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**Utah Department of Commerce
Division of Securities**

DOUGLAS E. GRIFFITH (4042)
SCOTT S. BRIDGE (12039)
KESLER & RUST
68 South Main Street, 2nd Floor
Salt Lake City, Utah 84101
Telephone: (801) 532-8000
Fax: (801) 531-7965
dgriffith@keslerrust.com
sbridge@keslerrust.com
Attorneys for Respondent James B. Mooring

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

IN THE MATTER OF:

ARTISAN GROUP, LLC, KENNETH
EUGENE NORTH d/b/a NEW CENTURY,
NEW CENTURY FUNDING, INC.; JAMES
MOORING, CRD#2876063; DAVID
BARTHOLOMEW, CRD#3098268; JON
REX PUGMIRE; JOHN PATRICK LAING

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

SD-11-0048

Respondent James B. Mooring (hereinafter "Mooring") by and through his counsel of record, Douglas E. Griffith of Kesler & Rust, files this memorandum in support of his Motion for Stay Pending Resolution of Criminal Proceedings ("Motion"). Specifically, Mooring is requesting that this matter be stayed until *State v. James B. Mooring*, Case No. 111904457, a criminal proceeding

currently pending before the Third District Court in Salt Lake County (the “Criminal Matter”), is fully resolved.

FACTUAL BACKGROUND

The Criminal Matter includes the following counts:

- Count 12 – Securities Fraud, a second degree felony in violation of 61-1-1 UCA
- Count 20 – Sales by an Unlicensed Agent, a third degree felony in violation of 61-1-3 & 21 UCA

Although Mooring denies all allegations in the Criminal Matter, a comparison of the allegations in the Criminal Information (attached hereto as Exhibit A) and Affidavit of Probable Cause, paragraphs 186 through 204, and 235 (attached as Exhibit B) with those in the Order to Show Cause establish beyond question that the two proceedings are based upon the same alleged facts. In both proceedings, the promotion and sale of securities to Dennis Howard and Sunny Howard¹ form the basis for the charges against Mooring. *Compare, e.g.*, Affidavit of Probable Cause, Paragraphs 186 – 204 with Order to Show Cause, Paragraphs 87 – 98.

¹ The Order to Show Cause refers to these individuals by their respective initials, “DH” and “SH”.

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 Fifth Amendment rights against self-incrimination. Conversely, if, in an effort to preserve such Fifth Amendment rights, Mooring makes no statements in these proceedings, Mooring's 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 Mooring.

In determining a motion such as this, courts look to: 1) the timeliness of the motion, and 2) the balancing of the plaintiff's interest in proceeding with the matter expeditiously against the impairment of the rights of the defendant by so proceeding, as well as the interest of all other affected parties. *SEC v. Google*, 1997 U.S. Dist Lexis 20878 *7-8 (D. Conn. April 30, 1997)².

In this case, the first fact clearly weights 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 Mooring to file his response to the Order to Show Cause, which was filed on June 28, 2011 and the Notice of Agency Action and prior to the hearing before the Division on the Order to Show Cause.

² A copy of this Lexis case is included as Exhibit C. Respondents are not aware of any case law from Utah courts addressing the propriety of staying civil and/or administrative proceedings during the pendency of related criminal proceedings. (This is probably because an order granting such 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.

Turning to the balancing of interests' prong, it is clear that delaying this proceeding will not significantly impair the Division's ability to proceed with this matter. First, because actions by the Utah Securities Division and the State of Utah have effectively ended Mooring's involvement with the securities product that is the core of the allegations in both this and the criminal proceedings. Mooring is no longer involved with promoting securities to anyone. Accordingly, there is no concern that Mooring is making a 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 tot he public will occur due to a stay of 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.* 25 F.3d 187, 193-194 (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 initialed, special consideration must be given to the plight of the party asserting the Fifth Amendment.") Moreover, in the event the criminal case is decided against Mooring, 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, Mooring is 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 Mooring's 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 cases], 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)).

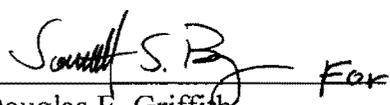
This case falls squarely within the ambit of those in which a stay of the civil proceedings has been granted. It is a case brought based upon the same alleged facts by the same government office as in the criminal proceeding. There is no threatened future harm to the public that will be caused or allowed 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, Mooring requests that the Motion be granted and that these proceedings be stayed pending the resolution on *State v. James B. Mooring*, Case No. 111904457.

DATED this 18th day of July, 2011.

KESLER & RUST



Douglas E. Griffith For
Attorney for Respondent James B. Mooring

CERTIFICATE OF SERVICE

I hereby certify that I caused to be delivered by the method indicated below a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF MOTION TO STAY PENDING RESOLUTION OF CRIMINAL PROCEEDINGS**, postage prepaid, this 10 day of July, 2011, to:

- FEDERAL EXPRESS
- U.S. MAIL
- HAND DELIVERY
- TELEFAX TRANSMISSION


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Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, Utah 84114-6760
Attn: Keith Woodwell

Utah Attorney General's Office
Commercial Enforcement Division
160 East 300 South, 5th Floor
P.O. Box 140872
Salt Lake City, UT 84114-0872
Attn: Jeff Buckner

EXHIBIT "A"

FILED DISTRICT COURT
Third Judicial District

JUN 15 2011

by _____
Deputy Clerk

CHÉ ARGUELLO, Bar No. 12412
Assistant Attorney General
MARK L. SHURTLEFF, Bar No. 4666
Utah Attorney General
5272 South College Drive, #200
Murray, Utah 84123
Telephone: (801) 281-1221
Facsimile: (801) 281-1224
Attorneys for Plaintiff

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

THE STATE OF UTAH, :
 :
 Plaintiff, :

CRIMINAL INFORMATION

vs. :

KENNETH E. NORTH :
DOB: February 10, 1970 :

Case No: 111904452

JOHN P. LAING :
DOB: February 25, 1969 :

Case No: 111904454

JON R. PUGMIRE :
DOB: August 6, 1957 :

Case No: 111904455

DAVID G. BARTHOLOMEW :
DOB: March 31, 1975 :

Case No: 111904456

JAMES B. MOORING :
DOB: September 27, 1975 :

Case No: 111904457

Defendants. :

Judge: _____

The undersigned, upon oath, states on information and belief that the defendants have committed the following crimes:

KENNETH E. NORTH

Securities Fraud, a second degree felony, 13 Counts
Employing an Unlicensed Agent, a third degree felony, 4 Counts
Pattern of Unlawful Activity, a second degree felony, 1 Count.

JOHN P. LAING

Securities Fraud, a second degree felony, 11 Counts
Sales by an Unlicensed Agent, a third degree felony, 1 Count
Pattern of Unlawful Activity, a second degree felony, 1 Count.

JON R. PUGMIRE

Securities Fraud, a second degree felony, 8 Counts
Sales by an Unlicensed Agent, a third degree felony, 1 Count
Pattern of Unlawful Activity, a second degree felony, 1 Count.

DAVID G. BARTHOLOMEW

Securities Fraud, a second degree felony, 2 Count
Sales by an Unlicensed Agent, a third degree felony, 1 Count
Pattern of Unlawful Activity, a second degree felony, 1 Count.

JAMES B. MOORING

Securities Fraud, a second degree felony, 1 Count
Sales by an Unlicensed Agent, a third degree felony, 1 Count

COUNT 1

SECURITIES FRAUD

a second degree felony

(Defendants: North and Laing)

Commencing on or about August or September 2006, in the State of Utah, the defendants NORTH and LAING, in connection with the offer or sale of a security, directly or indirectly, to DENNIS REESE, 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
(Defendants: North and Laing)

Commencing on or about October 2006, in the State of Utah, the defendants, NORTH and LAING, in connection with the offer or sale of a security, directly or indirectly, to DENNIS REESE, 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
SECURITIES FRAUD
a second degree felony
(Defendants: North and Laing)

Commencing on or about February 2007, in the State of Utah, the defendants, NORTH and LAING, in connection with the offer or sale of a security, directly or indirectly, to DENNIS REESE, 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 4
SECURITIES FRAUD
a second degree felony

(Defendants: North and Laing)

Commencing on or about March 2007, in the State of Utah, the defendants, NORTH and LAING, in connection with the offer or sale of a security, directly or indirectly, to DENNIS REESE, 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
SECURITIES FRAUD
a second degree felony
(Defendants: North, Laing and Pugmire)

Commencing on or about April 2007, in the State of Utah, the defendants, NORTH, LAING and PUGMIRE, in connection with the offer or sale of a security, directly or indirectly, to DENNIS REESE, 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 6
SECURITIES FRAUD
a second degree felony
(Defendants: North, Laing and Pugmire)

Commencing on or about April 2006, in the State of Utah, the defendants, NORTH, LAING and PUGMIRE, in connection with the offer or sale of a security, directly or indirectly, to **ROBERT AND FAYE MUSS**, 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 7
SECURITIES FRAUD
a second degree felony
(Defendants: North, Laing and Pugmire)

Commencing on or about April 2007, in the State of Utah, the defendants, NORTH, LAING and PUGMIRE, in connection with the offer or sale of a security, directly or indirectly, to **ROBERT AND FAYE MUSS**, 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 8
SECURITIES FRAUD
a second degree felony
(Defendants: North, Laing and Pugmire)

Commencing on or about June 2006, in the State of Utah, the defendants, NORTH, LAING and PUGMIRE, in connection with the offer or sale of a security, directly or indirectly, to **BRENDA WRIGHT**, 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 9
SECURITIES FRAUD
a second degree felony
(Defendants: North, Laing and Pugmire)

Commencing on or about June 2006, in the State of Utah, the defendants, NORTH, LAING and PUGMIRE, in connection with the offer or sale of a security, directly or indirectly, to **BRENDA WRIGHT**, 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 10
SECURITIES FRAUD
a second degree felony
(Defendants: North, Pugmire and Bartholomew)

Commencing on or about November 2006, in the State of Utah, the defendants, NORTH, PUGMIRE and BARTHOLOMEW, in connection with the offer or sale of a security, directly or indirectly, to TAMARA BERNSON, 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 11
SECURITIES FRAUD
a second degree felony
(Defendants: North, Laing and Pugmire)

Commencing on or about November 2006, in the State of Utah, the defendants, NORTH, LAING and PUGMIRE, in connection with the offer or sale of a security, directly or indirectly, to JULIE AND KARL LUND, 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 12
SECURITIES FRAUD
a second degree felony
(Defendants: North and Mooring)

Commencing on or about February 2007, in the State of Utah, the defendants, NORTH and MOORING, in connection with the offer or sale of a security, directly or indirectly, to

DENNIS AND SUNNY HOWARD, 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 13
SECURITIES FRAUD
a second degree felony
(North, Laing, Pugmire and Bartholomew)

Commencing on or about October 2006, in the State of Utah, the defendants, NORTH, LAING, PUGMIRE and BARTHOLOMEW, in connection with the offer or sale of a security, directly or indirectly, to **SHARON LLOYD**, 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 14
EMPLOYING AN UNLICENSED AGENT
a third degree felony
(Defendant: North)

From on or about 2006, in the State of Utah, the defendant NORTH, in violation of Utah Code Ann. § 61-1-3(2)(a), employed or engaged Laing as an agent in the offer and/or sale of a security when Laing was not licensed. This is a third degree felony under Utah Law.

COUNT 15
EMPLOYING AN UNLICENSED AGENT
a third degree felony
(Defendant: North)

From on or about 2006, in the State of Utah, the defendant NORTH, in violation of Utah Code Ann. § 61-1-3(2)(a), employed or engaged Pugmire as an agent in the offer and/or sale of a security when Pugmire was not licensed. This is a third degree felony under Utah Law.

COUNT 16
EMPLOYING AN UNLICENSED AGENT
a third degree felony
(Defendant: North)

From on or about 2006, in the State of Utah, the defendant NORTH, in violation of Utah Code Ann. § 61-1-3(2)(a), employed or engaged Mooring as an agent in the offer and/or sale of a security when Mooring was not licensed. This is a third degree felony under Utah Law.

COUNT 17
EMPLOYING AN UNLICENSED AGENT
a third degree felony
(Defendant: North)

From on or about 2006, in the State of Utah, the defendant NORTH, in violation of Utah

Code Ann. § 61-1-3(2)(a), employed or engaged Bartholomew as an agent in the offer and/or sale of a security when Bartholomew was not licensed. This is a third degree felony under Utah Law.

COUNT 18
SALES BY AN UNLICENSED AGENT
~~a third degree felony~~
(Defendant: Laing)

Commencing on or about 2006, the defendant LAING, in connection with the offer or sale of an security, willfully engaged in the offer or sale of a security without being licensed to transact business in this state. It is unlawful for any person to transact business in this state as an agent unless the person is licensed. This is a violation of Utah Code Ann. §§61-1-3 and 61-1-21, a third degree felony under Utah law.

COUNT 19
SALES BY AN UNLICENSED AGENT
a third degree felony
(Defendant: Pugmire)

Commencing on or about 2006, the defendant PUGMIRE, in connection with the offer or sale of an security, willfully engaged in the offer or sale of a security without being licensed to transact business in this state. It is unlawful for any person to transact business in this state as an agent unless the person is licensed. This is a violation of Utah Code Ann. §§61-1-3 and 61-1-21, a third degree felony under Utah law.

COUNT 20
SALES BY AN UNLICENSED AGENT
a third degree felony
(Defendant: Mooring)

Commencing on or about 2006, the defendant MOORING, in connection with the offer or sale of an security, willfully engaged in the offer or sale of a security without being licensed to transact business in this state. It is unlawful for any person to transact business in this state as an agent unless the person is licensed. This is a violation of Utah Code Ann. §§61-1-3 and 61-1-21, a third degree felony under Utah law.

COUNT 21
SALES BY AN UNLICENSED AGENT
a third degree felony
(Defendant: Bartholomew)

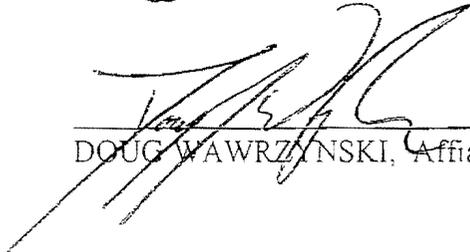
Commencing on or about 2006, the defendant BARTHOLOMEW, in connection with the offer or sale of an security, willfully engaged in the offer or sale of a security without being licensed to transact business in this state. It is unlawful for any person to transact business in this state as an agent unless the person is licensed. This is a violation of Utah Code Ann. §§61-1-3 and 61-1-21, a third degree felony under Utah law.

COUNT 22
PATTERN OF UNLAWFUL ACTIVITY
a second degree felony
(Defendants: North, Laing, Pugmire and Bartholomew)

Commencing on or about 2006, the defendants NORTH, LAING, PUGMIRE, and BARTHOLOMEW, engaged in conduct which constituted the commission of at least three

episodes of unlawful activity as defined in Utah Code Ann. § 76-10-1603. The defendants: (1) received proceeds derived, directly or indirectly, from a pattern of unlawful activity, in which they participated as a principal, or they 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) were 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 securities violations. 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 15 day of June, 2011,

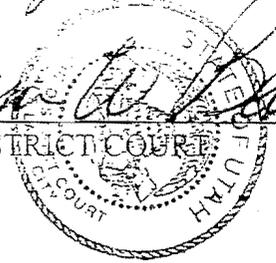


DOUG WAWRZYNSKI, Affiant

SUBSCRIBED AND SWORN to before me on this
15 day of June
2011.



JUDGE, THIRD DISTRICT COURT



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

1. Diana Parrish
2. John Patrick Laing
3. David G. Bartholomew
4. Rex Pugmire
5. ~~Collette Higham~~
6. Dennis Reese
7. Robert and Faye Muss
8. Brenda "BJ" Wright
9. Tamara Bernson
10. Julie and Karl Lund
11. Dennis and Sunny Howard
12. Sharon Lloyd
13. And Others

AUTHORIZED FOR PRESENTMENT AND FILING this 15th day of

June, 2011.

MARK L. SHURTLEFF
Utah Attorney General

By:

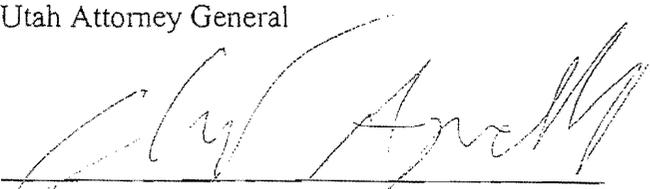

CHE ARGUELLO
Assistant Attorney General

EXHIBIT "B"

FILED DISTRICT COURT
Third Judicial District

JUN 15 2011

SALT LAKE COUNTY

By _____

Deputy Clerk

CHE' ARGUELLO, Bar No. 12412
Assistant Attorney General
MARK L. SHURTLEFF, Bar No. 4666
Utah Attorney General
5272 South College Drive, #200
Murray, Utah 84123
Telephone: (801) 281-1221
Facsimile: (801) 281-1224

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

THE STATE OF UTAH, :
 :
 Plaintiff, : **AFFIDAVIT OF PROBABLE CAUSE**
 :
 vs. :
 :
 KENNETH E. NORTH : Case No: 111904452
 DOB: February 10, 1970 :
 :
 JOHN P. LAING : Case No: 111904454
 DOB: February 25, 1969 :
 :
 JON R. PUGMIRE : Case No: 111904455
 DOB: August 6, 1957 :
 :
 DAVID G. BARTHOLOMEW : Case No: 111904456
 DOB: March 31, 1975 :
 :
 JAMES B. MOORING : Case No: 111904457
 DOB: September 27, 1970 :
 :
 Defendants. : Judge: _____

reservation with the Division of Corporations. The status of the name reservation is expired for failure to file renewal as of July 16, 2007. Utah Division of Securities records reveal no securities registration, exemption from registration, nor any notice filing in any manner for NCF.

-
5. ~~The Artisan Group, LLC ("Artisan") is a Utah limited liability company Artisan~~ registered with the Utah Department of Commerce, Division of Corporations on October 11, 2007. North is the Registered Agent as well as one of two Managers. The other manager is North's spouse, Christie North. Artisan's current status is expired as of February 2, 2009, for a failure to renew.
 6. John Patrick Laing ("Laing"), at all pertinent times, resided in Utah. Laing's last known address is 5 Centerpoint Dr., Ste. 400, Lake Oswego, OR 97035-8661. Laing was employed with NCF from at least 2005 to 2007. Laing has never held a securities license.
 7. David G. Bartholomew ("Bartholomew"), at all pertinent times, resided in Utah. Bartholomew's last known address is 1360 West 3420 North, Pleasant Grove, UT 84062. Bartholomew was registered as an agent with Hornor, Townsend & Kent between June 26, 2001 and December 6, 2006. Between September 25, 2006 and February 5, 2008, Bartholomew received no less than \$70,933.73 from NCF designated as "commissions."
 8. Jon Rex Pugmire ("Pugmire"), at all pertinent times, resided in Utah. Pugmire's last known address is 1046 East 650 North, Orem, UT 84094. From at least March 2006,

through October 2007, Pugmire was employed with NCF. Pugmire has never held a securities license.

9. James "Jamie" B. Mooring ("Mooring"), at all pertinent times, resided in Utah. Mooring's last known address is 110 North Cortez Trail, Ivins, UT 84738. Mooring was registered as an agent with ~~Hornor, Townsend & Kent~~ between June 18, 2001 and September 19, 2006. Between December 20, 2006 and August 21, 2007, Mooring received no less than \$71,531.93 from NCF designated as commissions. Mooring has held the following securities licenses; S6, S26, S63 and S65.
10. Collette Higham ("Higham"), at all pertinent times, resided in Utah. Higham's last known address is 1450 South West Temple, Unit A104, Salt Lake City, UT. Higham was employed with NCF as a receptionist, notary public and North's administrative assistant, from at least September 2006, through February 2010.
11. Dennis Reese ("Reese"), at all pertinent times, resided in Utah. Reese's last known address is 180 West 500 North, North Salt Lake, UT. Reese invested \$2,599,912.85 in the form of promissory notes with NCF.
12. Robert "Bob" and Faye Muss ("Musses"), at all pertinent times resided in California. The Musses, invested \$130,000 in the form of promissory notes with NCF.
13. Brenda J. "BJ" Wright ("Wright"), at all pertinent times, resided in Utah. Wright's last known address is 131 West 970 South, Midway, UT 84049. Wright invested \$400,000 in the form of promissory notes with NCF.

14. Tamara Bernson (“Bernson”), at all pertinent times, resided in Utah. Bernson’s last known address is 576 East 1840 North, Orem, UT 84097. Bernson invested \$90,000 in the form of promissory notes with NCF.
15. Julie and Karl Lund (“Lunds”), at all pertinent times, resided in Utah. The Lunds’ last known address is 53 South 180 West, Ephraim, UT 84627. The Lunds invested \$217,653.64 in the form of promissory notes with NCF.
16. Dennis and Sunny Howard (“Howards”), at all pertinent times, resided in Utah. The Howards’ last known address is 260 South 200 West, Santaquin, UT 84655. The Howards invested \$214,787.04 in the form of promissory notes issued with NCF.
17. Sharon Lloyd (“Lloyd”), at all pertinent times, resided in Utah. Lloyd’s last known address is 1680 West 3000 South, Heber City, UT 84032. Lloyd invested \$250,000 in the form of a promissory note with NCF.
18. An additional 30 investors with losses totalling in excess of \$5 million are incorporated.

BACKGROUND

19. Between 2006 and 2009, the defendants raised, directly or indirectly, no less than \$9,277,344.60 from no less than 35 investors and issued promissory notes to those investors.
20. Promissory notes are securities as defined by Utah Code 61-1-13.
21. In connection with the offer and/or sale of securities, the defendants, either directly or indirectly, made material omissions and/or untrue statements of material facts that a

reasonable investor would rely on when deciding whether to invest, and engaged in an act practice or course of business which operated or would operate as a fraud or deceit upon any person.

COUNT 1
SECURITIES FRAUD, a second degree felony
(Investor: Dennis Reese)
(Charged Defendants: North and Laing)

22. Patrick Laing contacted Reese on or about August or September 2006. Reese said he and Laing met in Reese's office at Kitchen Resource which was then located in Salt Lake County. During the meeting Laing gave Reese a NCF brochure
23. At this meeting Laing made the following statements:
- NCF issued short-term promissory notes secured by real property. He called them hard money loans or bridge loans and said the loans were in place while long term financing was arranged.
 - NCF paid note holders a "20% yearly annualized rate."
 - NCF never missed an interest payment to an investor.
 - NCF had projects in several locations including Palm Springs and the La Quinta Country Club in Colorado and that money invested would be used for one of NCF's projects.
 - NCF completes some building projects and sells other projects prior to completion.
 - NCF was a great company that had been in business for six or seven years.
 - Kenny North and his wife were the owners of NCF.

- Kenny North was worth \$12 million.
- Kenny North was a straight shooter.
- The worst case scenario for an investor was that the investor would have to wait for the return of their principal while the property securing their investment was liquidated.

~~NCF did not have a lot of investors but the opportunities were so great that NCF~~
took on some investors.

- The minimum investment amount was around \$100,000 and NCF was trying to raise \$1.2 million for the La Quinta project.
- If, for some reason, Reese needed to get his money out early NCF would try to work it out.
- Laing would earn a small commission if Reese invested.

24. Reese decided to invest \$500,000. Laing told Reese the check should be made payable to American Mortgage. Reese said he purchased a \$500,000 cashier's check from Zion's Bank on September 5, 2006. Laing picked up the check from Reese at Reese's office in Salt Lake County. On September 5, 2006, Reese signed the promissory note. Laing later delivered an executed copy of the promissory note with what appears to be North's signature to Reese at his office. The terms of the promissory note were 20% interest per annum to be paid quarterly. The maturity date on the promissory note was August 15, 2010.

25. In connection with the offer or sale of a security, Laing and/or North made omissions of material facts, including but not limited to paragraphs 26 through 30.
26. Laing told Reese, "NCF issued short-term promissory notes secured by real property." Laing omitted, whether the promissory note was registered or exempt from registration.
- ~~27. Laing told Reese, "The worst case scenario for an investor was that the investor would have to wait for the return of their principal while the property securing their investment was liquidated." Laing omitted the risk of loss.~~
28. Laing told Reese, "The minimum investment amount was around \$100,000 and NCF was trying to raise \$1.2 million for the La Quinta project." Laing omitted, what would happen if NCF failed to raise \$1.2 million for the La Quinta project.
29. Reese received a promissory note which appears to be signed by North and Laing, which states "For value received, Borrower promises to pay to the order of Lender, the sum of \$500,000." Laing did not disclose the involvement of NCF, North or any of the principals of NCF in any law suits, liens, judgments, prior violation of state or federal law.
30. Laing told Reese, "NCF was a great company that had been in business for six or seven years." Laing did not provide Reese with a prospectus, offering document, and/or NCF's financial statements. Laing also did not discuss what competition NCF was facing.
31. In connection with the offer or sale of a security, Laing and/or North made untrue statements of material facts, including but not limited to paragraphs 32 and 33.

32. The promissory note states, "It is accompanied by and attached to a real estate purchase agreement securing this investment with a 44.06% ownership in said lot/property." However, the promissory note was not secured by the actual property through a warranty or quit claim deed. Rather, the attached document, "Purchase & Sale Agreement" describes John M. Simcox, Dennis Reese, Mary Jane Reese, and New Century Builders, Inc. as purchasers of a construction loan made by New Horizons Community Credit Union. The Purchase and Sale Agreement grants Dennis and Mary Jane Reese a 44.06% ownership interest in the loan.
33. The promissory note states, "This loan agreement and promissory note is made...by and between New Century Funding, Inc. a Utah corporation..." However, Department of Commerce, Division of Corporations' records show NCF was never incorporated in Utah. NCF filed only for a name reservation on March 16, 2006. The name reservation expired on July 17, 2006.

COUNT 2
SECURITIES FRAUD, a second degree felony
(Investor: Dennis Reese)
(Charged Defendants: North and Laing)

34. On or about October 23, 2006, Reese invested \$200,000 with NCF. Reese issued a personal check drawn on his account at Zion's Bank to make the investment. For his investment, Reese received a Loan Agreement and Promissory Note signed by North and Laing on October 27, 2006. Reese also signed the agreement on October 27, 2006. The

purpose of the promissory note was “. . . for investing in four (4) lots in the Kellogg, Idaho mountain chalet development. The terms of the promissory note were, 15% per annum for two years payable monthly beginning December 15, 2006. The promissory note states “This note is also secured by a first-position deeded LLC ownership of the lot in question, to be finalized once funding is received and project plating is complete.”

Reese did not receive a trust deed or any evidence that the promissory note was secured.

35. In connection with the offer or sale of a security, Laing and/or North made omissions of material facts, including but not limited to paragraphs 36 through 38.
36. Reese received a promissory note which appears to be signed by North and Laing, which states “For value received, Borrower promises to pay to the order of Lender, the sum of \$200,000.” Laing and/or North, omitted the involvement of NCF, North or any of the principals of NCF in any law suits, liens, judgments, prior violation of state or federal law.
37. The promissory note states, “this investment will pay monthly payments with a fixed / guaranteed simple interest APR of 15%.” Laing did not disclose the risk of loss.
38. Laing told Reese, “NCF issued short-term promissory notes secured by real property.” Laing omitted, whether the promissory note was registered or exempt from registration.
39. In connection with the offer or sale of a security, Laing and/or North made untrue statements of material facts, including but not limited to paragraphs 40 and 41.

40. The promissory note states, "This loan agreement and promissory note is made...by and between New Century Funding, Inc. a Utah corporation..." However, Department of Commerce, Division of Corporations' records show NCF was never incorporated in Utah. NCF filed only for a name reservation on March 16, 2006. The name reservation expired on July 17, 2006.

41. Laing told Reese, "NCF was a great company that had been in business for six or seven years." Laing did not provide Reese with a prospectus, offering document, and/or NCF's financial statements. Laing did not discuss competition NCF was facing.

COUNT 3
SECURITIES FRAUD, a second degree felony
(Investor: Dennis Reese)
(Charged Defendants: North and Laing)

42. In or about February, 2007, Laing approached Reese again about investing additional funds. Laing met with Reese at Reese's office in Salt Lake County. Laing said NCF was working on a project in Kellog, Idaho. Laing said Reese could earn monthly interest on the investment.

43. Prior to investing, Reese met with North at North's office located on Holladay Boulevard in Salt Lake County. North said he and a partner had purchased a lot in Palm Springs and were planning to build a house on the property. North said the property was located on an exclusive golf course. North said the home they were to build was pre-sold for \$5 million and that NCF would make \$1 million on the deal. North said he needed Reese's

money to buy out his partner. North said he would secure Reese's investment with a trust deed on the lot which was worth a lot of money.

44. On or about February 14, 2007, Reese invested \$1.2 million by wiring the funds to New Century Builder's account at Brighton Bank per the wire instructions he received from ~~Laing or North.~~

45. On or about March 8, 2007, Reese received a copy of his NCF Loan Agreement and Promissory Note. The promissory note appears to be signed by North and Laing on February 15, 2007. The purpose of the promissory note was: "... investing in one (1) lot located in the New Century Funding "Quarry at La Quinta" project in La Quinta (Palm Springs), California. As such, in addition to this promissory note, this loan is secured by deeded and recorded interest in the following: Lot 1 Quarry Ranch Road, La Quinta CA 92253 (see separate deed, attached)."

46. The promissory note states that earnings will be paid out quarterly beginning March 15, 2007 and continuing every June 15, Sept 15, Dec 15, and Mar 15 thereafter until the home is sold, estimated at 24 months or less. NCF promised to pay Reese 20% interest per annum.

47. Along with the NCF promissory note, Reese received a copy of a Purchase and Sale Agreement between Reese and New Century Builders as purchasers of a residential construction loan and New Horizons Community Credit Union (NHCCU), as the seller of the residential construction loan (Benjamin Kaapuni Wong and Pua'ala Bruh Wong as

debtors). The agreement was signed and dated by Reese and North February 21, 2007. Attached to the promissory note was a document titled Exhibit A - First American Mortgage Servicing Inc., Construction Loan Payoff. Also attached to the promissory note was a document titled Assignment of Mortgage Loan. Reese said he did not receive any document indicating he was secured.

48. In connection with the offer or sale of a security, Laing and/or North made omissions of material facts, including but not limited to paragraphs 49 through 51.
49. Reese received a promissory note which appears to be signed by North and Laing, which states "For value received, Borrower promises to pay to the order of Lender, the sum of \$1,200,000." However, North and/or Laing omitted the involvement of NCF, North or any of the principals of NCF in any law suits, liens, judgments, prior violation of state or federal law.
50. Laing told Reese, "NCF issued short-term promissory notes secured by real property." However, Laing did not disclose whether the promissory note was registered or exempt from registration. Laing did not disclose the risk of loss.
51. Laing told Reese, "NCF was a great company that had been in business for six or seven years." However, Laing did not provide Reese with a prospectus, offering document, and/or NCF's financial statements. Laing did not discuss what competition NCF was facing in the industry.

52. In connection with the offer or sale of a security, Laing and/or North made untrue statements of material facts, including but not limited to paragraphs 53 and 54.
53. Prior to Reese investing, North stated Reese would be secured by a trust deed. However, Reese never received any documentation proving Reese's investment was secured.
- ~~54. The promissory note states, "This loan agreement and promissory note is made...by and~~
~~between New Century Funding, Inc. a Utah corporation..."~~However, Department of
Commerce, Division of Corporations' records show NCF was never incorporated in
Utah. NCF filed only for a name reservation on March 16, 2006. The name reservation
expired on July 17, 2006.

COUNT 4
SECURITIES FRAUD, a second degree felony
(Investor: Dennis Reese)
(Charged Defendants: North and Laing)

55. On or about March 27, 2007, Laing told Reese to roll over his Mass Mutual IRA to FiServe (Reese's self directed IRA). Laing said Reese could purchase a NCF promissory note with the funds and said NCF would pay all the fees associated with Reese's FiServe IRA.
56. On March 27, 2007, Reese rolled \$99,912.85 from his Standard Pipe Company, Inc. Employee 401(k) Profit Sharing Plan at Mass Mutual to his FiServe IRA. On April 2, 2007, Reese signed a document authorizing the purchase of a NCF promissory note. Also on April 2, 2007, FiServe FBO Dennis Reese purchased a NCF promissory note and

received a document title Specific Project (Deeded) Loan Agreement & Promissory Note. The promissory note memorializes the investment and terms: 20% per annum on the principal with principal and interest due March 12, 2011. The stated purpose of the promissory note was for “. . . investment in one or more properties located within the ~~New Century Funding development(s), designated and secured by one or more recorded~~ deeds.” With the promissory note was a Deed of Trust and Assignment of Rents between North-Gilger Land Investments LLC and Dennis Reese for real property in La Quinta, Riverside County, California. North’s signature on the document was not notarized and the document does not appear to have been recorded with the Riverside County Recorder’s Office.

57. In connection with the offer or sale of a security, Laing and/or North made omissions of material facts, including but not limited to paragraphs 58 through 61.
58. Reese received a promissory note which appears to be signed by North, which states “For value received, Borrower promises to pay to the order of Lender, the sum of \$99,912.85.” However, North and/or Laing omitted the involvement of NCF, North or any of the principals of NCF in any law suits, liens, judgments, prior violation of state or federal law.
59. The promissory note states, “Return on investment is guaranteed and is not dependent on New Century project production or profitability.” However, Laing did not disclose the risk of loss.

60. Laing told Reese, "NCF issued short-term promissory notes secured by real property." However, Laing did not disclose whether the promissory note was registered or exempt from registration.
61. Laing told Reese, "NCF was a great company that had been in business for six or seven years." However, Laing did not provide Reese with a prospectus, offering document, and/or NCF's financial statements. Laing did not discuss what competition NCF was facing in the industry.
62. In connection with the offer or sale of a security, Laing and/or North made untrue statements of material facts, including but not limited to paragraphs 63 and 64.
63. The promissory note states, "This loan agreement and promissory note is made...by and between New Century Funding, Inc. a Utah corporation..." However, Department of Commerce, Division of Corporations' records show NCF was never incorporated in Utah. NCF filed only for a name reservation on March 16, 2006. The name reservation expired on July 17, 2006.
64. Reese was told his investment would be secured by a trust deed. However, North's signature on the document was never notarized and the trust deed Reese received was never recorded.

COUNT 5
SECURITIES FRAUD, a second degree felony
(Investor: Dennis Reese)
(Charged Defendants: North, Laing and Pugmire)

65. On or about April 16, 2007, Laing and Pugmire solicited Reese to invest in a 90-day short term promissory note. Reese also received a phone call from North in which North said he needed \$600,000 for 90 days.
-
66. Reese purchased a cashier's check from Zion's Bank and had the check made payable to a mortgage company per instructions he received from Laing or Pugmire (Reese no longer remembers the name of the mortgage company). Reese said nearly 30 days later NCF had not cashed the check. On May 11, 2007, Reese said he went to Zion's bank and exchanged the cashier's check payable to the mortgage company for a new check payable to New Century Funding according to Laing or Pugmire's instructions.
67. Reese said on or about April 19, 2007, Laing or Pugmire delivered a document titled Specific Project (Deeded) Loan Agreement & Promissory Note. The terms of the 90 day promissory note are 24% simple-interest to be paid out at maturity. The promissory note indicates Reese is "secured by a deeded position in the 80% or less loan-to-value property or properties" within the New Century Funding Developments. Attached to the promissory note is a Deed of Trust and Assignment of Rents for a lot located in Riverside County, California. The deed does not bear a Recorder's stamp.

68. In connection with the offer or sale of a security, Laing, Pugmire and/or North made omissions of material facts, including but not limited to paragraphs 69 through 72.
69. Reese received a promissory note which appears to be signed by North, which states "For value received, Borrower promises to pay to the order of Lender, the sum of \$600,000." ~~However, Laing, Pugmire and/or North, omitted the involvement of NCF, North or any~~ of the principals of NCF in any law suits, liens, judgments, prior violation of state or federal law.
70. The promissory note states, "Return on investment is guaranteed and is not dependent on New Century project production or profitability." However, Laing, Pugmire, and/or North did not disclose the risk of loss.
71. Laing told Reese, "NCF issued short-term promissory notes secured by real property." However, Laing, Pugmire, and/or North did not discuss whether the promissory note was registered or exempt from registration.
72. Laing told Reese, "NCF was a great company that had been in business for six or seven years." Laing, Pugmire and/or North did not provide Reese with a prospectus, offering document, and/or NCF's financial statements. Laing, Pugmire, and/or North did not discuss what competition NCF was facing in the industry.
73. In connection with the offer or sale of a security, Laing, Pugmire and/or North made untrue statements of material facts, including but not limited to paragraphs 74 through 76.

74. The promissory note states, "This loan agreement and promissory note is made...by and between New Century Funding, Inc. a Utah corporation..." However, Department of Commerce, Division of Corporations' records show NCF was never incorporated in Utah. NCF filed only for a name reservation on March 16, 2006. The name reservation expired on July 17, 2006.

75. Reese was told his investment would be secured by a trust deed. However, the trust deed was never recorded.

76. In March 2008, Reese requested his interest payments. NCF did not make the payment that was due and Reese has not received a payment since.

77. NCF bank records show Reese received no less than \$279,500.03 in returns between September 21, 2006 and January 22, 2008.

COUNT 6
SECURITIES FRAUD, a second degree felony
(Investors: Robert and Faye Muss)
(Charged Defendants: North, Laing and Pugmire)

78. Robert Muss met Rex Pugmire in about May 2005 through his association with a Utah investment company called Nexids.

79. The Musses spoke to Pugmire by phone. The Musses were in their home in Newman, California using a speaker phone and Pugmire was usually in his Utah office or on his cell phone. Around April 2006, Pugmire phoned the Musses and mentioned New Century as an investment opportunity.

80. On or about April 5, 2006, Pugmire sent Robert and Faye a New Century Brochure. Robert read the brochure and learned that New Century had been in business for ten years and the names of New Century's principals. The brochure states "There are no requirements to invest bridge funds with New Century Funding other than the minimum loan of \$10,000 and a willingness to put the funds to work for at least six months."

81. During three to five phone conversations, Pugmire made the following statements about himself and the investment:

- He was working for New Century.
- He invested his own money in New Century.
- His grandparents or parents had invested and were receiving quarterly payments.
- The Musses could invest in New Century and if they invested, they would double their money in four years.
- The investment was in property secured by a promissory note.
- 24% profit was guaranteed.
- The investors were paid first.
- If New Century sold the property at a profit, Robert and Faye could make even more money.
- The minimum investment on a four year promissory note was \$50,000.
- The Musses' investment would be pooled with other investor funds and used for a specific project.

- If Robert and Faye pulled their money out early, they would lose their interest.
 - Robert and Faye could invest their money for six months to four years.
 - The investment was safe even when the market was “heading south” because New Century invested in resorts and second homes.
-
- ~~New Century was capitalized through its investors.~~

82. Pugmire “laid out the operation” and said he would have Laing contact the Musses with more information about the investment. Laing also sent a blank contract for the Musses to review.
83. On June 6, 2006, Laing sent an email to Faye regarding NCF’s “fixed-rate bridge-fund program” and specified the terms and interest rates offered. Laing said “All loans are secured with a promissory note and loans over \$100,000 are Trust Deeded in second position on one of our properties as well.”
84. Based on what they learned from Pugmire and Laing, the Musses decided to invest. The Musses invested for profit and had no managerial responsibilities with regard to New Century. The Musses did not receive a trust deed.
85. The Musses invested \$50,000 by bank wire on June 23, 2006. Between June 20, 2006 and June 22, 2006, North, Laing, and Robert and Faye Muss signed the New Century Funding, Inc Loan Agreement and Promissory Note (North on 06/20/2006, Laing on 06/20/2006, and Robert and Faye on 06/22/2006). The terms of the promissory note are.

guaranteed 25% per annum or 25% of the total profit from the sale of the property, which ever is greater. The promissory note matured on June 20, 2010.

86. In connection with the offer or sale of a security, Laing Pugmire and/or North made omissions of material facts, including but not limited to paragraphs 87 through 90.

~~87. Muss received a promissory note which appears to be signed by North and Laing, which states "For value received, Borrower promises to pay to the order of Lender, the sum of \$50,000." Pugmire, Laing and/or North omitted the involvement of NCF or its principals in any legal proceedings including bankruptcy, liens, judgments, and/or prior violations of state or federal law.~~

88. The promissory note states, "...this bridge-fund loan carries a fixed / guaranteed 25% APR simple-interest return (100% over 4 years) or 25% of the total profit from the sale of the property, whichever is greater." North, Pugmire and/or Laing omitted the number of other investors, the risk of loss, or competition NCF was facing in the industry. Also, North, Pugmire and/or Laing did not provide financial statements for New Century.

89. Around April 2006, Pugmire phoned Robert and Faye and mentioned New Century as an investment opportunity. Pugmire, Laing and/or North omitted Pugmire and Laing were making a commission on the Muss's investment.

90. Laing said "All loans are secured with a promissory note and loans over \$100,000 are Trust Deeded in second position on one of our properties as well." Laing, Pugmire and/or North omitted whether the offering was registered or exempt from registration. Also,

Laing, Pugmire and/or North omitted whether Pugmire and Laing were licensed to sell securities

91. In connection with the offer or sale of a security, Laing, Pugmire and/or North made untrue statements of material facts, including but not limited to paragraph 92 through 93.

~~92. The promissory note states, "This loan agreement and promissory note is made...by and between New Century Funding, Inc. a Utah corporation..." However, Department of Commerce, Division of Corporations' records show NCF was never incorporated in Utah. NCF filed only for a name reservation on March 16, 2006. The name reservation expired on July 17, 2006.~~

93. The Musses were told their investment would be secured by a trust deed. However, the Musses never received a trust deed.

COUNT 7
SECURITIES FRAUD, a second degree felony
(Investors: Robert and Faye Muss)
(Charged Defendants: North, Laing and Pugmire)

94. In or about April 2007, Robert phoned Pugmire and asked about other investment opportunities. Robert told Pugmire that he wanted to supplement his income. Pugmire told Robert about 30, 60, and 90 day New Century investment options.

95. On April 19, 2007, Pugmire sent the Musses an email in which he wrote: "Patrick indicated we would be flexible and allow you to invest short term monies for 60 - 90 day

terms @ 2% interest monthly. The investment would need to be above \$25K. Rollover terms will be determined at maturity of a note.”

96. Based on what he learned from Pugmire, Robert decided to invest \$80,000 on May 1, 2007. Robert said the \$80,000 was to be used by New Century on the Poncho Villa

~~project. Robert does not know any specifics about this project but said he did not~~
authorize his money to be used for anything but the Poncho Villa project.

97. The Musses were not provided a copy of the May 1, 2007 promissory note. They were, however, provided an Artisan Group statement showing the investment. North’s bank records confirm an incoming bank wire transfer from Muss on May 1, 2007.

Furthermore, the promissory note was rewritten and extended on October 29, 2007 (180 day term), March 13, 2008 (42 day term), and April 48, 2008 (30 day term). The last two promissory notes were written with Artisan Group as the borrower. Each appears to be signed by North. The principal on the promissory note was increased on each to show accrued interest on the prior promissory note.

98. In connection with the offer or sale of a security, Laing, Pugmire and/or North made omissions of material facts, including but not limited to paragraphs 99 through 102.

99. The Musses received a promissory note which appears to be signed by North and Laing, which states “For value received, Borrower promises to pay to the order of Lender, the sum of \$80,000.” Laing, Pugmire, and/or North omitted the involvement of NCF or its

principals in any legal proceedings including bankruptcy, liens, judgments, and/or prior violations of state or federal law

100. The promissory note states, “..this bridge-fund loan carries a fixed / guaranteed 25% APR simple-interest return (100% over 4 years) or 25% of the total profit from the sale of the property, whichever is greater.” Laing, Pugmire and/or North, omitted the number of other investors, the risk of loss, or competition NCF was facing in the industry. Also, prior to investing the Musses were not provided with financial statements for NCF.
101. Around April 2006, Pugmire phoned Robert and Faye and mentioned New Century as an investment opportunity. Pugmire, Laing and/or North omitted whether Pugmire and Laing were making a commission on the Muss’s investment.
102. Laing said “All loans are secured with a promissory note and loans over \$100,000 are Trust Deeded in second position on one of our properties as well.” Laing, Pugmire and/or North did not disclose whether the offering was registered or exempt from registration. Also, Laing, Pugmire and/or North omitted whether Pugmire and Laing were licensed to sell securities.
103. In connection with the offer or sale of a security, Laing, Pugmire and/or North made untrue statements of material facts, including but not limited to paragraph 104 through 105.
104. The promissory note states, “This loan agreement and promissory note is made...by and between New Century Funding, Inc. a Utah corporation...” However, Department of

Commerce, Division of Corporations' records show NCF was never incorporated in Utah. NCF filed only for a name reservation on March 16, 2006. The name reservation expired on July 17, 2006.

105. The Musses were told their investment would be secured by a trust deed. However, the Musses never received a trust deed.

106. Robert said he received three interest checks on his \$80,000 investment: \$4,800 on or about August 6, 2007; \$4,853.33 on or about November 1, 2007; and a partial interest payment of \$2,506.51 on or about December 17, 2007.

107. Robert Muss received a phone call from Travis Huff, a New Century employee, on or about March 2008. Huff said New Century would not be able to make the March interest payment and asked for a 90-day extension.

108. While the promissory note was reissued three times, North never paid on the promissory note.

109. NCF bank records show Muss received no less than \$12,159.84 in returns between August 14, 2007 and January 2, 2008.

COUNT 8
SECURITIES FRAUD, a second degree felony
(Investor: Brenda Wright)
(Charged Defendants: North, Laing and Pugmire)

110. Brenda "BJ" Wright ("Wright"), leaned about investing with NCF in a meeting at her business office for A+ Benefits in Lindon, UT on or about June 6, 2006. Present at this

meeting from NCF was North, Laing, and Pugmire. Also present were David Bartholomew, Larry Bartholomew, John Bartholomew and Kathy Olsen. North delivered a presentation to the group that described the investment opportunity. North was promoting a real estate development project in Kellogg, ID. North stated the ~~minimum investment was \$100,000. Investors would receive a promissory note, an~~ interest rate, and be collateralized by a trust deed.

111. North's presentation included the following representations:

- The New Century Mission Statement was "To Help Families Achieve Greater Prosperity Through Passive Real Estate Investment."
- The NC bridge-fund provides partners with "above-average fixed-rate returns."
- The NC development partnership provides partners a "secure, passive real estate investment."
- Development partners receive
 - o "A secure, passive real-estate investment opportunity."
 - o "1st Position title-placement"
- Bridge fund partners receive:
 - o "New Century promissory note"
 - o "Deed of trust (on all \$100,000+ loans)"
 - o "Monthly New Century Funding statement."

- o “Liquidity (interest paid at maturity or monthly with penalty)”
 - o “Guaranteed / fixed return or share in profits – which ever is greater.”
112. During the presentation, North stated the investments were no risk because investors would be in a first position on the property title.
- ~~113. During the presentation, Wright asked North if he was licensed to sell securities. North responded he does not need to be licensed because he is doing project specific real estate investments secured by deeds to specific lots/properties.~~
114. Based on the information provided at this meeting Wright decided to invest \$100,000. On or about June 26, 2006, Wright wired \$100,000 of her own funds from an A+ Benefits bank account to NCF. Wright received a promissory note signed by North and Laing for the principal amount of \$100,000.
115. Wright had her courier pick up the signed promissory notes and deeds of trust.
116. In connection with the offer or sale of a security, Laing, Pugmire and/or North made omissions of material facts, including but not limited to paragraphs 117 through 124.
117. North’s presentation stated investors would receive a promissory note. North did not disclose whether this security was exempt from registration.
118. North’s presentation stated investors would receive a promissory note. North specifically told Wright that he did not need to be licensed to sell securities because he was doing project specific real estate investments secured by deeds to specific lots/properties. The deed Wright received was not recorded.

119. North's presentation stated investors would receive a guaranteed fixed rate of return
North did not disclose NCF's operating history.
120. North's presentation stated investors would be passive, but North did not disclose the
experience of NCF's principals in the real-estate development industry.
-
- ~~121. North's presentation stated investors would receive a guaranteed fixed rate of return
North did not disclose track record of NCF to other investors.~~
122. North's presentation stated investors would receive a guaranteed fixed rate of return but
North did not disclose risk factors associated with the investment.
123. North's presentation stated investors would receive a 1st position title-placement, but
North did not disclose the number of other investors.
124. Wright received a promissory note which appears to be signed by North and Laing,
which states "For value received, Borrower promises to pay to the order of Lender, the
sum of \$100,000." Laing, Pugmire and/or North omitted the involvement of NCF, North
or any of the principals of NCF in any law suits, liens, judgments, or prior violation of
state or federal law.
125. In connection with the offer or sale of a security, Laing, Pugmire and/or North made
untrue statements of material facts, including but not limited to paragraphs 126 and 129.
126. The promissory note states, "This loan agreement and promissory note is made...by and
between New Century Funding, Inc. a Utah corporation..." However, Department of
Commerce, Division of Corporations' records show NCF was never incorporated in

Utah. NCF filed only for a name reservation on March 16, 2006. The name reservation expired on July 17, 2006.

127. During North's presentation he characterized the investment as no risk. North did not disclose the risk of loss.

~~128. North told Wright that he did not need to be licensed to sell securities because he was~~
doing project specific real estate investments secured by deeds to specific lots/properties. The deed Wright received, however, was never recorded and was unsecured. North, Laing and Pugmire were required to be licensed in order to sell unsecured promissory notes.

129. Wright was told her investment would be secured by a trust deed. However, the deed Wright received was never recorded.

COUNT 9
SECURITIES FRAUD, a second degree felony
(Investor Brenda Wright)
(Charged Defendants: North, Laing and Pugmire)

130. On or about June 26, 2006, North and Pugmire returned to Wright's office to deliver an additional power point presentation. Also present was Larry and John Bartholomew as potential investors. North delivered the presentation. North described multiple different real estate developments that investors could invest in. Among these opportunities was the La Quinta Project in Palm Springs, CA. North also told investors they could borrow funds using their individual credit to invest with NCF. North stated he arranged for the

financing to be set up through SunFirst Bank in St. George. Pugmire was present to handle loan paperwork for any investors that decided to invest.

131. In or about November, 2006, NCF paid for Wright to fly to Palm Springs to tour the La Quinta project. Present at this tour from NCF were North, North's wife Christie North, ~~Laing, and Pugmire. Also present at this tour as investors and/or potential investors were~~ Nadine Gillmore, JoAnn Adams, Kathy Olsen, Sherry Lloyd, Diane Oberg, Julie Lund, Gwen Christensen and Sherry Larsen.
132. Sometime after the Palm Springs tour, Pugmire worked with Wright as well as Larry and John Bartholomew to complete loan paper work and obtain individual loans from Key Bank.
133. On or about January 12, 2007, Wright invested \$300,000 by wiring the funds to NCF's account from Wright's commercial loan account at Key Bank. Wright states she had her courier pick up the signed promissory note from NCF's office. Wright's promissory note is for \$300,000 at a 15% per annum interest rate. The promissory note is signed by North and dated January 12, 2007.
134. Wright received multiple unrecorded Deeds of Trust which appear to be signed by North on January 10, 2007, December 12, 2007. Wright asked for recorded Deeds of Trust and NCF claimed they were already provided and did not provide recorded copies of the deeds.

135. In connection with the offer or sale of a security, Laing, Pugmire and/or North made omissions of material facts, including but not limited to paragraphs 136 through 143.
136. North's presentation stated investors would receive a promissory note. North did not disclose whether this security was exempt from registration.
- ~~137. North's presentation stated investors would receive a promissory note, a security under Utah law. North specifically told Wright that he did not need to be licensed to sell securities because he was doing project specific real estate investments secured by deeds to specific lots/properties. The deed Wright received, however, was never recorded.~~
138. North's presentation stated investors would receive a guaranteed fixed rate of return North did not disclose NCF's operating history.
139. North's presentation stated investors would be passive, but North did not disclose the experience of NCF's principals in the real-estate development industry.
140. North's presentation stated investors would receive a guaranteed fixed rate of return North did not disclose track record of NCF to other investors.
141. North's presentation stated investors would receive a guaranteed fixed rate of return but North did not disclose risk factors associated with the investment.
142. North's presentation stated investors would receive a 1st position title-placement, but North did not disclose the number of other investors.
145. Wright received a promissory note which appears to be signed by North, which states "For value received. Borrower promises to pay to the order of Lender, the sum of

\$300,000.” Laing, Pugmire, and/or North omitted the involvement of NCF, North or any of the principals of NCF in any law suits, liens, judgments, or prior violation of state or federal law.

144. In connection with the offer or sale of a security, Laing, Pugmire and/or North made ~~untrue statements of material facts, including but not limited to paragraph 145 through~~ 147.

145. The promissory note states, “This loan agreement and promissory note is made...by and between New Century Funding, Inc. a Utah corporation...” However, Department of Commerce, Division of Corporations’ records show NCF was never incorporated in Utah. NCF filed only for a name reservation on March 16, 2006. The name reservation expired on July 17, 2006.

146. North told Wright that he did not need to be licensed to sell securities because he was doing project specific real estate investments secured by deeds to specific lots/properties. The deed Wright received, however, was never recorded and was unsecured. North, Laing and Pugmire were required to be licensed in order to sell unsecured promissory notes.

147. Wright was told her investment would be secured by a trust deed. However, the deed Wright received was never recorded.

148. In February of 2008 the \$500,000 promissory note came due. Wright called North to inquire about how North would pay the principal and interest. North stated he would be

unable to make interest or principal payments at that time because of the market downturn.

149. In March 2008, North came to Wright's office and brought a new NCF brochure showing the La Quinta project overview. North stated the project was almost finished, the ~~properties would start selling by June and funds would be paid according to the original~~ schedule. The last time Wright tried to call North directly was in November 2008 when she was attempting to obtain financial information for tax purposes. North would repeatedly promise the documentations would be delivered in a week but fail to deliver. Thereafter, Wright communicated with North by email only.
150. Wright states her later research discovered \$8 million in liens on the La Quinta property and her own Deed of Trust was not recorded.
151. NCF bank records show Wright received no less than \$32,472.18 in returns between March 30, 2007 and February 5, 2008.

COUNT 10
SECURITIES FRAUD, a second degree felony
(Investor: Tamara Bernson)
(Charged Defendants: North, Pugmire and Bartholomew)

152. Bernson contacted Bartholomew to help her with retirement planning. Bernson met with Bartholomew four or five times at his office in Lindon, Utah. At the first meeting, Bartholomew said he would not charge Bernson for his services because he received a

commission from the people with whom he worked. The meetings took place in November through December 2006 and January 2007.

153. During the meetings, Bernson disclosed all her financial information, including that she owned a home “free and clear” near Bear Lake. Bartholomew said “that’s dead money” and told her to pull equity from her home and invest the money in New Century Funding’s bridge fund. Bartholomew said he invested in New Century and he recommended New Century to his other clients. Bartholomew said New Century did two things: build homes and make bridge loans. He said New Century had building projects in Colorado, California, and Idaho. Bartholomew said, “This will put your money to work for you.”
154. When Bartholomew mentioned New Century, Berson recognized the name because her brother, Pugmire, worked there.
155. Bernson phoned her brother to discuss the investment. Pugmire asked “Are you sure you want to invest?” Pugmire then provided additional information about New Century. Pugmire said Mr. North was the principal of the company. Pugmire confirmed that New Century had building projects in Colorado, California, and Idaho. Pugmire confirmed that Bernson would be able to get her money out in an emergency. Pugmire said Bernson’s money would be used on one of New Century’s building projects.
156. Based on what she learned from Bartholomew and Pugmire, Bernson obtained a mortgage loan from her credit union using the Bear Lake property as collateral. On

January 8, 2007, Bernson wrote a check for \$90,000 to New Century Funding. Bernson gave the check to her brother who said "You could lose all this." Pugmire accepted the check which was later deposited into New Century's account at Brighton Bank. Pugmire then delivered an executed promissory note which appears to be signed by North and Pugmire, dated January 9, 2007, to her at her home in Utah County.

157. Bernson received a \$4,500 quarterly payment in March, June, and September, and December 2007. Bernson said she did not receive her December or March 2008 interest payment.
158. Bernson phoned New Century and spoke to Christy North and Trevor Hinckley who told her New Century was experiencing some problems but she should get her check at the end of the month. Bernson also complained that she had not received a Deed of Trust securing her promissory note. Christy said the deed would be sent out immediately. Bernson also had her attorney, Gregory M. Simonsen, send a letter to New Century.
159. Soon after her phone call and attorney's letter, Bernson received a copy of an unrecorded deed of trust. Bernson said her original promissory note was to be secured by an interest in one lot located in the New Century Funding Kellogg, Idaho chalet development. However, when she received the unrecorded deed of trust it was for property in Riverside, California.
160. Bernson was 65 years old when she invested in New Century Funding
161. Bernson later requested her deed be recorded. It was recorded on February 28, 2008.

162. In connection with the offer or sale of a security, Bartholomew, Pugmire and/or North made omissions of material facts, including but not limited to paragraphs 163 through 165.
163. Bartholomew stated several of his clients were investors with NCF. Bartholomew omitted if and how much Bartholomew was compensated for referring investors to NCF.
164. Bemson received a promissory note which appears to be signed by North and Pugmire, which states "For value received, Borrower promises to pay to the order of Lender, the sum of \$90,000." Bartholomew, Pugmire and/or North, omitted the involvement of New Century or its principals in any legal proceedings, bankruptcy, and /or violation of state or federal law.
165. The promissory note states, "Return on investment is guaranteed and is not dependent on project production or profitability." New Century's business and operating history. Bartholomew, Pugmire, and/or North omitted NCF's financial statements, New Century's prospectus or offering documents, the market for New Century's properties and developments, and the number of other investors.
166. In connection with the offer or sale of a security, Bartholomew, Pugmire and/or North made untrue statements of material facts, including but not limited to paragraphs 167 and 168.
167. The promissory note states, "This note is also secured by a deeded position in the lot in question..." Bemson did not receive any documentation regarding her deed position until

February, 2008. When she did receive documentation, she received an unrecorded deed of trust.

168. The promissory note states, "This loan agreement and promissory note is made...by and between New Century Funding, Inc. a Utah corporation..." However, Department of Commerce, Division of Corporations' records show ~~NCF was never incorporated in~~ Utah. NCF filed only for a name reservation on March 16, 2006. The name reservation expired on July 17, 2006.
169. NCF bank records show Bernson received no less than \$16,750 between April 3, 2007 and December 24, 2007.

COUNT 11
SECURITIES FRAUD, a second degree felony
(Investors: Julie and Karl Lund)
(Charged Defendants: North, Laing and Pugmire)

170. Julie Lund first learned of NCF from her sister, Brenda Wright.
171. In November 2006, Julie Lund flew to Palm Springs, CA with other potential investors to tour the property being developed by NCF. During this tour Pugmire, Laing, and North gave a presentation on investing with NCF.
172. During the presentation Julie Lund recalls Laing stating North has been in business for a long time and had a good track record. Laing stated his family had invested with North and North makes investment decisions in favor of his investors.

173. During the presentation Pugmire, Laing, or North, all of whom were present, made the following statements:

- North owned the company. Pugmire and Laing were NCF employees.
- Investors would receive a recorded Deed of Trust.
- ~~• NCF was paying 20-25% interest to investors.~~
- North chose properties so carefully that even a sever downturn in the economy, investors would still be protected.
- Investors could get money out early if they really needed it.
- The Lund's farm could generate cash-flow income for them if they leveraged their home by taking out lines of credit.

174. Based on representations made on the Palm Springs, CA tour and when Laing visited the Lund's home, Lund's invested a total of \$217,653.64 derived from savings, working capital from their farm, and home equity. The Lund's received three promissory notes. The first promissory note is for \$23,153.64, dated November 16, 2006 and appears to be signed by Laing.

175. The second promissory note is for \$139,500, dated December 8, 2006 and appears to be signed by North and Laing. Funds for this promissory note came from the Lunds' home equity.

176. The third promissory note is for \$55,000, dated April 20, 2007 and appears to be signed by North. \$11,677.22 of the \$55,000 came from working capital of the Lunds' farm, the remaining \$43,322.78 came additional equity from their home after a reappraisal.
177. The Lunds received both the second and third promissory notes via email.
-
178. ~~The Lunds received unrecorded Deeds of Trust. Later, based on Wright's~~ recommendation, Lunds repeatedly requested recorded copies of their Deeds of Trust from NCF. NCF never delivered recorded copies.
179. In connection with the offer or sale of a security, Laing, Pugmire and/or North made omissions of material facts, including but not limited to paragraphs 180 and 181.
180. Lunds received three promissory notes; each appears to be signed by North and/or Laing, which states "For value received, Borrower promises to pay to the order of Lender, the sum of" North, Pugmire, and/or Laing omitted the involvement of New Century or its principals in any legal proceedings, bankruptcy, and /or prior violation of state or federal law.
181. North chose properties so carefully that even a sever downturn in the economy, investors would still be protected. Risk of loss associated with the investment was omitted.
182. In connection with the offer or sale of a security, Laing, Pugmire and/or North made untrue statements of material facts, including but not limited to paragraphs 183 and 184.
183. Lunds would receive a recorded Deed of Trust. Lunds never received a recorded Deed of Trust.

184. The promissory note states, "This loan agreement and promissory note is made...by and between New Century Funding, Inc. a Utah corporation..." However, Department of Commerce, Division of Corporations' records show NCF was never incorporated in Utah. NCF filed only for a name reservation on March 16, 2006. The name reservation expired on July 17, 2006.

185. NCF bank records show Lunds received no less than \$39,027.56 between March 20, 2007 and December 24, 2007.

COUNT 12
SECURITIES FRAUD, a second degree felony
(Investors: Dennis and Sunny Howard)
(Charged Defendants: North and Mooring)

186. Dennis Howard first heard about Jamie Mooring through Alex Hunt, another investor. Howard made an appointment to meet Mooring at Mooring's office in Pleasant Grove, Utah. The meeting took place on or about February 2007. Present at all the meetings with Mooring were Howard and his wife, Sunny Howard. Howard and Sunny met with Mooring monthly between February and July 2007. During the meetings Mooring made recommendations about the purchase of life insurance, disability insurance, and changing the name of the Howard family trust and provided investment advice. By June 2007,

Mooring was talking to the Howards about investment opportunities.

187. Howard said Mooring told them about New Century Funding and gave the Howards some New Century promotional papers including a letter dated January 1, 2007

addressed "To Whom It May Concern." The letter, on New Century Funding letterhead, lists six entities which make up the New Century Group. Howard said Mooring also gave him a New Century News letter dated Fourth Quarter 2006 and some other papers related to the investment. Mooring did not provide the Howards with disclosure documents or a private placement memorandum.

188. Mooring made the following statements:

- North / New Century builds luxury resorts and that they pay cash for all their properties.
- New Century operates on cash and New Century's assets outweigh their debt.
- Kenny North is New Century's owner / principal and that others on the board include Patrick Laing, Johnson, and Crane.
- New Century completes building projects and then sells the properties.
- New Century was capitalized through its investors.
- New Century was in working in a project in Kellogg, Idaho similar to Park City, Utah and when complete would sell lots.
- New Century had other investors but only mentioned Alex Hunt by name.
- A New Century promissory note was risk free and guaranteed because all the promissory notes were collateralized with real property.
- If Howard pulled his investment out early there would be a 5% penalty.
- Howard's money would be used on the Kellogg, Idaho development.
- North and the people at New Century were people of the highest character.

- Mooring would be compensated for his time by New Century and the insurance company for whom he sold policies.

- Money the Howards invested would be collateralized by property in Kellogg, Idaho.

189. Based on Mooring's representations, the Howards decided to invest. The Howards had no managerial responsibilities and invested for profit. ~~The Howards elected to roll their interest payments into their principal.~~

190. The Howards moved their money from UBS to a self-directed IRA. Mooring helped Howard accomplish the transfer by steering Howard to Fiserv. On June 25, 2007, Howard said he received an email from Collette Higham of New Century. Higham attached documents to the email to facilitate the transfer of the Howards retirement funds to Fiserv. Higham wrote "when the transfer is complete I will forward you your Note and Deed deeding you into one of our properties." The Howards completed the Fiserv forms the following day and sent the forms to Fiserv.

191. On or about July 20, 2007, the Howards received a document titled Specific Project (Deeded) Loan Agreement & Promissory Note, Bridge fund # C1242-BF20070620-13. The promissory note is an agreement between New Century and Fiserv for the benefit of Sunny Kay Howard. The terms of the promissory note were detailed in a paragraph titled "The Purpose of this Note" which states: "THIS PROMISSORY NOTE is for the purpose of a 1440 day investment in one or more properties located within the New Century Funding development(s), designated within and secured by one or more recorded

deeds (see separate document). This bridge-fund loan includes a fixed 20.00% APR simple-interest return which will be paid out At Maturity. Return on investment is guaranteed and is not dependent on New Century project production or profitability. . . . the loan is secured by a deeded position in the 80% or less loan-to-value property or properties mentioned above, to be recorded once funding and signed authorization are received. “ ”FOR VALUE RECEIVED, BORROWER promises to pay . . . LENDER, the sum of \$58,009.47 . . . together with interest thereon at a rate of 20.00 percent per annum . . . on the principal balance.” This promissory note appears to have been signed by North on July 20, 2007. The Howards received the promissory note by fax or email from New Century.

192. On or about September 11, 2007, the Howards received a document titled Specific Project (Deeded) Loan Agreement & Promissory Note, Bridge fund # C1242-BF20070820-12. The promissory note is an agreement between New Century and Fiserv for the benefit of Dennis Lynn Howard the terms of the promissory note were detailed in a paragraph titled “The Purpose of this Note” which states: “THIS PROMISSORY NOTE is for the purpose of a 1440 day investment in one or more properties located within the New Century Funding development(s), designated within and secured by one or more recorded deeds (see separate document). This bridge-fund loan includes a fixed 20.00% APR simple-interest return which will be paid out At Maturity. Return on investment is guaranteed and is not dependent on New Century project production or

profitability. . . . the loan is secured by a deeded position in the 80% or less loan-to-value property or properties mentioned above, to be recorded once funding and signed authorization are received. " "FOR VALUE RECEIVED, BORROWER promises to pay . . . LENDER, the sum of \$156,777.30 . . . together with interest thereon at a rate of 20.00 percent per annum . . . on the principal balance." The promissory note appears to have

been signed by North on September 11, 2007 and by Dennis Howard the same day. The Howards received the document via fax or email from New Century.

193. In connection with the offer or sale of a security, Mooring and/or North made omissions of material facts, including but not limited to paragraphs 194 through 197.
194. Mooring stated, NCF was capitalized through its investors. Mooring did not provide the number of other investors. Also, Mooring did not provide financial statements or other information regarding NCF's capitalization.
195. Mooring stated, North and the people at NCF were people of the highest character. Mooring omitted the involvement of NCF or its principals in any legal proceedings, bankruptcy, and /or violation of state or federal law. Also, Mooring omitted what research he had done to arrive at the conclusion that North and the people at NCF were of the highest character.
196. The Howards received a promissory note which appears to be signed by North, which states "For value received, Borrower promises to pay to the order of Lender, the sum of

\$58,009.47.” North omitted the involvement of NCF or its principals in any legal proceedings, bankruptcy, and /or violation of state or federal law.

197. Mooring stated he was being compensated by NCF. Mooring did not state if he was licensed to sell securities. Mooring did not disclose how much he was being compensated and if his compensation was coming out of investor funds. ~~Mooring did not state if~~ NCF’s principals were licensed to sell securities.
198. In connection with the offer or sale of a security, Mooring and/or North made untrue statements of material facts, including but not limited to paragraphs 199 through 201.
199. Mooring stated, the Howards’ investment would be collateralized by property in Kellogg, Idaho. However, the Howards never received a recorded Deed of Trust or any proof of collateralization.
200. Mooring stated, a New Century promissory note was risk free and guaranteed because all the promissory notes were collateralized with real property. However, Mooring did not properly disclose the risk of loss associated with the investment.
201. The promissory note states, “This loan agreement and promissory note is made...by and between New Century Funding, Inc. a Utah corporation...” However, Department of Commerce, Division of Corporations’ records show NCF was never incorporated in Utah. NCF filed only for a name reservation on March 16, 2006. The name reservation expired on July 17, 2006.

202. On December 4, 2008, the Howards sent an email to Collett Higham stating they might need to access money prior to the expiration of the contract and inquired what needed to be done to start the process. Higham wrote back the following day. Higham wrote, "Because of the current market we are struggling as a company," and that Howard would need to contact North and provided a phone number and email address. The Howards sent an email to North as well but North did not respond.
203. The Howards did not receive a trust deed, warranty deed, or any collateral on their investments with New Century.
204. NCF bank records show the Howards received no payments.

COUNT 13
SECURITIES FRAUD, a second degree felony
(Investor: Sharon Lloyd)
(Charged Defendants: North, Laing, Pugmire and Bartholomew)

205. Lloyd said she first learned of investing with New Century from her sister, Kathy Olsen. Olsen is a friend of BJ Wright. Wright and her partner, Larry Bartholomew, operate A-Plus Benefits. Olsen told Lloyd she invested money into New Century and that Wright and Larry Bartholomew also invested. Olsen said the Financial Advisor who recommended New Century was Larry Bartholomew's son, David Bartholomew.
206. On or about October 2006, Lloyd visited Kellogg, Idaho. Those present in Kellogg were Lloyd, Olsen, Wright and her husband, Laing, Pugmire, and North. Lloyd said the trip was paid for by North and Laing and Pugmire were North's employees assigned to wine

and dine the group. North flew in on the second day and met the group for dinner where North talked about all his development projects. Laing and Pugmire took the group of investors to condos and a water park. In addition, Lloyd said they were driven around Kellogg and told about plans for the area and the economy.

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207. On or about November 2006, Lloyd and a group of investors visited Palm Springs, CA with expenses paid by North. Present on the trip were Lloyd, Kathy Olsen, other clients of A-Plus, Laing, Pugmire and North. The group toured a condo development where she saw construction equipment on site. She said they visited a time-share which North used as an example of how he intended to structure his development. The group also attended a dinner at North's home near Palm Springs where Laing gave a presentation about the investment.
208. During the power point presentation, Laing made many of the same promises set forth in paragraph 111 of this affidavit.
209. Lloyd requested that her investment be tied to the Kellogg, Idaho project.
210. After the two tours, Lloyd made an appointment to meet with Bartholomew. Lloyd said she met with Bartholomew three times during November 2006 and all the meetings took place at A-Plus Benefits in Lindon, Utah. Bartholomew asked her for a complete financial history which Lloyd provided. Lloyd provided information about her savings, debt, liabilities, investments, certificates of deposit, life insurance and more. During the meetings Lloyd told Bartholomew that she was a widow and the purpose of investing was

to provide her with a monthly income so she would not have to dip into savings to meet her monthly expenses. At the meetings, Bartholomew gave Lloyd a New Century brochure.

211. During the three meetings David Bartholomew made the following representations:

-
- He invested in New Century Funding;
 - BJ Wright and Larry Bartholomew invested with New Century Funding;
 - New Century Funding was a really good deal which he researched personally;
 - New Century Funding had been in business a long time and was successful;
 - Kenny North was the principal of New Century Funding;
 - Everyone who invested with New Century Funding was making money;
 - New Century offered investors promissory notes which paid high interest depending on the how long an investor committed funds;
 - New Century offered 25% per annum on funds invested for four years, 18% on funds invested for six months to a year, and 15% on funds invested with a monthly interest payout;
 - There were other places Lloyd could put her money and that he could recommend but New Century was the best and the safest;
 - There were two ways to participate. a direct investment of principal or by allowing New Century to use the investors credit score;
 - Lloyd's investment would be tied to a specific New Century real estate

development project;

- As with any investment there was a slight risk Lloyd would lose her money

however,

- Lloyd would be secured by deed to real property with a value greater than her investment;

- ~~The minimum investment for a two year promissory note was \$500,000 but for~~

Lloyd, New Century would make an exception and allow an investment of \$250,000;

- In an emergency, Lloyd could get her money out or change the terms of her

investment contract;

- In order to invest, Lloyd had to have a certain credit score;

- He would not be making a commission on the investment from New Century and he would not charge her for the advice he was providing.

212. In connection with the offer or sale of a security, Bartholomew, Laing, Pugmire and/or North made omissions of material facts, some of which are included in paragraphs 117 through 123 of this affidavit. Others include, but are not limited to paragraphs 213 through 218.

213. Bartholomew stated New Century Funding had been in business a long time and was successful. Bartholomew did not provide Lloyd with financial statements for NCF showing NCF's successful operating history or provide other basis for how Bartholomew arrived at his conclusion.

214. Bartholomew stated everyone who invested with New Century Funding was making money. Bartholomew omitted the number of other investors.
215. Bartholomew stated at his Lindon office, New Century Funding was a really good deal which he researched personally and Kenny North was the principal of New Century Funding. Bartholomew omitted the involvement of North, ~~New Century or its principals~~ in certain legal proceedings including law suits, bankruptcies, violations of law, liens, judgments etc. Also, Bartholomew omitted what research he had done to arrive at his conclusion.
216. Bartholomew stated there were other places Lloyd could put her money and that he could recommend but New Century was the best and the safest. Bartholomew omitted if he was licensed to recommend and sell securities, what firm he was licensed with, and if this was an approved product at his firm or if he was selling away from his firm.
217. Bartholomew stated Lloyd would be secured by deed to real property with a value greater than her investment. Bartholomew omitted what position Lloyd would be in on the deed securing her investment.
218. Bartholomew stated New Century offered investors promissory notes which paid high interest depending on the how long an investor committed funds. New Century offered 25% per annum on funds invested for four years. 18% on funds invested for six months to a year, and 15% on funds invested with a monthly interest payout. However,

Bartholomew did not disclose whether the investment was registered or exempt from registration

219. In connection with the offer or sale of a security, Bartholomew, Laing, Pugmire and/or North made untrue statements of material facts, including but not limited to paragraph 220 through 221.
-
220. Lloyd was told her investment would be secured by a trust deed. However, Lloyd never received a trust deed.
221. Bartholomew stated he would not be making a commission on the investment from New Century and he would not charge her for the advice he was providing. However, Bartholomew received commissions from NCF.
222. On November 30, 2006, Lloyd invested \$250,000 via two bank wires. The first bank wire was for \$150,000 from Lloyd's Wells Fargo Investments account and the second bank wire was from Lloyd's America First Federal Credit Union savings account. Lloyd said she invested for profit and had no managerial responsibilities with regard to New Century Funding. Lloyd was 58 years old at the time she invested and had a net worth of about a million dollars.
223. In January for February 2007, Lloyd met with David Bartholomew at A-Plus benefits in Lindon, Utah. Lloyd asked David Bartholomew for her promissory note and the deed securing her investment. He said he would check with North.

224. Lloyd states she picked up her promissory note from Bartholomew's office at A-Plus Benefits in Lindon, UT. However, Lloyd states she never received a Trust Deed or any other documentation showing her investment was collateralized.
225. Lloyd said she received two interest payments during 2006 (one was a partial interest payment) and interest payments form most of 2007. ~~About a year after she invested,~~ interest payments stopped. Lloyd said after the payments stopped, Kenny North sent her an email in which he asked for two months to "get everything together." Later Kenny North said he needed six months.
226. In November or December 2008, Lloyd and Olsen met Kenny North for lunch in Salt Lake City. At the meeting North asked Lloyd and Olsen to be patient and wait. He blamed New Century's problems on the current economic crisis.
227. NCF bank records show Lloyd received no less than \$37,500.33 between January 22, 2007 and January 22, 2008.

COUNT 14
EMPLOYING AN UNLICENSED AGENT
a third degree felony
(Charged Defendant: North)

228. North employed and compensated Laing as an agent in the offering and/or sale of a security in Utah. Utah Code Ann. §61-1-3(2)(a).

COUNT 15
EMPLOYING AN UNLICENSED AGENT
a third degree felony
(Charged Defendant: North)

229. North employed and compensated Pugmire as an agent in the offering and/or sale of a security in Utah. Utah Code Ann. §61-1-3(2)(a).

COUNT 16
EMPLOYING AN UNLICENSED AGENT
a third degree felony
(Charged Defendant: North)

230. North employed and compensated Mooring as an agent in the offering and/or sale of a security in Utah. Utah Code Ann. §61-1-3(2)(a).

COUNT 17
EMPLOYING AN UNLICENSED AGENT
a third degree felony
(Charged Defendant: North)

231. North employed and compensated Bartholomew as an agent in the offering and/or sale of a security in Utah. Utah Code Ann. §61-1-3(2)(a).

COUNT 18
SALES BY AN UNLICENSED AGENT
a third degree felony
(Charged Defendant: Laing)

232. Laing transacted business in Utah as a broker-dealer or agent of NCF and/or North while he was unlicensed. Utah Code Ann. §61-1-3.

COUNT 19
SALES BY AN UNLICENSED AGENT
a third degree felony
(Charged Defendant: Pugmire)

233. Pugmire transacted business in Utah as a broker-dealer or agent of NCF and/or North while he was unlicensed. Utah Code Ann. §61-1-3.

COUNT 20
SALES BY AN UNLICENSED AGENT
a third degree felony
(Charged Defendant: Mooring)

234. Mooring transacted business in Utah as a broker-dealer or agent of NCF and/or North while he was unlicensed. Utah Code Ann. §61-1-3.

COUNT 21
SALES BY AN UNLICENSED AGENT
a third degree felony
(Charged Defendant: Bartholomew)

235. Bartholomew transacted business in Utah as a broker-dealer or agent of NCF and/or North while he was unlicensed. Utah Code Ann. §61-1-3.

COUNT 22
PATTERN OF UNLAWFUL ACTIVITY
a second degree felony
(Charged Defendants: North, Laing, Pugmire and Bartholomew)

236. Commencing in or about 2006, North, Laing, Pugmire and Bartholomew engaged in conduct which constituted the commission of at least three episodes of unlawful activity as defined in Utah Code Ann. §76-10-1603. The unlawful activity included three or more violations of Utah Uniform Securities Act.

SUMMARY

237. Based on my review of the evidence, there is probable cause to believe that North, Laing, Pugmire, Bartholomew and/or Mooring committed the crimes set forth above of and summarized below as follows:

- North => Securities Fraud, 13 Counts;
Employing an Unlicensed Agent, 4 Counts;
Pattern of Unlawful Activity, 1 Count.

- Laing => Securities Fraud, 11 Counts;
Sales by an Unlicensed Agent, 1 Count;
Pattern of Unlawful Activity, 1 Count.
- Pugmire => Securities Fraud, 8 Counts;
Sales by an Unlicensed Agent, 1 Count;
Pattern of Unlawful Activity, 1 Count.
- Bartholomew => Securities Fraud, 2 Counts;
Sales by an Unlicensed Agent, 1 Count;
Pattern of Unlawful Activity, 1 Count.
- Mooring => Securities Fraud, 1 Count;
Sales by an Unlicensed Agent, 1 Count

DATED this 15 day of June, 2011.



Douglas Wawrzynski, Affiant

2011.

SUBSCRIBED AND SWORN before me this 15 day of June



JUDGE, THIRD DISTRICT COURT



FILED DISTRICT COURT
Third Judicial District

JUN 15 2011

by _____
Deputy Clerk

CHÉ ARGUELLO, Bar No. 12412
Assistant Attorney General
MARK L. SHURTLEFF, Bar No. 4666
Utah Attorney General
5272 South College Drive, #200
Murray, Utah 84123
Telephone: (801) 281-1221
Facsimile: (801) 281-1224

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

THE STATE OF UTAH,	:	Bail \$ <u>100,000⁰⁰</u>
Plaintiff,	:	
vs.	:	WARRANT OF ARREST
JAMES B. MOORING,	:	Case No: <u>111904457</u>
DOB: September 27, 1970	:	Judge: _____
Defendant.	:	

THE STATE OF UTAH TO ANY PEACE OFFICER IN THE STATE OF UTAH,

GREETINGS:

An Information, upon oath, having been this day made before me by Investigator Douglas Wawrzynski, and it appearing from the Information, or affidavit filed with the Information, that there is probable cause to believe that the public offense(s) of: **Securities Fraud, a second degree felony, 1 count and Sales by an Unlicensed Agent, a third degree felony, 1 count,** has been committed, and that the defendant, JAMES B. MOORING, has

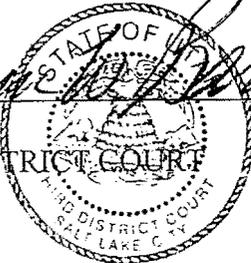
committed these offenses,

YOU ARE THEREFORE COMMANDED to arrest the above named defendant forthwith and bring the defendant before this court, or before the nearest or most accessible magistrate for setting bail. If the defendant has fled justice, you shall pursue the defendant into any other county of this state and there arrest the defendant. The offenses listed above are felonies.

Bail is set in the amount of \$ 100,000⁰⁰.

DATED this 15 day of June, 2011.


HONORABLE,
JUDGE, THIRD DISTRICT COURT



Defendant's Last Known Address:

110 North Cortez Trail
Ivins, UT 84738

EXHIBIT "C"



LEXSEE 1997 U.S. DIST. LEXIS 20878



Analysis
As of: Jan 19, 2010

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, VS. JONATHAN N. GOOGLE, BENJAMIN J. SISTI, KENNETH A. ZAK, WILLIAM P. CANDELORI, PETER J. CURLEY and EDMUND M. AUTUORI, Defendants.

Civil No. 3:95cv00420(AVC)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

1997 U.S. Dist. LEXIS 20878

April 30, 1997, Decided
April 30, 1997, Filed

DISPOSITION: [*1] Defendant's motion for reconsideration granted. Relief requested granted.

inconvenience and delay to the SEC, the protection of the manager's constitutional right against self-incrimination was the more important consideration.

CASE SUMMARY:

PROCEDURAL POSTURE: Defendant tax manager filed a motion for reconsideration of the court's prior order, which denied the manager's motion to stay or for a protective order in the action of plaintiff, the Securities and Exchange Commission (SEC), regarding the sale of unregistered securities.

OUTCOME: The tax manager's motion for reconsideration was granted. The tax manager's motion to stay was also granted.

OVERVIEW: The issue presented on appeal was whether the court should stay the action pending a termination of the related criminal proceedings in order to accommodate the tax manager's assertion of his *Fifth Amendment* privilege against self-incrimination. The court held that the circumstances presented merited a stay of the action pending a conclusion of the related criminal proceedings. The tax manager was under indictment, and was likely to proceed to trial in the criminal case relatively soon. While the stay would, undoubtedly, cause

CORE TERMS: criminal proceedings, reconsideration, discovery, offering, self-incrimination, indictment, protective order, civil litigation, civil action, unregistered, accommodate, investors, action pending, public interest, sale of securities, criminal action, criminal case, civil proceedings, en banc, termination, involvement, convenience, accounting, deposition, invoke, grand jury, expeditious, falsely

LexisNexis(R) Headnotes

Civil Procedure > Judgments > Relief From Judgment

> *Motions to Alter & Amend*

[HN1] A motion to for reconsideration filed pursuant to *Fed. R. Civ. P. 59(e)* allows a losing party to seek the trial court's reconsideration of a court order if served within 10 days of the rendition of judgment.

Civil Procedure > Judgments > Relief From Judgment > Motions to Alter & Amend

Civil Procedure > Appeals > Standards of Review > Clearly Erroneous Review

[HN2] *Fed. R. Civ. P. 59 (e)* recognizes only three possible grounds for any motion for reconsideration: 1) an intervening change in the controlling law; 2) the availability of new evidence not previously available; and 3) the need to correct a clear error of law or to prevent manifest injustice.

Antitrust & Trade Law > U.S. Department of Justice Actions > Civil Actions > General Overview

Civil Procedure > Parties > Joinder > General Overview

[HN3] The federal government may pursue simultaneously parallel civil and criminal proceedings that arise from the same facts.

Constitutional Law > Bill of Rights > Fundamental Rights > Procedural Due Process > Self-Incrimination Privilege

Criminal Law & Procedure > Trials > Defendant's Rights > Right to Remain Silent > Self-Incrimination Privilege

Evidence > Privileges > Self-Incrimination Privilege > General Overview

[HN4] Where, during the course of the proceedings, a defendant invokes the *Fifth Amendment* privilege against self-incrimination, special considerations must be given to the plight of the party asserting the *Fifth Amendment*.

Civil Procedure > Judgments > Entry of Judgments > Stays of Proceedings > General Overview

[HN5] The Constitution, however, does not ordinarily require a stay of civil proceedings pending the outcome of the related criminal proceedings.

Civil Procedure > Judgments > Entry of Judgments > Stays of Proceedings > General Overview

[HN6] Whether a stay should be granted is within the discretion of the trial court. In determining whether to

grant a stay, the court considers the timeliness of the motion and balances the plaintiff's interest in proceeding expeditiously with the civil litigation against the prejudice to the plaintiff if delayed, the private interests of and burden on the defendant, the convenience to the courts, the interests of persons not parties to the civil litigation, and the public interest.

COUNSEL: For SECURITIES & EXCHANGE COMMISSION, plaintiff: John B. Hughes, U.S. Attorney's Office, New Haven, CT. David E. Butler, John M. D'Amico, Jeffrey W. Kobrick, U.S. Securities & Exchange Comm., Boston, MA.

For EDMUND M. AUTUORI, defendant: Ira B. Grudberg, Jacobs, Grudberg, Belt & Dow, P.C., New Haven, CT USA. Robert M. Romano, Morgan, Lewis & Bockius, New York, NY.

For DONALD BODELL, movant: Paul Windels, III, Carlene Booth Johnson, Perry & Windels, New York, NY. James E. Hartley, Jr., Gary B. O'Connor, Drubner, Hartley, O'Conner & Mengacci, Waterbury, CT. Robin L. Rosenthal, Avon, CT. Robert J. Perry, Perry & Windels, Dillwyn, VA.

For INVESTORS, movant: Paul Windels, III, Perry & Windels, New York, NY.

JUDGES: Alfred V. Covello, United States District Judge.

OPINION BY: Alfred V. Covello

OPINION

RULING ON EDMUND AUTUORI'S MOTION FOR RECONSIDERATION

This is an action for permanent injunction, accounting, and for the surrender of monies received in connection with Colonial Realty Company's unregistered public offering and sale of securities. It is brought pursuant to § 20(b) of the Securities Act, [*2] *15 U.S.C. § 77i(b)*, and §§ *21(d)* and *21(e)* of the Exchange Act. *15 U.S.C. §§ 78u(d)* and *78ute*.

The defendant, Edmund Autuori (hereinafter "the defendant") now moves for reconsideration of the court's March 10, 1997 order that denied the defendant's motion

to stay or for a protective order. The issue presented is whether the court should stay this action pending a termination of the related criminal proceedings in order to accommodate the defendant's assertion of his *Fifth Amendment* privilege against self-incrimination. For the reasons hereinafter set forth, the court grants the motion for reconsideration, and concludes that the defendant is entitled to a stay of these proceedings.

FACTS

Examination of the affidavits, exhibits, and other supporting material accompanying the motion to stay, and the responses thereto, discloses the following undisputed, material facts. During the Summer of 1993, the United States Attorney's office for the District of Connecticut informed the defendant that his involvement with Colonial Realty Company and its unregistered sale of securities would be subject to a federal grand jury investigation. On September 10, 1996, a grand jury sitting [*3] in Connecticut, returned an indictment against the defendant.

On March 9, 1995, the plaintiff commenced the present civil action in connection with the same sale of unregistered securities. Specifically, the complaint alleges, *inter alia*, that the defendant, a tax manager of the accounting firm of Arthur Andersen LLP, knowingly and recklessly participated in the planning and structuring of a fraudulent offering of securities in the Colonial Constitution Limited Partnership ("CCLP") in 1989 and 1990, instructed salespeople in selling the offering, and directly and actively solicited individuals to buy the offering in violation of the federal registration and antifraud statutes. The complaint also alleges that the defendant repeatedly and falsely assured potential investors that the "numbers" in Colonial's offering "work", and falsely gave investors comfort that the Colonial offering was a sound and profitable investment, even after the defendant had information to the contrary.

On April 27, 1995, the parties began discovery. On June 5, 1995, the plaintiff served the defendant with interrogatories and a request for the production of documents. On July 24, 1995 the defendant invoked [*4] his *Fifth Amendment* privilege against self-incrimination, and refused to answer questions about any aspect of his involvement in the CCLP offering, including his solicitation of investors. Then, on March 28, 1996, just one day before the close of discovery, the defendant filed the within motion to stay.

STANDARD

[HN1] A motion to for reconsideration filed pursuant to *Federal Rule of Civil Procedure 59(e)* allows a losing party to seek the trial court's reconsideration of a court order if served within 10 days of the rendition of judgment. See *Lavespere v. Niagara Mach. & Tool Works, Inc.*, 910 F.2d 167, 173-74 (5th Cir. 1990). "[HN2] *Rule 59 (e)* recognizes only 3 possible grounds for any motion for reconsideration: 1) an intervening change in the controlling law; 2) the availability of new evidence not previously available; and 3) the need to correct a clear error of law or to prevent manifest injustice." *Larsen v. Ortega*, 816 F. Supp. 97 (D. Conn. 1992).

DISCUSSION

The defendant argues that since the parallel criminal action requires that he assert his *Fifth Amendment* privilege, he is effectively prevented from defending himself in this action. Accordingly, the defendant [*5] argues that the court should stay this matter pending a resolution of the related criminal proceedings. Moreover, the defendant asserts that a stay is necessary because the criminal case is advancing towards trial, and "due to the complexity of the issues involved, preparation for the criminal action requires the undivided attention of both [the defendant] and his attorneys until the [criminal] trial is completed."

The plaintiff responds that the motion to stay, presented more than a year after the initiation of the action and after discovery has ended, would be unfair and contrary to the public interest in the expeditious resolution of this matter.

The court concludes that the circumstances presented here merit a stay of this action pending a conclusion of the related criminal proceedings. It is well established that [HN3] the federal government may pursue simultaneously parallel civil and criminal proceedings that arise from the same facts. *Standard Sanitary Manufacturing Co. v. United States*, 226 U.S. 20, 33 S. Ct. 9, 57 L. Ed. 107 (1912) (parallel government civil and criminal proceedings under antitrust law); *United States v. Kordel*, 397 U.S. 1, 25 L. Ed. 2d 1, 90 S. Ct. 763 (1970) (parallel government civil and criminal proceedings [*6] under food and drug laws). [HN4] Where, during the course of the proceedings, a defendant invokes the *Fifth Amendment* privilege against

self-incrimination, "special considerations must be given to the plight of the party asserting the *Fifth Amendment*." *United States v. Certain Real Property and Premises Known As 4003-4005 5th Ave.*, 55 F.3d 78, 83 (2d Cir. 1995).

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.

Id. at 84 (emphasis original). The most appropriate procedure for accommodating the interests of both parties varies from case to case. *Id.* at [*7] 84, n.6. Courts have explored a range of approaches, including the entry of a protective order prohibiting the use of the civil litigants' responses in any criminal proceeding, see *United States v. Parcels of Land*, 903 F.2d 36 (1st Cir. 1990), and by ordering a stay in the civil proceedings pending a termination of the parallel criminal matter. *Wehling v. CBS*, 608 F.2d 1084, 1088-89 (5th Cir. 1979). [HN5] The Constitution, however, "does not ordinarily require a stay of civil proceedings pending the outcome of the related criminal proceedings." *Kashi v. Gratsos*, 790 F.2d 1050, 1057 (2d Cir. 1986) citing *SEC v. Dresser Indus., Inc.*, 202 U.S. App. D.C. 345, 628 F.2d 1368, 1375 (D.C. Cir. 1980) (en banc), cert. denied, 449 U.S. 993, 66 L. Ed. 2d 289, 101 S. Ct. 529 (1980).

[HN6] Whether a stay should be granted is within the discretion of the trial court. ¹ *United States v. Kordel*, 397 U.S. 1, 12 n. 27, 25 L. Ed. 2d 1, 90 S. Ct. 763 (1970); *SEC v. Dresser Indus., Inc.*, 202 U.S. App. D.C. 345, 628 F.2d 1368, 1377 (D.C. Cir. 1980) (en banc), cert. denied, 449 U.S. 993, 66 L. Ed. 2d 289, 101 S. Ct. 529 (1980). In determining whether to grant a stay, the court considers the timeliness of the motion, *Certain Real Property*,

supra, and balances the plaintiff's interest in proceeding expeditiously with the civil [*8] litigation against the prejudice to the plaintiff if delayed, the private interests of and burden on the defendant, the convenience to the courts, the interests of persons not parties to the civil litigation, and the public interest. *Arden Way Assoc. v. Boesky*, 660 F. Supp. 1494, 1497 (S.D.N.Y. 1987). In *Gala Enterprises, Inc., v. Hewlett Packard Co.*, 1996 U.S. Dist. LEXIS 18867, 96 Civ. 4864, 1996 WL 732636 (S.D.N.Y. 1996), a defendant who was under indictment moved to stay discovery in a parallel civil action. Although the court found that, under the circumstances of the case, the interests of the plaintiffs, the court, and the public all weighed in favor of denying the stay, the court nevertheless granted a stay to accommodate the defendant's *Fifth Amendment* privilege.

¹ See *Paine Webber, Jackson & Curtis, Inc., v. Malon S. Arduis, Inc.*, 486 F. Supp. 1118 (S.D.N.Y. 1980) (stay denied where the defendants were under indictment); *SEC v. First Jersey Securities, Inc.*, 1987 U.S. Dist. LEXIS 10157, 1987 WL 8655, *5 (S.D.N.Y. 1987) (stay denied, stating "the public has an interest in the prompt resolution of allegations against [the defendants]. . ."); *SEC v. Musella*, Fed. Sec. L. Rep. (CCH) P99,156, 38 Fed. R. Serv. 2d (Callaghan) 426 (S.D.N.Y. 1983) (denying stay of civil action); *Roe v. Operation Rescue*, 710 F. Supp. 577 (E.D.Pa. 1988) (stay denied because it was uncertain how long the parallel criminal proceedings would last). See also *Wehling v. CBS*, 608 F.2d 1084, 1088-89 (5th Cir. 1979) (case stayed); *Clark v. United States*, 481 F. Supp. 1086, 1099-1100 (S.D.N.Y. 1979) (discovery stayed); *Dienstag v. Bronsen*, 49 F.R.D. 327 (S.D.N.Y. 1970) (protective order granted, depositions stayed).

[*9] In the instant case, certain considerations do not favor a stay. Specifically, the late timing of the motion, as presented to the court at the close of discovery, coupled with the interests of the plaintiff, the public, and the court ² in the expeditious resolution of this matter. However, the court nevertheless concludes that a stay is in order. The defendant is now under indictment, and is likely to proceed to trial in the criminal case this Summer. While the stay will, undoubtedly, cause inconvenience and delay to the plaintiff, the protection of the defendant's Constitutional right against

self-incrimination is the more important consideration. Accordingly, the court grants the defendant's motion to stay.

2 "The convenience of the courts is best served when motions to stay proceedings are discouraged." *Gala Enterprises, Inc. v. Hewlett Packard Company*, 1996 U.S. Dist. LEXIS 18867, 1996 WL 732636 (S.D.N.Y. 1996) citing *United States v. Private Sanitation Indus., Ass'n*, 811 F. Supp. 802, 808 (E.D.N.Y. 1992).

CONCLUSION

[*10] The defendant's motion for reconsideration

(document no. 126) is granted. The relief requested is also granted. The court orders the matter stayed at the conclusion of the May 7, 1997 deposition of James Hartley, Esq. Further, in view of this ruling, the court will, upon motion, reconsider the deadlines set for the completion of discovery.

SO ORDERED, this 30th day of April, 1997 at Hartford, Connecticut.

Alfred V. Covello

United States District Judge