FILED DISTRICT COURT
Third Judicial District

FEB 22 2008

By SALT LAKE COUNTY
Deputy Clerk

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IN THE THIRD JUDICIAL DISTRICT COURT, ~~WEST JORDAN~~ SALT LAKE KT

SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	
Plaintiff,	:	**AFFIDAVIT OF PROBABLE CAUSE**
vs.	:	
DARIN LAYNE KRACL DOB: January 3, 1968	:	Case No: 081901383
	:	Judge: _____
Defendant.		

STATE OF UTAH)
:ss
COUNTY OF SALT LAKE)

I, JEFFERY NIELSEN, being first duly sworn upon oath, depose and state as follows:

1. I am currently employed as a full time investigator with the Utah Division of Securities following my completion of an internship with the Division during the Spring/Summer of 2006, and a contract position with the Division from May 2006 through July 2007. I have worked as the primary investigator on several cases; and, during my internship I

assisted other Investigators for the Division of Securities on other cases. I am currently a student at the University of Utah and I will graduate with a degree in Sociology with a minor in Middle Eastern studies in Spring 2008. I am currently investigating possible violations of securities fraud statutes and related criminal code violations by DARIN LAYNE KRACL.

2. The facts set forth in this affidavit are based upon the results of an investigation during which I have collected and reviewed records from witnesses and other sources. I have received information from Jeremiah Cox, Louis Luke Rothey, Jr., and others.

PARTIES

3. DARIN LAYNE KRACL, at all pertinent times, resided in Utah, and his last known address is 1893 W. Pervenche Lane, South Jordan, UT 84095.

4. Advanced Trading Solutions, LLC registered with the Utah Division of Corporations on September 27, 2006. DARIN LAYNE KRACL is listed as a Member. Advanced Trading Solutions, LLC's status is expired as of January 16, 2008.

BACKGROUND

5. Between December 2006 and January 2007, DARIN LAYNE KRACL met with investors at KRACL's business, Advanced Trading Solutions, LLC , located in Salt Lake County.

6. KRACL has not held any licenses with the National Futures Association or with the Utah Division of Securities. KRACL offered to do foreign exchange (forex) trading with

investors' funds, and would receive a percentage of profits made. The trading of another person's funds can be an investment contract. An investment contract is a security as defined by Utah Code Annotated §61-1-13.

7. Prior to investing, KRACL did not provide investors with the information ordinarily provided in a prospectus including but not limited to: financial statements, descriptions of the backgrounds of the company officers and directors, a list of the risk factors relating to the investment, and a discussion of the company's business operations.

8. KRACL did not disclose other material facts to investors, including but not limited to: suitability factors for the investments, the nature of competition for forex trading, and if the investment KRACL offered was a registered security or exempt from registration.

9. Third District Court documents show KRACL was charged with third degree felony theft on January 30, 1992. KRACL pleaded guilty to a class A misdemeanor charge. KRACL failed to disclose this information to investors.

10. During January 2007 through May 2007, KRACL received approximately $6.7 million from two investors. Subsequent to making the investments, the two investors have been able to recover approximately $2 million (approximately $1.7 million in interest payments, and $275,000 in returned principal).

COUNT 1
SECURITIES FRAUD, a second degree felony
(Jeremiah Cox and Luke Rothey)

11. Jeremiah Cox and Louis Luke Rothey, Jr. , through a rule 506 Regulation D filing with

the Securities and Exchange Commission (SEC) and a Private Placement Memorandum (PPM), raised money from investors. Cox and Rothey planned to use their own personal funds, along with money raised from the PPM, to invest in forex trading. Cox and Rothey were introduced to KRACL by another individual, who suggested Cox and Rothey contact KRACL.

12. On or about December 2006 through January 2007, Cox and Rothey met with KRACL multiple times at KRACL's office, located in Draper, Utah. At the meetings, KRACL offered Cox and Rothey the opportunity to invest with Advanced Trading.

13. During the meetings, KRACL told Cox and Rothey he learned to trade forex from "a group in Vancouver," and had been trading forex since on or about August 2004. KRACL said he worked with the Vancouver group to develop a "proprietary" trading platform, in which KRACL could trade up to ten accounts at the same time. Cox said KRACL made the platform trading sound like all of the accounts were traded like one big account. KRACL said he spent $250,000 to develop the platform, but the platform was worth over $1 million. KRACL said Cox and Rothey would occupy account number seven out of an available ten spots. KRACL said his other six clients were his only other clients. KRACL said there was approximately $12 million under management in the other six accounts. KRACL said he did not really want to have any other clients, and Cox and Rothey were lucky to be associated with KRACL.

14. Cox and Rothey asked KRACL about opening accounts for all of their clients, so that all

of the money Cox and Rothey had raised could be kept separate. KRACL said his platform allowed him to set up four sub-accounts under the main account, but KRACL would not separate the accounts completely. Cox and Rothey said KRACL was very adamant about Cox and Rothey only having one account.

15. KRACL said he made money by trading the pound/dollar pair. KRACL said he looked for trends in the market. KRACL said he made money from what he called Price Interest Points (PIPs). Cox said he was aware that PIPs are basically points; when a trader has a gain in PIPs, the trader earns money. KRACL said he normally traded 10% of a customer's account at any given time, but KRACL traded his own account at 30%. KRACL said if 30% of an account were traded, and the currency pair were to move 300 PIPs, then the account would double. KRACL said he monitored the trades, and if the trading was negative, KRACL would close out and wait for the next wave. Cox and Rothey asked KRACL to train them on how KRACL traded forex, but KRACL said he did not trust others, so his business was a "one man show."

16. Cox and Rothey asked to see account statements on the trading, but KRACL said he could not provide copies of the account statements for Cox and Rothey to keep, since KRACL wanted to keep his other investors' information confidential. KRACL did show Cox and Rothey statements on one individual's account, and the statements showed the individual's account had a 200% return on the investment. KRACL told Cox and Rothey he made an average monthly return of 47.5% for trading accounts during the prior 12

months. Cox and Rothey said the account statements KRACL showed them were on letterhead for a company called FX Solutions, LLC. KRACL said FX Solutions was the broker he used, and Cox and Rothey's trading account would be with FX Solutions. This was an untrue statement. According to documents and account statements provided by FX Solutions, KRACL never opened an account for Cox and Rothey through FX Solutions.

17. KRACL said he traded accounts for some famous people, including Charles Barkley, Evander Holyfield, and Richie McDonald, who is the lead singer of the country band Lonestar. KRACL said somebody gave KRACL $5 million to trade, and KRACL made this person $3 million in profit. KRACL would not say who the person was, but said Cox and Rothey "would know him." Cox and Rothey said KRACL made this comment after talking about Charles Barkley.

18. KRACL said if a trader could not earn 20% per month, the trader had no business trading. KRACL told Cox and Rothey he never had a losing month while trading. This was an untrue statement. According to account statements provided by FX Solutions' compliance officer, KRACL's personal trading account had a balance of $235,787.10 on November 6, 2006. Between November 6, 2006, and January 6, 2007, KRACL lost approximately $226,685 in trades, and approximately $8,000 in premiums were deducted from the account, leaving a balance of $787.15 on January 6, 2007.

19. Cox and Rothey asked KRACL if there was a contract length of time for the investment.

KRACL said there was no length of time the investment funds needed to be with KRACL. KRACL said either side could pull out of the investment at anytime, meaning Cox and Rothey could pull their investment funds out at any time, or KRACL could drop Cox and Rothey from his client list. KRACL said he would not trade for Cox and Rothey until Cox and Rothey had $250,000 in their account. KRACL said he wanted Cox and Rothey's account to have $1 million in a fairly short amount of time, or KRACL would drop Cox and Rothey. Cox and Rothey said KRACL only discussed using investment funds for forex trading. KRACL did not discuss using investment funds for any other purpose, nor did Cox and Rothey authorize KRACL to use the funds for any other purpose.

20. KRACL said he would take either a 12% or 24% trading fee from the profits he made for Cox and Rothey. KRACL said he would take 12% if there was less than a 50% gain for the month, and would take 24% if the account had 50% or more in gains for the month. KRACL agreed to give Cox and Rothey biweekly statements on their account. KRACL said he wanted to stop trading investors' accounts once KRACL hit a personal worth of $50 million.

21. Cox and Rothey asked KRACL if KRACL held any licenses. KRACL said he did not. KRACL said since forex trading is not overseen by the SEC, no license was required to trade forex. This was an untrue statement. KRACL would need to be licensed in securities to trade client funds.

22. Prior to investing any funds, Cox and Rothey said they did a LexisNexis search on KRACL. Cox and Rothey said they were unable to find anything on KRACL. Cox said he checked on Advanced Trading through the Utah Division of Corporations on or about December 2006. Cox said he noticed KRACL was listed as a principal.

23. On or about December 26, 2006, KRACL gave Cox a document on FX Solutions letterhead, entitled *Discretionary Trading Authorization/Power of Attorney*. The document shows an account number (to be determined) for an FX Solutions account in the name of All World Consortium, Inc., which is Cox's company. The document states Advanced Trading was authorized to engage in forex trading for Cox/All World in one or more accounts with FX Solutions. The document showed Advanced Trading would earn 12-24% in management fees. Cox said both he and KRACL signed the form while at KRACL's office, which was located in Draper, Utah. According to FX Solutions' compliance officer, an account for All World was never opened through FX Solutions.

24. Prior to Cox and Rothey's investment, KRACL failed to disclose some of the information provided in paragraphs 7, 8, and 9.

25. KRACL failed to tell Cox and Rothey he was not authorized to trade funds for Cox and Rothey. According to FX Solutions' compliance officer, only KRACL's personal funds were to be transferred to KRACL's FX Solutions trading account. As far as FX Solutions was concerned, all funds deposited into KRACL's account were from KRACL's personal funds. KRACL was not authorized to move other peoples' funds into

KRACL's trading account to be traded.

26. Based on KRACL's representations, Cox and Rothey invested by wiring $175,000 to Advanced Trading's Wells Fargo Bank account on or about January 17, 2007. According to Advanced Trading's bank records, KRACL was the only authorized signatory on the Advanced Trading bank account.

27. After Cox and Rothey invested with KRACL, KRACL told them he had set up an account for All World. Rothey said he understood this to mean an account was set up for All World at FX Solutions, and on KRACL's trading platform.

28. On or about January 22, 2007, KRACL was contacted by Michael Hines of the Utah Division of Securities about a prior complaint against KRACL. KRACL told Hines he did not trade other investors' funds, only KRACL's own personal account. During the conversation, Hines told KRACL if KRACL traded other people's money, it could be an investment contract, which meant KRACL would need to be licensed with the Division. KRACL said he understood. With the exception of Cox and Rothey's first investment of $175,000 on January 17, 2007, all other investments Cox and Rothey gave to KRACL occurred after January 22, 2007. KRACL failed to tell Cox and Rothey he had been contacted by the Division about a prior complaint.

29. On or about February 27, 2007, Cox and Rothey contacted KRACL and asked about their account status. Cox and Rothey received a financial statement by facsimile from KRACL on their forex trading account. The document consisted of two pages which

appear to have been typed on a word processing program, and shows a breakdown of how much money was in the main account and sub-accounts. The statement shows Cox and Rothey's account had grown 21.6% between January 9, 2007, and February 27, 2007. Cox and Rothey said they had seen FX Solutions statements on other accounts prior to their investments, but the statement Cox and Rothey received did not appear to be from FX Solutions. At about this time, Cox and Rothey requested to have daily updates on their account, and to have financial statements from FX Solutions sent to them. Cox and Rothey said KRACL ignored their requests. (Cox and Rothey said KRACL preferred to contact them through cellular text messaging. When Cox and Rothey requested the FX Solutions statements on their account, Cox and Rothey said KRACL would not reply to the messages.)

30. On or about February or March 2007, KRACL told Cox and Rothey he was working on getting an account for somebody in Phoenix, and the account would bring $200 million to Advanced Trading. Cox and Rothey said they understood the customer was to be the Phoenix Suns basketball team, based on the conversation Cox and Rothey had with KRACL.

31. From on or about January 17, 2007, to May 25, 2007, Cox and Rothey invested approximately $6,770,000 with KRACL. KRACL said Cox and Rothey's account earned $2 million between February and May 2007. After KRACL took out his fees, KRACL sent approximately $1.7 million in represented net profits to Cox and Rothey. Cox and

Rothey said the last monthly statement they received from KRACL was for April 2007.

32. KRACL moved Cox and Rothey's funds between three bank accounts. Two of the accounts were with Wells Fargo Bank (a personal account and a business account for Advanced Trading), and the third was a personal account with Zions Bank. Advanced Trading's account received Cox and Rothey's investment funds, and was used for business expenses, along with some personal expenses. KRACL's personal account with Wells Fargo Bank was used to send funds to FX Solutions, and for some personal expenses. KRACL was the sole signatory on both of the Wells Fargo Bank accounts. KRACL's personal account with Zions Bank was shared with KRACL's wife and was used for personal expenses.

33. Advanced Trading's Wells Fargo Bank records reveal KRACL used Cox and Rothey's investment funds in the following manner: $395,437.89 to a title company; approximately $869,600 for automobiles and other vehicles/trailers; approximately $1.7 million in payments to Cox and Rothey from Cox and Rothey's own investment funds; approximately $2.1 million in payments to other unrelated individuals/companies; approximately $239,000 sent to KRACL's Zions Bank personal account; about $288,000 in withdrawals; and approximately $327,000 used for the purchase of a minor league baseball team.

34. Wells Fargo Bank and Zions Bank records reveal KRACL also used Cox and Rothey's funds for other personal expenses, including: cell/telephone bills; insurance payments;

mortgage payments; cash withdrawals; groceries; gasoline; entertainment; travel; jewelry; credit card payments; sports memorabilia; clothing; utility payments; and tithing.

35. According to KRACL's Wells Fargo Bank records and FX Solutions statements, KRACL sent $1,175,000 of Cox and Rothey's funds to FX Solutions to trade forex between February 1, 2007, and April 20, 2007. All of the funds were deposited into KRACL's personal trading account. Between June 1, 2007, and June 28, 2007, KRACL moved $1,140,000 from the FX Solutions account back to KRACL's personal Wells Fargo Bank account.

36. On or about the beginning of June 2007, Cox asked KRACL for a personal loan of $600,000. Cox said he had a couple of deals closing, and could pay KRACL back in about a month. KRACL said he would check his personal account. Some time later, KRACL said he could loan Cox the funds. On or about June 8, 2007, KRACL wired $600,000 to Cox. Approximately $570,000 of the funds were the original principal investment funds given to KRACL by Cox and Rothey for forex trading.

37. On or about mid-June 2007, KRACL told Cox and Rothey their forex trading account was down, so no profit check would be sent for the month of June 2007. Cox and Rothey said some of their clients wanted their investment funds back, so on or about June 28, 2007, Cox sent an email to KRACL requesting 100% of the investment funds to be returned.

38. At the end of June 2007 or beginning of July 2007, KRACL said he could not get Cox and Rothey's funds back. KRACL said Cox and Rothey's investment funds were pooled with other investor funds, and were being used to leverage the other investors' funds. KRACL said if he were to remove Cox and Rothey's funds, the other clients would lose money. Cox said KRACL made it sound like Cox and Rothey's funds were being used in the same account as other clients. Cox and Rothey said KRACL continued to put off Cox and Rothey's request for the return of their investment funds for about a month.

39. About mid-July 2007, KRACL told Cox he wanted his $600,000 returned, with interest. KRACL said Cox's deals were taking too long. KRACL told Cox he could have made a good return on the funds if KRACL traded the funds in an account, so KRACL wanted 10% added to the repayment. KRACL said if Cox repaid the loan with the 10% interest, KRACL would return all of Cox and Rothey's investment funds.

40. On or about July 27, 2007, Cox wired the $660,000 to Advanced Trading's Wells Fargo Bank account. At about the same time, Cox and Rothey told KRACL they had waited long enough, and they wanted their investment funds back. KRACL told Cox and Rothey he closed out the forex trading positions, and would give Cox and Rothey back the remaining principal, which was $6,495,000, minus $382,000 of trading losses. KRACL said he would have the money to Cox and Rothey by August 6, 2007.

41. On or about August 3, 2007, Cox sent a text message to KRACL to get an update on the investment funds. Cox said this was the last contact he had with KRACL until mid-

August 2007, when KRACL sent Cox a text message stating KRACL was having trouble getting the investment funds.

42. On or about September 7, 2007, KRACL met with Cox and Rothey at a restaurant in Brigham City, Utah. While at the meeting, KRACL told Cox and Rothey he would try to return Cox and Rothey's funds. KRACL said he had not been truthful with Cox and Rothey. KRACL said he had lost more than the $382,000 in trades by July 27, 2007. KRACL said he really had lost approximately $1.4 million in trades by July 27, 2007. This also was an untrue statement based on information revealed by KRACL's bank records. KRACL said the account was down $2 million as of September 7, 2007. This is a contradictory statement, as KRACL told Cox and Rothey on July 27, 2007, he had closed out all of the trading positions. KRACL agreed to start paying money to Cox and Rothey on a monthly basis in order to pay back the principal.

43. On or about September 28, 2007, KRACL signed some lien documents for Cox and Rothey on KRACL's properties located in South Jordan, Utah, and St. George, Utah.

44. On or about December 6, 2007, KRACL agreed to pay about $65,000 a month to Cox and Rothey. KRACL gave $64,950 to Cox and Rothey at this time.

45. Since Cox and Rothey invested the $6,770,000, Cox and Rothey have received back approximately $2 million in funds, and hold liens on two of KRACL's properties. Cox and Rothey are still owed approximately $4,690,000 in principal.

COUNT 2
THEFT, a second degree felony
(Jeremiah Cox and Luke Rothey)

46. KRACL represented to Cox and Rothey that he would use Cox and Rothey's investment funds to trade forex. Bank records reveal Cox and Rothey wired $175,000 into Advanced Trading's Wells Fargo Bank account on or about January 17, 2007, bringing the account balance to $344,093.71. Bank records show KRACL spent Cox and Rothey's $175,000 investment in the following manner: $117,261.03 used to purchase automobiles, $5,000 as a deposit on a trailer, and $52,738.97 as a payoff payment on a Porsche and Visa. By January 25, 2007, the $175,000 was spent, and Advanced Trading's Wells Fargo Bank account had a balance of $220,130.76. Cox and Rothey authorized their funds to be used to trade forex. Cox and Rothey did not authorize KRACL to use investment funds for any other purpose.

47. KRACL obtained money from Cox and Rothey and exercised unauthorized control of the money with the purpose to deprive them thereof.

COUNT 3
FALSE STATEMENTS UNLAWFUL, a third degree felony

48. On or about January 22, 2007, KRACL was contacted by Hines of the Division about a prior complaint against KRACL. During their conversation, KRACL told Hines he did not trade other investors' funds, only KRACL's own personal account. This was a false statement. According to KRACL's Wells Fargo Bank account records, Cox and Rothey wired their $175,000 investment to KRACL on January 17, 2007, with the understanding

that the funds would be used for forex trading.

49. During proceedings under the Utah Uniform Securities Act, Utah Code Annotated §61-1-1, et seq, KRACL made a statement to the Division which was, at the time and in the light of the circumstances under which it was made, false or misleading in a material respect.

SUMMARY

50. Based on my review of the evidence there is probable cause to believe that KRACL committed the crimes of:

SECURITIES FRAUD
a second degree felony, 1 count

THEFT
a second degree felony, 1 count

FALSE STATEMENTS UNLAWFUL
a third degree felony, 1 count

DATED this 22 day of February, 2008.

Jeffery Nielsen, Affiant

SUBSCRIBED AND SWORN to before me on this 22 day of February, 2008.

Kate A Toomey

JUDGE, THIRD DISTRICT COURT

FILED DISTRICT COURT
Third Judicial District

FEB 22 2008

SALT LAKE COUNTY
By _____ Deputy Clerk

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IN THE THIRD JUDICIAL DISTRICT COURT, ~~WEST JORDAN~~ SALT LAKE KT

SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	Bail $ _____
Plaintiff,	:	**CRIMINAL INFORMATION**
vs.	:	
DARIN LAYNE KRACL DOB: January 3, 1968	:	Case No: 081901383
Defendant.	:	Judge: _____

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

SECURITIES FRAUD,
a second degree felony, 1 count

THEFT
a second degree felony, 1 count

FALSE STATEMENTS UNLAWFUL,
a third degree felony, 1 count

COUNT 1
SECURITIES FRAUD
a second degree felony

Commencing on or about December 2006, in the State of Utah, County of Salt Lake, the defendant, in connection with the offer or sale of a security, directly or indirectly, to **JEREMIAH COX and LUKE ROTHEY**, 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
THEFT
a second degree felony

Commencing on or about January 2007, the defendant obtained or exercised unauthorized control over the property of **JEREMIAH COX and LUKE ROTHEY**, with a purpose to deprive them thereof. The value of the property is or exceeds $5,000.00. This is a violation of Utah Code Ann. § 76-6-404, a second degree felony.

COUNT 3
FALSE STATEMENTS UNLAWFUL
a third degree felony

Commencing on or about January 2007, the defendant, willfully, caused to be made, in any document filed with the Division of Securities, or in any proceeding, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in

any material respect, in violation of Utah Code Ann. §§61-1-16 and 61-1-21. This violation is a third degree felony under Utah Law.

DATED this 22 day of February, 2008

JEFFERY NIELSEN, Affiant

SUBSCRIBED AND SWORN to before me on this 22 day of February, 2008.

Judge, Third District Court

STATE OF UTAH
THIRD DISTRICT COURT
SALT LAKE CITY

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

1. Jeremiah cox
2. Luke Rothey, Jr.
3. Michael Hines, Division of Securities
4. and Others.

AUTHORIZED FOR PRESENTMENT AND FILING this 21st day of February, 2008.

MARK L. SHURTLEFF
Utah Attorney General

By: Charlene Barlow
CHARLENE BARLOW
Assistant Attorney General

FILED DISTRICT COURT
Third Judicial District

FEB 22 2008

SALT LAKE COUNTY

By _____
Deputy Clerk

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IN THE THIRD JUDICIAL DISTRICT COURT, ~~WEST JORDAN~~ SALT LAKE

SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	Bail $ _____
Plaintiff,	:	**WARRANT OF ARREST**
vs.	:	
DARIN LAYNE KRACL, DOB: January 3, 1968	:	Case No. 081901383
	:	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 Jeffery Nielsen, and it appearing from the Information, or affidavit filed with the Information, that there is probable cause to believe that the public offense of: **Securities Fraud, a second degree felony, 1 count; Theft, a second degree felony, 1 count; and False Statements Unlawful**

STATE OF UTAH
THIRD DISTRICT COURT
SALT LAKE CITY

third degree felony, 1 count, has been committed, and that the defendant, DARIN LAYNE KRACL, 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 $ 25,000.00 cash only

DATED this 22 day of February, 2008.

Kate A Toomey

HONORABLE, K TOOMEY
JUDGE, THIRD DISTRICT COURT

STATE OF UTAH
THIRD DISTRICT COURT
SALT LAKE CITY

Defendant's Last Known Address:

1893 W. Pervenche Lane
South Jordan, UT

I CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL DOCUMENT ON FILE IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH

DATE: February 22, 2008

DEPUTY CLERK

STATE OF UTAH
THIRD DISTRICT COURT
SALT LAKE CITY