investors with the information ordinarily provided in a prospectus, including but not limited to: financial statements, descriptions

¹One lane is one exam room worth of ophthalmic equipment. A lane generally consists of a chair, stand, phoropter/refractor, foot lamp, and a projector/projection system.

of the backgrounds of the company officers and directors, a list of the risk factors relating to the investment, and a discussion of the company's business operations.

10. Burns did not disclose other material facts to investors, including but not limited to: Burns did not discuss suitability factors for the investment; Burns did not discuss if investors could afford to lose their investment funds; Burns did not disclose how he would be compensated for selling the securities; Burns did not discuss who would be on title to the lanes; Burns did not discuss what would happen if Burns could not raise enough funds to purchase and lease all 10 lanes to the optometrist; Burns did not discuss where the lanes would be held; Burns did not provide any equipment serial numbers to investors; Burns did not discuss what would occur if the optometrist was unable to purchase the lanes; Burns failed to disclose how many other investors were involved; Burns failed to disclose the amount of funds he had raised; Burns did not discuss why lease documents mention Christine LeDeux, while the assignment documents mention SIVA; Burns failed to disclose he had not used all previous investor funds to purchase lanes; Burns did not discuss how he would cover the funding; Burns did not disclose if the investment contracts offered were registered or exempt from registration; and, Burns did not say if he was licensed to sell securities.

-
11. Burns collected about \$95,000 from at least three investors. Records show Burns paid investors about \$11,400 in interest payments through January 2007. Investors are still owed about \$83,600 in principal alone.

COUNT 1
SECURITIES FRAUD, a second degree felony
(Michael Griffeth)

12. Michael Griffeth said Burns contacted him regarding an investment opportunity between or about March and May 2006. Griffeth said he and Burns had multiple discussions regarding the investment over a period of a few weeks in person at Griffeth's office in Tooele, Utah.
13. During the conversations, Burns said he had a deal with a lady in Idaho who was an optometrist looking to obtain 10 lanes of ophthalmic equipment for some clinics. Burns said the optometrist did not have the capital to purchase the equipment, so the optometrist was looking to lease the lanes for up to a year. Burns said he had access to 10 lanes, and was raising funds to purchase the 10 lanes for the lease. Burns said investors needed to invest \$15,000 for each lane, but Burns would accept as much as the investor could invest. Burns said the lanes would be collateral for the investment, but Burns did not discuss who would be on title to the lanes.
14. Burns said the optometrist would try to finance the purchase of all 10 lanes by the end of the lease period. Burns said investors would get their principal back once the optometrist

purchased the lanes. Burns did not discuss what would occur if the optometrist was unable to purchase the lanes.

15. Burns said the optometrist was going to pay about \$400 per month per lane leased, which would be paid to the investor who invested the money for the lane. Griffeth said Burns talked about the deal being an "excellent" investment. Griffeth said he thought he remembered Burns was going to invest some of his own funds as well. Griffeth told Burns he was interested in investing \$35,000.
16. Griffeth said Burns showed him a copy of the lease contract, which Griffeth was able to review prior to investing, but Griffeth did not receive a copy for his records. Griffeth said he could not remember the names or companies involved with the lease.
17. Based on Burns' representations, Griffeth invested by giving LA a \$15,000 check made payable to LA on or about May 25, 2006. Griffeth said he was unsure if he mailed the check to LA, or if either Burns or LA picked up the check from Griffeth's office. Griffeth said he also gave Burns a \$20,000 check made payable to B&B on or about July 20, 2006. Griffeth said Burns may have picked up the \$20,000 check from Griffeth's office. Griffeth said neither of his checks were to purchase any ophthalmic equipment for his own practice. Griffeth said he and Burns did not discuss using Griffeth's funds for any other purpose than to purchase lanes of ophthalmic equipment, so Griffeth would not have authorized the use of his funds for any other purpose.

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18. Prior to the investments, Burns failed to provide Griffeth with any disclosure documents. Burns also failed to provide some of the information found in paragraphs 9 and 10 of this affidavit.
19. Bank records show Griffeth's \$15,000 was deposited into B&B's Wells Fargo Bank account on or about May 24, 2006, bringing the balance to \$15,028.97. According to a first in first out analysis of the records, the \$15,000 was used in the following manner: \$171.03 in payments to LA, \$31.80 in bank fees, \$2,000 to American Express, \$1,500 transferred to Burns Properties, LLC, \$4,500 transferred to Burns' personal account, \$5,000 paid to LA's brother, David Skalka, \$321.69 paid to insurance companies, \$20 paid to Tek Hut, \$78.81 paid to Cable One, and \$1,376.67 paid to wireless companies.
20. Bank records show Griffeth's \$20,000 was part of a \$27,500 deposit into B&B's Wells Fargo Bank account on or about July 20, 2006, bringing the account balance to \$26,430.51. A first in first out analysis of the records shows the \$27,500 was used in the following manner: \$1,069.49 was used to cover a negative balance, \$66 in bank fees, a \$2,000 rent payment, \$1,865.80 paid to credit card companies, \$1,498.71 paid to an unrelated individual, and \$21,000 paid to Wasatch Ophthalmic Instruments. According to an invoice provided by Wasatch Ophthalmic Instruments, the \$21,000 was used as a payment to purchase three lanes of ophthalmic equipment.

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21. Griffeth said he received about \$3,000 from Burns on his investment between August 2006 and February 2007. Griffeth said he did not track payments very closely at the time, but later noticed missing monthly payments. Griffeth asked Burns and LA about the missing payments. Griffeth said both Burns and LA were apologetic about the payments, but never explained the delinquencies. Griffeth said he had contact with investors Brenden White and Matt Parsons soon thereafter. Griffeth said he, White, and Parsons learned about inconsistencies with their investments, including false names used in the lease contract, so they and two other investors retained an attorney in or about the beginning of 2007.
22. Griffeth said he, White, and Parsons met with Burns at Parsons' office in Provo, Utah, in or about May 2007. Griffeth said he, White, and Parsons confronted Burns about the lease deal. Griffeth said Burns was very apologetic and said he would work to pay back the funds. Burns said he had made some "dumb" decisions and needed money when he collected the investment funds. Burns said he used the investments to pay off other debts. Griffeth said he did not recall if Burns admitted the lease deal was fraudulent. Burns discussed paying Griffeth, White, and Parsons a certain amount per month to pay back the investment principal. Burns also discussed another investment opportunity involving a record deal in Nashville, which Burns could use to pay back Griffeth, White, and Parsons.

Griffeth, White, and Parsons told Burns they would give Burns 90 days to come up with a plan to pay back the money.

23. Griffeth said he has not received any other funds to date, and he last had contact with Burns and LA in or about March 2008.

COUNT 2
SECURITIES FRAUD, a second degree felony
(Matthew Parsons)

24. Parsons said Burns told him about an investment opportunity in person at a hospital in Mt. Pleasant, Utah, on or about July 15, 2006. Parsons said he and Burns had a couple of subsequent telephone conversations about the investment over a couple week period of time while Parsons was at his office in Provo, Utah.
25. During the conversations, Burns said he was working on a deal to lease a maximum of 10 lanes of ophthalmic equipment to an optometrist in Idaho because the optometrist could not purchase the equipment. Burns said he would use investment funds to purchase the lanes for the lease, and a \$15,000 minimum investment was needed for each lane. Burns said he would provide Parsons with descriptions and serial numbers for the lanes Parsons' funds purchased. Burns said Parsons would earn \$600 per month in profit for each lane his investment funds purchased.
26. Burns said the lease was for six to 12 months, at which time the optometrist would try financing the purchase of the lanes. Burns said Parsons' principal would be repaid once

the optometrist received the financing. Burns said if the optometrist did not obtain the financing, Parsons would own the lanes his funds had purchased. Parsons discussed investing \$30,000 for two lanes.

27. Burns said Parsons "did not need to worry" about the deal, because Parsons' business with Burns was worth 10 times what Parsons' investment was worth to Burns. Burns also said he would not do anything to jeopardize their business relationship. Burns said he could cover the funding if needed, but Burns did not discuss how he would cover the funding. Parsons said Burns did not provide any documents during the initial meeting.
28. In or about July 2006, Parsons learned other ophthalmologists and optometrists had invested with Burns, including Griffeth. Parson said he contacted Griffeth to see what Griffeth thought of Burns' investment.
29. On or about July 26, 2006, Burns sent Parsons an email with three documents attached. The first document was a copy of a lease agreement between B&B and SIVA for 10 lanes. The second document is an exhibit list of the lanes, and the last document, entitled *Assignment of Lease*, assigns Parsons all rights from the B&B/SIVA lease.
30. On or about July 31, 2006, Burns and Parsons signed a copy of the *Assignment of Lease* while Parsons and Burns were in either Gurnison, Utah, or Mt. Pleasant, Utah. Based on Burns' representations, Parsons invested by giving Burns a \$30,000 personal check in person while at the hospital in Mt. Pleasant, Utah, on or about August 1, 2006. Parsons

-
- said he and Burns did not discuss using Parsons' funds for any other purpose than to purchase the lances of ophthalmic equipment, so Parsons would not have authorized the use of his funds for any other purpose.
31. Prior to the investment, Burns failed to provide Parsons with any disclosure documents. Burns also failed to provide some of the information found in paragraphs 9 and 10 of this affidavit.
32. On or about August 26, 2006, Burns emailed a copy of the *Assignment of Lease* with serial numbers for the equipment assigned to Parsons, as well as an address where the lances were located. Parsons said he never verified if the equipment was at the location Burns represented. Some of the serial numbers provided on Parsons' *Assignment of Lease* match serial numbers on the Wasatch Ophthalmic Instruments invoice which some of Griffith's money may have been used to purchase as described previously.
33. Parsons said within a few weeks of investing, Burns provided Parsons with a copy of a lease agreement showing Christine LeDeux, PLLC, as the lessee instead of SIVA. Burns said LeDeux was the optometrist he had mentioned before Parsons invested.
34. Between about September and November 2006, Burns paid Parsons three monthly payments of \$1,200. In or about November 2006, Parsons had trouble contacting Burns, but was able to contact LA, who was very vague about Burns. Parsons said one of the other investors traveled to Idaho at about this same time and learned the lances were not at

-
- the locations Burns had represented. Parsons said he and the other investors started to question the veracity of the investment.
35. In or about November 2006, Parsons, White, Griffeth, and two other investors retained an attorney to get their funds back from Burns. The attorney sent Burns a letter notifying Burns of possible securities fraud violations and the attorney tried getting Burns to sign a payment settlement. Burns later signed a promissory note for Parsons and paid Parsons \$1,200 in or about January 2007.
36. On or about May 31, 2007, Parsons, Griffeth, and White met with Burns at Parsons' office, located in Provo, Utah. During the meeting, Burns said his intent was to do the lease deal, but there was no lease deal or equipment. Burns said he used the investment funds for other purposes, but Burns did not intend to steal the money. Burns said he expected to receive funds from other sources to pay the investment funds back to Parsons and the others. Burns also said he had been in drug rehab. Parsons, Griffeth, and White agreed to give Burns six months before coming up with a repayment plan and resuming payments, and Parsons requested updates from Burns every 30 days.
37. Parsons said Burns never contacted him to give progress reports after the meeting. Parsons said he has not had contact with either LA or Burns since about November 2007.

COUNT 3
THEFT, a second degree felony
(Matthew Parsons)

-
38. Burns represented to Parsons that he would use Parsons' funds to purchase the lanes for the lease. Bank records show Parsons' \$30,000 was deposited into B&B's Wells Fargo Bank account on or about August 1, 2006, bringing the account balance to \$30,022.80. A first in first out analysis of the records shows the \$30,000 was used in the following manner: \$14.90 in bank fees, \$430 paid to an unrelated individual, \$1,447.30 paid to WA Federal Savings, a \$2,939.75 installment loan account payment, \$725.55 paid to Countrywide Mortgage, \$250 paid to LA, a \$4,563.28 mortgage payment, \$5,575.16 paid to Visa, \$11,868.56 paid to Salt Lake Schools Credit Union, and \$2,185.50 paid to "SPA."
39. Parsons authorized Burns to use the funds to purchase the lanes for the lease. Parsons did not authorize his funds to be used for any other purpose.
40. Burns obtained money from Parsons and exercised unauthorized control of the money with the purpose to deprive him thereof.

COUNT 4
SECURITIES FRAUD, a second degree felony
(Brenden White)

41. White said he has known Burns for about 10 years and has purchased ophthalmic equipment from B&B during that time period. On or before July 19, 2006, Burns contacted White by telephone while White was at Yuba Reservoir, located in the counties

-
- of Juab and Sanpete in Utah. White said he and Burns also had minor discussions in a couple of subsequent telephone calls while White was in Salt Lake County, Utah.
42. During the conversations, Burns said he had come across a good deal he could handle by himself, but Burns wanted to get his friends and associates involved as well. Burns said he was working on a deal with an optometrist in Idaho named Christine LeDeux whereby B&B would lease 10 lanes of ophthalmic equipment to LeDeux. Burns said the lease was for six months with an option to extend for an additional six months. Burns said LeDeux was unable to purchase the lanes at the time, but would obtain financing to purchase the lanes prior to the end of the lease period.
43. Burns said he would use the invested funds to purchase the lanes, and Burns was looking for people to invest \$15,000 for each lane to be leased. Burns said LeDeux would pay \$600 per month per lane leased, which would be paid to the investors. Burns said he would also provide the investor with a list of serial numbers for each lane leased. Burns said investors would get their principal back once LeDeux purchased the lanes. Burns said investors would own the lanes if the lease did not occur or if LeDeux was unable to purchase the equipment at the end of the lease. White said Burns may have said the deal was low risk, but Burns did say the investment was "a deal we can't lose on."
44. White told Burns he would consider investing \$30,000 for two lanes, but he wanted to see the lease contract. On or about July 19, 2006, Burns sent White a copy of the lease

contract between B&B and LeDeux. On or about July 26, 2006, Burns sent White a different copy of the B&B/LeDeux lease agreement along with an assignment of lease and an exhibit list. The exhibit list shows the equipment included with each lane and the assignment of lease states B&B would assign White all rights, title, and interest in the lanes and entitlement to the monthly lease payments due under the lease. The assignment document does not contain serial numbers for the equipment, and the assignment references a lease between B&B and SIVA, not B&B and LeDeux. White said Burns did not discuss why the lease mentions LeDeux, while the assignment mentions SIVA.

45. Based on Burns' representations, White invested by giving Burns a \$30,000 check made payable to B&B on or about August 28, 2006. White said he gave the check to LA in person at White's office, located in Sandy, Utah. White said some of his investment funds came from home equity, which White told Burns would cause a delay in obtaining the funds. Burns did not provide White with any signed documents in return for the funds. White said he and Burns did not discuss using White's funds for any other purpose than to purchase ophthalmic equipment, so White would not have authorized the use of his funds for any other purpose. Prior to the investment, Burns failed to provide White with some of the information normally provided in disclosure documents.

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46. Prior to the investment, Burns failed to provide White with any disclosure documents. Burns also failed to provide some of the information found in paragraphs 9 and 10 of this affidavit.
47. After the investment, Burns paid the September and October 2006 monthly lease payments to White. White said Burns stopped making payments after the October 2006 payment was made. White said he began to research the lease at about this time, and White was unable to find LeDeux in Idaho. White said he also contacted SIVA's owner/registered agent, Jon Heitzman. Heitzman said he did not know LeDeux, and was unaware of any lease involving B&B.
48. In or about November 2006, White, Parsons, Griffeth, Brett Benard, and Jake Hayes retained an attorney, who sent Burns a letter requesting investor funds to be returned and to notify Burns his conduct constituted a violation of the securities fraud provisions. Soon after, White met with Burns in Salt Lake City, Utah. Burns said the lease had fallen through because LeDeux had moved and decided not to lease the lanes. Burns said he assumed the investors wanted Burns to invest the money elsewhere, and Burns said he felt obligated to provide an equal amount of profit as was offered by the lease. White said he had difficulty contacting Burns after this meeting.

-
49. In or about December 2006, White and the other investors, through the attorney, received a promissory note from Burns, and White received an additional payment from Burns. It appears both Burns and LA signed White's promissory note.
50. On or about May 31, 2007, White, Parsons, and Griffeth met with Burns at Parson's office. White said he, Parsons, and Griffeth agreed to give Burns six months to pay back their funds before moving forward with any actions. Burns said he was working on a new investment deal with Alice Cooper and the Huntsman family, which would generate enough funds to pay back White, Parsons, and Griffeth. White said he did not recall if Burns admitted the lease deal was fraudulent.
51. White said he has not been able to contact either Burns or LA since about December 2007, and Burns has not made any additional payments on the investment since the payment made through White's attorney in or about December 2006.

COUNT 5
THEFT, a second degree felony
(Brenden White)

52. Burns represented to White that he would use White's funds to purchase ophthalmic equipment for the lease. Bank records show White's \$30,000 was deposited into B&B's Wells Fargo Bank account on or about August 28, 2006, bringing the account balance to \$45,740.50. A first in first out analysis of the records shows the \$30,000 was used in the

following manner: \$17,050.98 paid to Middlekauff Ford and \$12,949.02 paid to Southern Idaho RV and Marine.

53. White authorized Burns to use the funds to purchase ophthalmic equipment. White did not authorize his funds to be used for any other purpose.
54. Burns obtained money from White and exercised unauthorized control of the money with the purpose to deprive him thereof.

COUNT 6
PATTERN OF UNLAWFUL ACTIVITY
a second degree felony

55. Commencing in or about March 2006, Burns engaged in conduct which constituted the commission of at least three episodes of unlawful activity as defined in Utah Code Ann. §76-10-1603. Burns: (1) received proceeds derived, directly or indirectly, from a pattern of unlawful activity as more fully defined in Counts 1 through 5 above, in which Burns participated as principal, or used or invested, directly or indirectly, any part of that income, or the proceeds derived from the investment or use of those proceeds, in the acquisition of any interest in, or establishment or operation of, any enterprise; (2) through a pattern of unlawful activity acquired or maintained, directly or indirectly, any interest in or control of any enterprise; or (3) was employed by, or associated with any enterprise and conducted or participated, whether directly or indirectly, in the conduct of that enterprise's affairs through a pattern of unlawful activity. The unlawful activity included

three or more violations of securities fraud. This is a violation of Utah Code Ann. §76-10-1603, a second degree felony.

SUMMARY

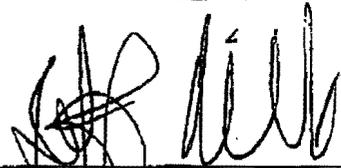
56. Based on my review of the evidence, there is probable cause to believe that Burns committed the crimes of:

SECURITIES FRAUD
a second degree felony, 3 counts

THEFT
a second degree felony, 2 counts

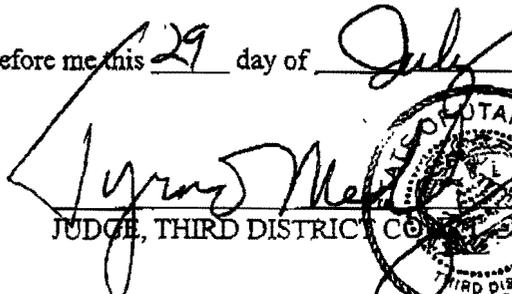
PATTERN OF UNLAWFUL ACTIVITY
a second degree felony, 1 count

DATED this 29 day of July, 2010.



JEFFERY NIELSEN, Affiant

SUBSCRIBED AND SWORN before me this 29 day of July, 2010.



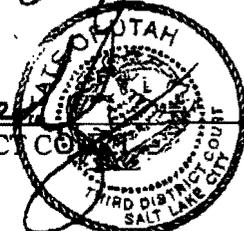
JUDGE, THIRD DISTRICT CO


Exhibit “3”

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

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

IN THE MATTER OF:

**BURNS & BURNS ASSOCIATES, INC.,
 ANTHONY JAMES BURNS,**

Respondents.

ORDER TO SHOW CAUSE

Docket No. **00-11-1157**

Docket No. **00-11-1158**

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

STATEMENT OF JURISDICTION

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

and sale of securities in or from Utah.

STATEMENT OF FACTS

THE RESPONDENTS

2. Burns & Burns Associates, Inc. (B&B) is an expired Idaho corporation. Anthony J.

Burns is the president of B&B and Loriann Burns is secretary and registered agent. B&B has never been licensed as a broker-dealer, agent, investment advisor, or investment advisor representative in Utah. Anthony J. Burns (Burns), at all relevant times, was a resident of Idaho. Burns has never been licensed as a broker-dealer, agent, investment advisor, or investment advisor representative in Utah.

GENERAL ALLEGATIONS

3. From approximately March 2006 to August 2006, Respondents offered and sold securities to investors, in or from Utah, and collected a total of \$95,000.
4. Burns made material misrepresentations and omissions in connection with the offer and sale of securities to the investors below.
5. The investors lost \$83,600 in principal.

INVESTOR M.G.

6. Between or about March and May 2006, Burns contacted M.G. about an investment opportunity. During that time, M.G. and Burns had multiple discussions about the investment at M.G.'s office in Tooele, Utah.
7. During the conversations, Burns made the following representations:

8. M.G. expressed an interest in investing \$35,000 and Burns showed him a copy of the lease contract. Although M.G. had reviewed the lease prior to investing, he never received a copy for his records.
9. ~~Based on Burns' representations, M.G. invested \$35,000.~~
10. On or about May 25, 2006, M.G. gave a \$15,000 check to Lorian Burns. The check was made payable to her. Burns deposited the \$15,000 into B&B's Wells Fargo Bank account about that same day, bringing the balance to \$15,028.97.
11. According to a source and use analysis of bank records, the \$15,000 were used by the Burnses as follows:
- a. \$171.03 paid to Lorian Burns;
 - b. \$31.80 paid in bank fees;
 - c. \$2,000 paid to American Express;
 - d. \$1,500 transferred to Burns Properties, LLC;
 - e. \$4,500 transferred to Burns' personal account;
 - f. \$5,000 paid to Lorian Burns's brother;
 - g. \$321.69 paid to insurance companies;
 - h. \$20 paid to Tek Hut;
 - i. \$78.81 paid to Cable One; and
 - j. \$1,376.67 paid to wireless companies.
12. M. G. gave another \$20,000 check to Lorian Burns on July 20, 2006. That check was

- a. Burns had a deal with an optometrist in Idaho who was trying to acquire ten lanes¹ of ophthalmic equipment for some clinics;
- b. Burns did not say who the optometrist was, but said she needed to lease the lanes because she did not have the capital to purchase the equipment herself;
- c. Burns had access to ten lanes and was raising funds to buy them for the purpose of leasing them to the optometrist;
- d. Investors would invest \$15,000 for each lane, but Burns would accept as much as the investors wanted to invest;
- e. The lanes would be used as collateral for the investment, but Burns did not discuss whose name would be on the title to the lanes;
- f. The optometrist would try to buy back all ten lanes by the end of the lease period;
- g. The investors would get their principal back once the optometrist purchased the lanes, however, Burns did not discuss what would occur if the optometrist was unable to purchase the lanes;
- h. The optometrist would make a lease payment of about \$400 per month per lane leased, and the lease money paid would be used to re-pay the investor;
- i. Burns said the deal would be an "excellent" investment and that he would be investing some of his own funds as well;

¹One lane is one exam room worth of ophthalmic equipment. A lane generally consists of a chair, stand, phorometer/refractor, foot lamp, and a projector/projection system.

made payable to B&B. Burns deposited the \$20,000 check about that same day as part of a \$27,500 deposit into B&B's Wells Fargo Bank, bringing the balance to \$26,430.51.

Both the \$15,000 and \$20,000 checks were to be used for the sole purpose of purchasing lanes of ophthalmic equipment

13. According to a source and use analysis of bank records, the \$27,000 deposit was used by the Burnses as follows:

- a. \$1,069.49 used to cover negative balance;
- b. \$66 paid in bank fees;
- c. \$2,000 paid toward the Burnses' rent;
- d. \$1,865.80 paid to credit card companies;
- e. \$1,498.71 paid to an unrelated individual; and
- f. \$21,000 paid to Wasatch Ophthalmic Instruments for a purchase of three lanes of ophthalmic equipment.

14. Between August 2006 and February 2007, M.G. received an interest payment of about \$3,000 from Burns on his investment. M.G. has not received any other payments to date.

15. To date, Burns still owes M.G. approximately \$32,000 in principal.

INVESTOR M.P.

16. On or about July 15, 2006, Burns told M.P. about the investment opportunity. The discussion occurred at a hospital in Mt. Pleasant, Utah.

17. During the next two weeks, M.P. and Burns had at least two more telephone conversations

about the investment while M.P. was at his office in Provo, Utah.

18. During these conversations, Burns made the following representations about the investment opportunity:

- a. He was working on a deal to lease ten lanes of ophthalmic equipment to an optometrist in Idaho because the optometrist could not purchase the equipment;
- b. He would purchase the lanes with the funds raised for the purpose of leasing them to the optometrist and needed a minimum of \$15,000 for each lane;
- c. Burns would provide descriptions and serial numbers of the lanes purchased by M.P.'s funds;
- d. M.P. would earn \$600 each month for each lane purchased;
- e. The term of the lease was to be for six to twelve months, and upon expiration of the lease, the optometrist would buy back the lanes;
- f. M.P.'s principal would be re-paid once the optometrist received the financing, otherwise, M.P. would own the lanes he purchased;
- g. M.P. "did not need to worry" about the deal because M.P.'s business relationship with Burns was worth ten times more than the value of M.P.'s investment and he would not do anything to jeopardize their business relationship;²
- h. Burns could cover the funding if needed, but he did not discuss how he would do it.

²Burns worked with M.P. as a surgical technician.

19. On or about July 26, 2006, Burns sent M.P. an e-mail with three documents attached: (1) a copy of a lease agreement between B&B and Southern Idaho Vision Alliance, PLLC³ for ten lanes; (2) an exhibit list of the lanes; and (3) an *Assignment of Lease* that assigned M.P. all rights from the lease.
-
20. On or about July 26, 2006, Burns and M.P. signed a copy of the *Assignment of Lease*.
21. Based on Burns' representations, M.P. invested \$30,000.
22. On or about August 1, 2006, M.P. gave a \$30,000 personal check to Burns in Mt. Pleasant Utah. The \$30,000 was deposited into B&B's Wells Fargo Bank account, bringing the balance to \$30,022.80.
23. According to a source and use analysis of bank records, the \$30,000 deposit was used by the Burnses as follows:
- a. \$14.90 paid in bank fees;
 - b. \$430 paid to an unrelated individual;
 - c. \$1,447.30 paid to WA Federal Savings;
 - d. \$2,939.75 paid toward an installment loan account;
 - e. \$725.55 paid to Countrywide Mortgage;
 - f. \$250 paid to Loriann Burns;
 - g. \$4,563.28 paid toward Burns' mortgage;

³Southern Idaho Vision Alliance, PLLC (SIVA) is a professional limited liability company, registered in Idaho on August 15, 2003.

- h. \$5,575.16 paid to Visa;
 - i. \$11,868.56 paid to Salt Lake Schools Credit Union; and
 - j. \$2,185.50 paid to "SPA."
-

- 14. On or about August 26, 2006, Burns e-mailed a copy of the *Assignment of Lease* with serial numbers for the equipment assigned to M.P. and an address where the lanes were located. Some of the serial numbers matched the serial numbers on the invoice showing a payment to Wasatch Ophthalmic Instruments in ¶ 13(f) above.
- 15. A few weeks after investing, Burns provided a copy of a lease agreement to M.P. The lease named the optometrist as the lessee instead of SIVA.
- 16. Between about September and November 2006, Burns paid M.P. three monthly payments of \$1,200.
- 17. In or about January 2007, Burns signed a promissory note for M.P. and paid him \$1,200.
- 18. To date, Burns still owes M.P. \$25,200 in principal.

INVESTOR B.W.

- 19. On or before July 19, 2006, Burns telephoned B.W. about an investment while B.W. was at Yuba Reservoir in Utah. B.W. had known Burns for about ten years and had purchased ophthalmic equipment from B&B before. B.W. also had minor discussions with Burns about the investment over the telephone.
- 0. During the conversations, Burns made the following representations:
 - a. He had come across a good deal and could finance it by himself, but wanted to get

THE ITEMS AND ASSOCIATES INVOLVED AS WELL;

- b. Burns was working on a deal with an optometrist in Idaho purportedly named Christine LeDeux (LeDeux).⁴ As part of this deal, B&B would lease ten lanes of ophthalmic equipment;
- c. The lease term was for six months with an option to extend for an additional six months;
- d. LeDeux was unable to purchase the lanes herself at the time, but would be able to purchase them at the end of the lease period if she obtained financing;
- e. Burns would use the funds invested to purchase the lanes and was looking for people to invest \$15,000 for each lane to be leased;
- f. LeDeux would pay \$600 per month per lane leased, and that money would be used to re-pay investors;
- g. Burns would provide the investors with a list of serial number for each lane leased
- h. Investors would get their principal back once LeDeux purchased the lanes;
- i. Investors would own the lanes if the lease did not occur or if LeDeux was unable to purchase the equipment at the end of the lease;
- j. The investment was "a deal we can't lose on."

⁴The real identity of Christine LeDeux is unknown. No one named Christine LeDeux is licensed as an optometrist or ophthalmologist in Idaho.

11. B.W. said he would consider investing \$30,000 for two lanes, but wanted to see the lease contract.
12. On or about July 19, 2006, Burns sent a copy of the lease agreement between B&B and LeDeux to B.W.
13. On or about July 26, 2006, Burns sent a different copy of the lease agreement to B.W. along with an assignment of the lease, stating that B&B would assign B.W. all rights, title interest in the lanes, and entitlement to the monthly payments due under the lease, as well as an exhibit list of the equipment included with each lane.
14. The assignment did not contain serial numbers for the equipment and references a lease between B&B and SIVA, not B&B and LeDeux.
15. Burns did not discuss why the lease mentions LeDeux, and the assignment mentions SIVA.
16. Based on Burns' representations, B.W. invested \$30,000.
17. On or about August 28, 2006, B.W. gave a \$30,000 check made payable to B&B to Loriam Burns. The \$30,000 was deposited into B&B's Wells Fargo Bank account, bringing the balance to \$45,740.50.
18. According to a source and use analysis of bank records, the \$30,000 deposited was used by the Burns as follows:
 - a. \$17,050.98 paid to Middlekauff Ford; and
 - b. \$12,949.02 paid to Southern Idaho RV and Marine.

19. Burns paid the monthly lease payments for September and October 2006 to B. W., but stopped making payments to B. W. after that.
10. In or about December 2006, B. W. and other investors, through the attorney, received a promissory note from Burns, signed by both Burns and Loriann Burns, and B. W. received an additional payment from Burns.
11. To date, Burns still owes B. W. \$26,400 in principal.

CAUSES OF ACTION

COUNT I

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

12. The Division incorporates and re-alleges paragraphs 1 through 41.
13. The investment opportunities offered and sold by Respondents are securities under § 61-1-13 of the Act.
14. In connection with the offer and sale of securities to investors, Respondents, directly or indirectly, made false statements, including, but not limited to the following:
- a. To M.G.:
 - i. That Burns would use investment funds to purchase lanes for the lease, when in fact, Burns did not use all of M.G.'s funds to purchase the lanes as represented;
 - b. To M.P.:
 - i. That Burns would use investment funds to purchase the lanes for the lease when in fact, Burns did not use any of M.P.'s funds to purchase the lanes;

ii. That there was a lease document showing B&B would lease the lanes to SIVA, when in fact, there never was a lease deal involving SIVA;

c. To B.W.:

i. That Burns would use investment funds to purchase the lanes for the lease, when in fact, Burns did not use any of B.W. funds to purchase the lanes;

ii. That there was a lease document showing B&B would lease the lanes to Christine LeDeux, PLLC, when in fact, there is not any Christine LeDeux, PLLC, registered in Idaho or Utah;

iii. That there was an assignment document, which references a lease with SIVA, when in fact, there was never a lease deal with SIVA.

15. In connection with the offer and sale of securities to the investor, Respondents, directly or indirectly, failed to disclose material information, which was necessary in order to make representations made not misleading, including, but not limited to the following:

a. The amount of funds raised;

b. What would happen if Burns could not raise enough funds to purchase and lease all ten lanes to the optometrist;

c. How Burns would cover the funding;

d. How Burns would be compensated for offering the investment;

e. What would occur if the optometrist was unable to purchase the lanes;

f. Who would be on title to the lanes;

- e. Equipment serial numbers;
- h. Where the equipment would be held;
- i. That he had not used all previous investor funds to purchase lanes;
- j. That he did not use M.P.'s funds for the lanes;
- k. That some of the serial numbers provided on M.P.'s *Assignment of Lease* match serial numbers on the Wasatch Ophthalmic Instruments invoice that some of the M.G.'s money may have been used to purchase;
- l. Why the lease mentions LeDeux, while the assignment mentions SIVA;
- m. Some or all of the information typically provided in an offering circular or prospectus regarding B&B, such as:
 - i. Financial statements;
 - ii. Risk factors for the investors;
 - iii. Suitability factors for the investment;
 - iv. The number of other investors;
 - v. Whether the investment is a registered security or exempt from registration
and
 - vi. Whether Burns was licensed to sell securities.

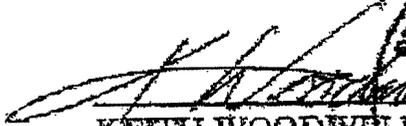
ORDER

The Director, pursuant to § 61-1-20 of the Act, hereby orders Respondents to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63G-4-202, -204 through

and held before the Utah Division of Securities. The hearing will occur on Tuesday, October 5, 2010, at 9:00 a.m., at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2nd Floor, Salt Lake City, Utah. The purpose of the hearing is to establish a scheduling order and address any preliminary matters. If Respondents fail to file an answer and appear at the hearing, the Division of Securities may hold Respondents in default and impose a fine in accordance with Utah Code Ann. § 63G-4-209. In lieu of default, the Division may decide to proceed with the hearing under § 63G-4-208. At the hearing, Respondents may show cause, if any they have:

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

DATED this 9th day of August, 2010.


KEITH WOODWELL
Director, Utah Division

