FILED DISTRICT COURT
Third Judicial District

SEP 16 2008

SALT LAKE COUNTY

By _____ Deputy Clerk

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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	Bail $ _____
Plaintiff,	:	**CRIMINAL INFORMATION**
vs.	:	
DAVID LYNN JOHNSON, DOB: March 1, 1962	:	Case No: 081907140
	:	Judge _____
Defendant.		

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 (4 counts)

THEFT
a second degree felony (2 counts)

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

COUNT 1
SECURITIES FRAUD
a second degree felony

Commencing on or about January 2005, in the State of Utah, Salt Lake County and elsewhere, the defendant, in connection with the offer or sale of a security, directly or indirectly, to **ROB McCLEVE**, 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

From on or about January 2005, the defendant obtained or exercised unauthorized control over the property of **ROB McCLEVE**, with a purpose to deprive him thereof. The value of the property is or exceeds $5,000.00. This is a violation of Utah Code Ann. § 76-6-404, a second degree felony.

COUNT 3
SECURITIES FRAUD
a second degree felony

Commencing on or about Janaury 2005, in the State of Utah, Weber County and elsewhere, the defendant, in connection with the offer or sale of a security, directly or indirectly, to **CORT OUDERKIRK**, 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
THEFT
a second degree felony

From on or about January 2005, the defendant obtained or exercised unauthorized control over the property of **CORT OUDERKIRK**, with a purpose to deprive him thereof. The value of the property is or exceeds $5,000.00. This is a violation of Utah Code Ann. § 76-6-404, a second degree felony.

COUNT 5
SECURITIES FRAUD
a second degree felony

Commencing on or about March 2008, in the State of Utah, Weber County and elsewhere, the defendant, in connection with the offer or sale of a security, directly or indirectly, to **JEFFERY NIELSEN (undercover)**, 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

Commencing on or about March 2008, in the State of Utah, Salt Lake County and elsewhere, the defendant, in connection with the offer or sale of a security, directly or indirectly, to **RYAN JOLLEY**, 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
PATTERN OF UNLAWFUL ACTIVITY
a second degree felony

Commencing on or about January 2004, the defendant has engaged in conduct which constituted the commission of at least three episodes of unlawful activity as defined in Utah Code Ann. § 76-10-1601. The defendant: (1) received proceeds derived, directly or indirectly, from a pattern of unlawful activity as more fully defined in Counts 1 through 6 above, in which he participated as a principal, or he used or invested, directly or indirectly, any part of that income, or the proceeds of the income, or the proceeds derived from the investment or use of those proceeds, in the acquisition of any interest in, or establishment or operation of, any enterprise; (2) through a pattern of unlawful activity acquired or maintained, directly or indirectly, any interest in or control of any enterprise; or (3) was employed by, or associated with

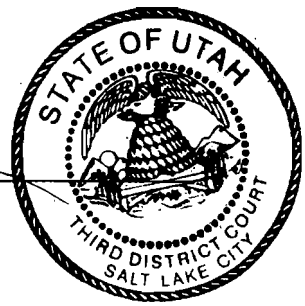
any enterprise and conducted or participated, whether directly or indirectly, in the conduct of that enterprise's affairs through a pattern of unlawful activity. The unlawful activity included three or more violations of securities fraud and theft. This is a violation of Utah Code Ann. §76-10-1601 and § 76-10-1603(5) (1995), et seq. a second degree felony.

DATED this 16 day of September, 2008.

JEFFERY NIELSEN, Affiant

SUBSCRIBED AND SWORN to before me on this 16 day of September, 2008.

JUDGE, Third Judicial District Court



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

1. David Johnson
2. Rob McCleve
3. Cort Ouderkirk
4. Ryan Jolley
5. Chad Nay
6. And Others.

AUTHORIZED for presentment and filing this 15 day of September, 2008.

MARK L. SHURTLEFF
Utah Attorney General

By: E. Neal Gunnarson
E. NEAL GUNNARSON
Assistant Attorney General

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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.	:	
DAVID LYNN JOHNSON DOB: March 1, 1962	:	Case No: 081907140
	:	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 graduated from the University of Utah with a degree in Sociology and 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 DAVID LYNN JOHNSON.

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 DAVID L. JOHNSON, Rob McCleve, Cort Ouderkirk, Ryan Jolley, Chad Nay, and others.

PARTIES

3. DAVID LYNN JOHNSON, at all pertinent times, resided in Utah, and his last known address is 1100 S State, Richmond, UT 84333.

4. D.L. Johnson Co., LLC (DLJ Co.) registered with the Utah Division of Corporations on June 13, 2001. DAVID L. JOHNSON is listed as the Manager and Registered Agent. DLJ Co.'s status is active as of May 20, 2008. DLJ Co. is not registered with the Utah Division of Securities.

5. Xtra Source, LLC registered with the Utah Division of Corporations on September 13, 2007. Nate Miller (N. Miller) is listed as a Manager and Registered Agent. Kyle Miller (K. Miller) is listed as a Manager. Xtra Source's status is active as of May 20, 2008. Xtra Source is not registered with the Utah Division of Securities.

BACKGROUND

6. JOHNSON offered people the opportunity to invest funds with JOHNSON to day trade stocks, and investors funds were pooled into the same account. In return for investment funds, JOHNSON offered investors a return of 3-5% per month. The trading of another person's funds can be an investment contract. JOHNSON also offered promissory notes to some of the investors. Investment contracts and promissory notes are securities as defined by Utah Code Annotated §61-1-13.

7. Sometime during or about early 2008, JOHNSON began telling some of his investors he was in violation of state securities statues. JOHNSON said in order to fix the problem, a "restructuring" of the company took place. The restructuring which was to take place is as follows: N. Miller and K. Miller, who previously invested with JOHNSON, were to collect funds through a Rule 506 offering through their company Xtra Source. The collected funds were then to be given to JOHNSON in order to day trade stocks. Not all investors were told of this new structure, nor were all new/old investors' funds reinvested with or rolled over to Xtra Source.

8. A majority of the investors' funds were deposited into a US Bank account set up for DLJ Co., on which JOHNSON was the sole signatory. Some investors' funds were deposited into a bank account JOHNSON had at Washington Mutual Bank.

9. Prior to any investments, JOHNSON did not provide investors with the information ordinarily provided in a prospectus, including but not limited to: financial statements,

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

10. JOHNSON did not disclose other material facts to investors, including but not limited to: nature of competition for day trading of stocks, suitability factors for the investment, a minimum investment amount needed to invest, the number of investors JOHNSON had, a track record of the company to the investors, conflicts of interest involved with the investment, if the promissory notes/investment contracts JOHNSON offered were registered securities or exempt from registration, or if JOHNSON was licensed to sell securities.

11. Second District Court documents show JOHNSON was involved in a civil legal proceeding commencing in October 2005. The case disposition was dismissed in January 2007. JOHNSON failed to disclose this information to investors.

12. JOHNSON filed for chapter 7 bankruptcy in 1996. JOHNSON failed to disclose this information to investors.

13. The Utah Division of Securities sent JOHNSON a letter regarding possible violations of securities licensing statues in August 2007. JOHNSON retained an attorney, but a response was never returned to the Division. On or about December 28, 2007, the Division sent another letter to JOHNSON requesting information on the possible offer and sale of securities to investors. JOHNSON responded by letter, which the Division received on January 25, 2008, stating JOHNSON met with a securities attorney, and was

"closing the company [DLJ Co.] down and returning the money to those who have asked me to do work for them." JOHNSON failed to disclose this information to investors.

14. Starting on or about July 2005 to April 2008, JOHNSON received about $185,181 from three investors. Subsequent to the investments, the investors have been able to recover approximately $94,137 in interest and $24,800 in principal payments. JOHNSON told one witness he had about 180 investors involved, and it would take approximately $8 million to pay back the principal investment amounts to all investors.

COUNT 1
SECURITIES FRAUD, a second degree felony
(Rob McCleve)

15. Rob McCleve learned about an investment opportunity with JOHNSON from McCleve's nephew about seven to nine years ago. McCleve said he started to consider investing with JOHNSON in or about July 2005.

16. Sometime after July 2005, McCleve received some information about JOHNSON's investment opportunity with DLJ Co. from McCleve's brother. On or about March 31, 2006, McCleve contacted JOHNSON by telephone while in Salt Lake County, Utah. McCleve said he and JOHNSON decided to meet at JOHNSON's home/office located in Ogden, Utah.

17. During the meeting, JOHNSON said he day traded stocks. JOHNSON said he primarily traded Google stock, and JOHNSON would close out all trades at the end of each day. JOHNSON said investments ranged from $200 invested to about $104,000 for the largest

investor. JOHNSON said investors earned 5% per month on their investment, and investors could either roll over the interest payments or receive monthly payments. JOHNSON said he would keep whatever amount of money he earned above the 5% he had to pay to investors each month. JOHNSON said McCleve would receive monthly statements on his investment and an interest check by the fifth of every month.

18. JOHNSON said he did all of the trading himself. JOHNSON said he wanted to stop taking in new investors by Spring 2007, and JOHNSON said he was looking to lower the interest offered from 5% per month to 3% per month. JOHNSON said he wanted to continue trading until he was 65 years old.

19. JOHNSON said he had been trading for about seven to eight years, and the trading was pretty "rocky" when JOHNSON first began. JOHNSON said when he began trading, JOHNSON would work at night, and then trade stocks during the day. JOHNSON said day trading was pretty volatile, but JOHNSON said he was able to capture the volatility, and was able to make money even when the stock market was down through long and short trading.

20. JOHNSON said he had about 50-60 investors involved and never had problems paying his investors on-time. JOHNSON said all investor funds would be pooled in the same account. JOHNSON said McCleve could get his investment funds out at any time. JOHNSON said if he received a request early enough, the investor would get the funds back the same day. If not, the funds would be available to the investor the next day.

JOHNSON said if anything were to happen to him, JOHNSON's parents and JOHNSON's accountant would take over JOHNSON's affairs to pay back the investors.

21. Based on JOHNSON's representations, McCleve invested by giving JOHNSON a $10,000 personal check while at the meeting. McCleve said the money was from equity in McCleve's home. McCleve said he only authorized JOHNSON to use the investment funds for stock trading. McCleve said he was not to have an active role in the investment.

22. Bank records reveal 11 separate deposits of McCleve's funds were made into DLJ Co.'s US Bank account between January 3, 2005, and January 31, 2008, as follows: $10,000 on March 31, 2006; $28,975 on June 1, 2006; $10,000 on June 26, 2006; $16,000 on June 26, 2006; $2,318 on July 6, 2006; $587 on September 8, 2006; $1,400 on September 18, 2006; $1,101 on November 7, 2006; $5,000 on January 29, 2007; $7,000 on May 1, 2007; and, $2,000 on June 15, 2007. McCleve also invested $12,000 on October 30, 2007, which was deposited into a Washington Mutual Bank account, and $1,800 on January 30, 2008 (unknown where funds were deposited).

23. Prior to the all of McCleve's investments, JOHNSON failed to provide McCleve with any disclosure documents. JOHNSON also failed to provide McCleve with some of the information found in paragraphs 9, 10, 11, 12, and 13.

24. McCleve said he tried to stay close to JOHNSON so he would know quickly if anything went wrong. On or about the beginning of 2007, McCleve spoke with a neighbor who

works for Fidelity. McCleve told the neighbor about JOHNSON's investment opportunity. The neighbor said JOHNSON may need a securities license, so McCleve asked JOHNSON if JOHNSON was licensed. JOHNSON said he was advised by his accountant he did not need a license.

25. McCleve said he started to have problems in getting his monthly interest checks and statements from JOHNSON starting on or about May 2007. McCleve said JOHNSON made it sound like the problem with getting the checks out on time was because there were too many investors involved. McCleve said JOHNSON wanted to cut back by dropping smaller investors. McCleve said JOHNSON also had other excuses for the problems, such as the stock market going crazy, which consumed a lot of JOHNSON's time.

26. On or about late summer/early fall 2007, JOHNSON told McCleve he needed to be licensed, and was taking courses to become licensed. About this same time, McCleve took a friend who owned an investment business to meet JOHNSON. After the meeting, McCleve's friend said McCleve needed to get his investment funds out of JOHNSON's company, because the business was questionable and might be in violations of securities statutes. McCleve's friend said if somebody were to call the Division of Securities, McCleve's funds could be in jeopardy. McCleve said he talked with JOHNSON about the concerns brought up by McCleve's friend, but JOHNSON told McCleve everything was alright.

27. On or about September and October 2007, JOHNSON started talking to McCleve about a new stock that was taking off in the market called VMWare. JOHNSON said he wanted McCleve and a couple of other investors to bring in more investors and money. JOHNSON said he made about $1.2 million in September 2007, and almost $1 million in October 2007.

28. Sometime in the winter of 2007, JOHNSON told McCleve he was no longer in compliance with state statutes. On or about January or February 2008, JOHNSON talked about changing the business structure in order to comply with law, and JOHNSON said he and an investor named N. Miller were meeting with attorneys to do so. JOHNSON said the new structure would involve N. Miller's company, Xtra Source, LLC. JOHNSON said investors' funds would go into Xtra Source, and then JOHNSON would continue to trade for Xtra Source's investors. JOHNSON said previously invested funds would be transferred to Xtra Source eventually. JOHNSON and N. Miller told McCleve the new structure involved the use of private placement memorandums and investors would need to qualify as accredited.

29. McCleve said he had introduced about 15-20 people to JOHNSON, which is mostly his family and some friends. McCleve said starting on or about April or May 2008, JOHNSON started to push McCleve hard for new investor referrals. McCleve said JOHNSON even talked about paying a commission to McCleve if McCleve made

referrals, but McCleve said he did not accept or receive any compensation or commissions for introducing people to JOHNSON.

30. Between March 2006 and January 30, 2008, McCleve made a total of 12 investment deposits for a total investment of $98,181. McCleve rolled over his interest payments for April, May, June, and July 2006, and started receiving monthly interest payments from August 2006 to April 2008. McCleve received about $93,137 in interest payments and $24,800 in principal withdrawals since investing.

COUNT 2
THEFT, a second degree felony
(Rob McCleve)

31. JOHNSON represented to McCleve that he would use McCleve's investment funds for stock trading. Bank records reveal 11 separate deposits of McCleve's funds were made into DLJ Co.'s US Bank account between January 3, 2005, and January 31, 2008. A first in first out analysis on two of McCleve's investment deposits revealed as follows:

a. On or about April 4, 2006, McCleve's first investment, $10,000, was deposited into the DLJ Co. account, bringing the account balance to $115,992.31. According to the bank records, JOHNSON used $9,573.62 as payments to four other possible investors, $374 for an unknown use, and $50.32 as a payment to JOHNSON. These funds were spent by May 8, 2006.

b. On or about June 2, 2006, $28,975 of McCleve's funds were deposited into the DLJ Co. account, taking the account balance to $73,703.71. According to the

bank records, JOHNSON spent the funds in the following manner: about $6,600 as "funding" payments to a business called Distinctive Edge, a $4,000 payment to a possible investor, a $9,000 "withdrawal" payment to an individual, numerous payments for car expenses, and in excess of $2,200 in payments to Home Depot, and numerous other personal expenses. These funds were spent by June 27, 2006.

c. JOHNSON's bank records reveal JOHNSON wired $91,000 to a trading account on March 15, 2006, and did not transfer any other funds to the account again until JOHNSON wired $120,000 on November 7, 2006. Both deposits mentioned above were made and spent during the period when JOHNSON did not move any funds over to the trading account.

32. McCleve only authorized his funds to be used for stock trading. McCleve did not authorize JOHNSON to use investment funds for any other purpose.

33. JOHNSON obtained money from McCleve and exercised unauthorized control of the money with the purpose to deprive him thereof.

COUNT 3
SECURITIES FRAUD, a second degree felony
(Cort Ouderkirk)

34. Cort Ouderkirk said he learned from his brother about an investment opportunity with JOHNSON and DLJ Co. sometime during 2004. Ouderkirk said he watched how his brother's investment did for a couple of years before becoming interested in the investment opportunity.

35. Ouderkirk said he met with JOHNSON at JOHNSON's office located in Ogden, Utah, on or about December 2006, and had some subsequent email contact after the meeting. During the meeting, Ouderkirk asked JOHNSON about JOHNSON's business dealings and stock trading. JOHNSON showed Ouderkirk his computer set up consisting of multiple televisions and three computers to monitor the market and financial news. JOHNSON said he traded stock in 1,000 share lots, and traded Google stock exclusively, since Google stock was volatile enough to make money without watching other stocks.

36. JOHNSON said he generally watched the market during the first and last half hour of trading during the day to determine volatility, but JOHNSON said nobody knows exactly how the market's volatility works. JOHNSON said he watched the trading whenever he had money in the market. JOHNSON said he would take trading funds out of the market at the end of every day and whenever JOHNSON left the computer.

37. JOHNSON said he had been involved with a few businesses. JOHNSON said he started a couple of businesses and worked as management for some chain companies. JOHNSON said he was also involved with failed businesses, but by being with them, JOHNSON learned how to make a successful business. JOHNSON said he learned to trade stock by going through the ups and downs over five years and learned to stick with the stocks he knew.

38. JOHNSON offered Ouderkirk 5% per month on Ouderkirk's investment funds. JOHNSON said he would earn the 5% per month through trading, and whatever

JOHNSON earned above the 5% for Ouderkirk would go to JOHNSON. JOHNSON said Ouderkirk would be able to get his investment funds out of the company at anytime, and funds would be made available within about 24 hours.

39. JOHNSON said investment funds were not at risk, and JOHNSON would not lose the money. JOHNSON said he had stops set up in case of trading loses and the money was always secure. JOHNSON said he had about 36 investors. JOHNSON said there was no minimum investment needed to get involved, and investors' funds ranged from a couple of hundred dollars for smaller investors to about $100,000 for JOHNSON's largest investor. JOHNSON said he had about $200,000 of his own funds invested. JOHNSON said investor funds were pooled together in one account.

40. During the meeting, JOHNSON provided Ouderkirk with a packet of documentation. The documents are entitled *How to Get Started*, *Company Information and Guidelines*, and *Deposit and Withdrawal Guidelines*. Also included are two letters to investors: one describing what will happen in the event anything happens to JOHNSON, and another letter, dated September 1, 2006, which describes JOHNSON's trading background, including JOHNSON had traded for about nine years. According to the company info document, "all deposits are guaranteed by the company against any loss," and it states investors would earn 5% per month on investment funds.

41. Based on JOHNSON's representations, Ouderkirk invested by depositing a $10,000 personal check, dated December 29, 2006, into DLJ Co.'s bank account at a US Bank

located in Provo, Utah. Ouderkirk said JOHNSON was only authorized to use investment funds in order to trade stocks.

42. Bank records reveal five separate deposits of Ouderkirk's funds were made into DLJ Co.'s US Bank account between January 3, 2005, and January 31, 2008, as follows: $10,000 on December 29, 2006; $5,000 on March 30, 2007; $35,000 on April 27, 2007; $15,000 on May 31, 2007; and, $1,000 on October 1, 2007. Ouderkirk also invested $1,000 on February 1, 2008, which was deposited into the DLJ Co. US Bank account.

43. Prior to all of Ouderkirk's investments, JOHNSON failed to provide Ouderkirk with any disclosure documents. JOHNSON also failed to provide Ouderkirk with some of the information found in paragraphs 9, 10, 11, 12, and 13.

44. Ouderkirk said he had some email contact with JOHNSON since making the investment. On or about October 2007, Ouderkirk asked JOHNSON about the stock market volatility which occurred during Fall 2007. JOHNSON told Ouderkirk the volatility did not affect his trading, since JOHNSON made money on the volatility.

45. Between December 2006 and February 2008, Ouderkirk invested six times for a total investment of $67,000. Ouderkirk said he rolled over all of his interest payments. On or about July 2008, Ouderkirk sent JOHNSON an email request to return all of Ouderkirk's investment principal plus interest accrued since investing. To date, Ouderkirk has not received any payments from JOHNSON on Ouderkirk's investment.

COUNT 4
THEFT, a second degree felony
(Cort Ouderkirk)

46. JOHNSON represented to Ouderkirk that he would use Ouderkirk's investment funds for stock trading. Bank records reveal five separate deposits of Ouderkirk's funds were made into DLJ Co.'s US Bank account between January 3, 2005, and January 31, 2008. A first in first out analysis on two of Ouderkirk's investment deposits revealed as follows:

a. On or about December 29, 2006, Ouderkirk's first investment, $10,000, was deposited into the DLJ Co. account, bringing the account balance to $145,399.83. According to the bank records, JOHNSON used $4,500 as a payment to another possible investor, about $1,100 as part of a cash withdrawal, two debits for personal expenses, and about $4,300 used as a "funding" payment to a company called Distinctive Edge. These funds were spent by January 24, 2007.

b. On or about April 27, 2007, $35,000 of Ouderkirk's funds were deposited into the DLJ Co. account, bringing the account balance to $491,614.62. According to the bank records, JOHNSON used in excess of $3,000 as payments to other possible investors, a $30,000 "signing bonus" payment to an individual, a $1,500 customer withdrawal, and a $25.03 payment to a gasoline station. These funds were spent by May 22, 2007.

c. JOHNSON's bank records reveal JOHNSON wired $100,000 to a trading account on December 1, 2006, and did not transfer any other funds to the account again until JOHNSON wired $500,000 on August 8, 2007. Both deposits mentioned above were made and spent during the period when JOHNSON did not move any funds over to the trading account.

47. Ouderkirk only authorized his funds to be used for stock trading. Ouderkirk did not authorize JOHNSON to use investment funds for any other purpose.

48. JOHNSON obtained money from Ouderkirk and exercised unauthorized control of the money with the purpose to deprive him thereof.

COUNT 5
SECURITIES FRAUD, a second degree felony
(Undercover Meeting)

49. On March 12, 2008, JOHNSON held a presentation about investing with JOHNSON at the Marriott Hotel located in Ogden, Utah. Four other individuals were present at the meeting, including your affiant. The following occurred during the presentation.

50. JOHNSON said he has traded for about 11 years. JOHNSON said his first three years of trading were a learning experience. JOHNSON said he turned $4,000 into $24,000 over a four month period, but then lost about $8,000, because he "didn't understand the market." JOHNSON said it was scary when he first started trading, but JOHNSON said he has been doing "really well."

51. JOHNSON explained a little about the stock market, and the types of stocks/companies JOHNSON traded. JOHNSON said he was trading approximately $5 million in an account held at Interactive Brokers, which JOHNSON said is similar to an E*Trade account. This was an untrue statement. According to records provided by Interactive Brokers, JOHNSON's account held about $1.4 million during March 2008.

52. JOHNSON said he normally traded "well known, big stocks that are in a really good growth phase," such as Google or Apple stock. JOHNSON said he closed out his trading positions at the end of every trading day, in order to protect the funds from any big drops in price when trading opened again.

53. JOHNSON said he had approximately 58 investors, and none of the investors had ever left him with one exception, a college student who needed their funds to go to school. JOHNSON said all investor funds are pooled in one account, so investors do not have their own account. JOHNSON said he was trying to grow the pool from the $5 million to about $20 to $25 million. JOHNSON said when he reached that amount, he would close the pool, and just trade for the investors involved in the pool at that time. JOHNSON said the more money he had in the account to trade, the more progress he could make. JOHNSON said "it's kind of like swinging with a little bigger bat."

54. JOHNSON said he averaged 50% returns over the last ten years, and had always done 50% or better. JOHNSON showed the group some of the trading history of the various stocks he traded. JOHNSON said it was "not that hard" for him to pick a stock that

would earn 50% based on the stocks JOHNSON showed. JOHNSON said his "expectation is to double [his] money in a year," and if JOHNSON did not double his funds, he was disappointed. JOHNSON said it was possible to double his money in the market, especially through the way he traded. JOHNSON said he made his trading as safe as possible, and the longer he traded, the "safer and safer" he was able to function. This was an untrue statement. Between September and December 2007, JOHNSON began to trade his account on margin, with JOHNSON borrowing in excess of $1 million for the four months. By trading on margin, JOHNSON increased the amount of risk involved. Also, according to Interactive Brokers' monthly statements on JOHNSON's account, JOHNSON had a net loss of $1,889,156.95 between September and December 2007.

55. One individual asked JOHNSON about the stock market's volatility, and how JOHNSON performed during the volatile months. JOHNSON said a lot of money could be made, but a lot of money could be lost. JOHNSON said the market became really volatile about the beginning of August 2007, and JOHNSON "made most of [his] money on the down side because two out of three days are down." During the meeting, JOHNSON stated the following:

a. "See the volatility has been really good for me. And there's been huge plunges and real steady, you know, real high climbs and stuff. And so, that volatility, that's kind of what I live off of, so the more dramatic moves can be, then the more

obvious they are to me, and the more, the stronger I can capitalize on it. So, really, really from about last August until now, it's been really volatile because that's about when the first worries about credit started to be heard. And so it sold off real heavy and then it came shooting out of there at the end of October and then since then it's been up and down and mostly down. But that volatility is kind of what I live off of, ah, that's how I make my money."

56. JOHNSON said the volatility was good for him and the volatility was how he made money. This was an untrue statement. Between August 2007 (when JOHNSON claimed the volatile market conditions began) and February 2008, JOHNSON had a net loss of $2,819,247.02 according to Interactive Brokers monthly statements on JOHNSON's account.

57. JOHNSON said the company he worked for was called Xtra Source Investments (registered with the Utah Division of Corporations as Xtra Source, LLC). JOHNSON provided everybody in attendance with a one page document which explained the levels of membership in Xtra Source Investments, along with contact information for N. Miller, who JOHNSON said was his friend and business partner. JOHNSON said he and N. Miller worked together for about a year. JOHNSON said N. Miller dealt with all of the administrative issues, such as handling of documents, while JOHNSON focused on trading. JOHNSON said Xtra Source has an outside auditor conduct an audit every quarter and at the end of the year on the trading account. Your affiant asked if investors

get a copy of the audited statement. JOHNSON said he was not sure, and would have to check with N. Miller.

58. JOHNSON said the investment opportunity was "pretty cut and dried." JOHNSON said an individual puts in money and receives a monthly payment. JOHNSON said he just plugged away and tried "to make consistent money." JOHNSON said a minimum of $50,000 needed to be invested, and investors could add to their initial investment. JOHNSON said if an investor needed their funds back, the investor just needed to call JOHNSON, and the funds should be available by the end of the day. JOHNSON said he offered investors at least 3% per month return on investments regardless of how well he did in trading. JOHNSON said he tried to make between 5-10% per month in order to pay investors their percentage. Your affiant asked how much JOHNSON made monthly, and JOHNSON said he tried to make about $200,000 per month, which would fulfill his monthly payout to investors plus "a good chunk more."

59. One individual asked if the return was guaranteed, and JOHNSON responded by saying the state does not allow JOHNSON to guarantee anything. JOHNSON said he guaranteed to work very hard with everything he had in him to be successful. JOHNSON said he has proved he has "been able to be successful up to this point." This was an untrue statement by JOHNSON. According to Interactive Brokers' records on JOHNSON's account, JOHNSON had a net loss of $2,767,190.03 between January 2004 and April 2008.

60. JOHNSON said his company went through a restructuring process, because he discovered he was not in compliance with state securities laws, which are set up to protect investors. JOHNSON said he worked with one of the best securities attorneys to fix the problem, which meant JOHNSON needed to offer a private placement memorandum (PPM) to investors. JOHNSON said the attorney drew up the PPM and told JOHNSON he was "free and clear" to raise money for trading. JOHNSON said the PPM was given out because the state wanted investors to have a full disclosure about the investment. JOHNSON said he started providing a PPM to his investors on or about January 2008. JOHNSON said he was not licensed, and did not need to be since he was operating under the PPM, but JOHNSON failed to disclose he was contacted by the Division regarding possible licensing violations in or about August 2007.

61. Your affiant asked if JOHNSON ever had losing months. JOHNSON said he had seven months where he did not make the amount he needed to pay to investors. JOHNSON said sometimes he has had a bad month, but "most of them have been years ago." This was an untrue statement. According to Interactive Brokers' records on JOHNSON's account, JOHNSON had numerous losing months, with some fairly significant losses in the account.

62. JOHNSON said he had approximately $800,000 of his funds in the account, which acted as a buffer for trading losses. JOHNSON said if he had a losing month on trades, the monthly interest payments were made from the $800,000 buffer, and JOHNSON would

have to trade through the buffer to reach investor funds. JOHNSON said whatever he made above the 3% he pays investors was added to the buffer amount. JOHNSON said he used approximately $3,000 per month of the buffer funds for living expenses.

63. Before the meeting ended, Your affiant asked JOHNSON if JOHNSON had been involved in any criminal proceedings or any bankruptcies. JOHNSON said no, when in fact, he filed a chapter 7 bankruptcy in 1996.

COUNT 6
SECURITIES FRAUD, a second degree felony
(Ryan Jolley)

64. Ryan Jolley said he was told about an investment with JOHNSON and DLJ Co. by a friend who had previously invested with JOHNSON. Jolley said he contacted JOHNSON about the investment opportunity by email on or about the end of March 2008. JOHNSON responded to the email by sending some information about DLJ Co. JOHNSON said Jolley would be able to get his investment funds back at any time by making an email request to JOHNSON. Jolley said he requested to meet with JOHNSON before making a decision about the investment.

65. Jolley said JOHNSON's secretary, Sue Tyler, contacted Jolley's friend to inquire about Jolley after the email contact with JOHNSON. Tyler then contacted Jolley by telephone and said JOHNSON wanted Jolley as a client, but it would take a little time because JOHNSON had learned part of the way the business was run was illegal, and would take about three weeks to clear up the issues. Jolley said it seemed like Tyler did not know

for sure what the problem was with the company, so Jolley asked Tyler to send out some additional info on DLJ Co., and then Jolley would discuss the legal issues with JOHNSON when they met.

66. Through email conversations, Jolley requested to have a face to face meeting with JOHNSON. On or about April 11, 2008, Jolley and JOHNSON met at a fast food restaurant located in Salt Lake City, Utah. At the meeting, JOHNSON explained the company's legal issue by saying the manner in which he was trading could not be done with investors who invested small amounts of money. JOHNSON said he had a lot of investors, but the smaller investors were not to be involved in the investment. JOHNSON said he did not want to lose any clients, so instead of losing the smaller investors, JOHNSON would just pool the smaller investors' funds together to get around the issue. JOHNSON said depending on the amount of money Jolley invested, Jolley's funds might have to be pooled with his friend's funds.

67. JOHNSON said there was no risk involved with the investment. One of the documents JOHNSON provided to Jolley is entitled *Company Information and Guidelines*, which states "all deposits are guaranteed by the Company against any loss." Jolley asked JOHNSON how JOHNSON could guarantee the money against any losses. JOHNSON said he would take Jolley's funds and pool it with all of his other investors' funds. JOHNSON said over the years he has traded, JOHNSON has added his own funds, which came from the profits he earned above what he owed in monthly interest payments to

investors. JOHNSON said he trades with X amount of the pool to make the monthly returns, leaving enough money behind to cover everybody's principal investment amounts. JOHNSON said he would have to trade poorly for a long time in order to lose the excess funds in the pool, and even then, JOHNSON would still have enough money to pay back the investors. JOHNSON said it would be impossible to lose all of the pooled funds. JOHNSON said he uses some of the excess money he earns for personal expenses.

68. JOHNSON said he was a day trader and had traded for about six years, and has made a difference in peoples' lives through the money he made for investors. JOHNSON told Jolley he was licensed, and had completed the series 7 courses, when in fact, JOHNSON has not held any securities licenses. JOHNSON said he spends his time working in front of four computer screens, where JOHNSON watches how a few select stocks are doing. JOHNSON said he makes money no matter what the stock market does. JOHNSON said even if the stock market starts to crash, JOHNSON would still be able to make money. JOHNSON said he had traded for so long, he knows when stocks will drop. JOHNSON said if he can see a company's stock will drop, he will sell all of the stock in the company, and then buy the stock back when it reaches the bottom of the drop. JOHNSON said he runs the whole operation, but has somebody that helps him do his work. JOHNSON did not mention who the individual was nor did JOHNSON mention what the person's function was.

69. JOHNSON said investments under $40,000 would earn interest at a rate of 4% per month, and investments $40,000 and higher would earn 5% per month. Jolley said he was looking to invest $20,000 initially. Jolley said if things went well, Jolley would be able to raise his investment principal above $40,000. Jolley asked if he could start earing 5% per month on the $20,000, to which JOHNSON agreed.

70. Jolley told JOHNSON the $20,000 he was looking to invest was a ton of money for Jolley. Jolley said if the money was lost, it would hurt Jolley financially. Jolley asked JOHNSON, "If you were me, knowing what you know about your company, would you invest?" JOHNSON said "absolutely," because the investment was 100% safe, since all deposits were guaranteed against loss, plus the investor would earn a good return.

71. JOHNSON said Jolley could deposit funds directly into the DLJ Co. bank account, write JOHNSON a check, or JOHNSON would accompany Jolley to the bank to deposit the funds. JOHNSON said in return for the investment, JOHNSON would issue Jolley a promissory note. JOHNSON said if Jolley invested by the end of April 2008, JOHNSON would give Jolley credit as if Jolley had actually invested at the beginning of April 2008, since JOHNSON had to put off meeting Jolley.

72. Jolley said JOHNSON sent Jolley a $20,000 promissory note by overnight mail, which Jolley received on or about April 26, 2008. The promissory notes appears to be signed by JOHNSON, and is dated April 1, 2008. Jolley said the promissory note he received offered interest at a rate of 4% per month, so Jolley contacted JOHNSON about the

discussion of earning 5% per month. JOHNSON, in an email, said he would send Jolley a corrected note with the first monthly statement.

73. Based on JOHNSON's representations, Jolley invested by depositing a $20,000 personal check into DLJ Co.'s US Bank account on or about April 29, 2008. Jolley said he made the deposit at the US Bank branch located on Foothill Drive in Salt Lake City, Utah. Jolley said he only authorized JOHNSON to use the $20,000 in order to trade stock.

74. Prior to the $20,000 investment, JOHNSON failed to provide Jolley with any disclosure documents. JOHNSON also failed to provide Jolley with some of the information found in paragraphs 9, 10, 11, 12, and 13.

75. After investing, Jolley received monthly statements and $1,000 interest checks for the months of April and May 2008. On or about mid-June 2008, Jolley learned from his friend that JOHNSON's company was in trouble. Jolley's friend said he requested to have his investment back, but was told it was not possible to get the money back at that time. Sometime after learning of the problem, Jolley received a letter from his bank showing the May 2008 interest payment was returned as uncollectible, and a copy of the check is stamped "account closed."

76. Since making the investment, Jolley has been unable to recover his investment funds, and Jolley has only received one payment of $1,000 to date.

COUNT 7
PATTERN OF UNLAWFUL ACTIVITY
a second degree felony

77. Commencing on or about January 2004, JOHNSON engaged in conduct which constituted the commission of at least three episodes of unlawful activity as defined in Utah Code Ann. §76-10-1603. JOHNSON: (1) received proceeds derived, directly or indirectly, from a pattern of unlawful activity as more fully defined in Counts 1 through 6 above, in which JOHNSON participated as principal, or used or invested, directly or indirectly, any part of that income, or the proceeds derived from the investment or use of those proceeds, in the acquisition of any interest in, or establishment or operation of, any enterprise; (2) through a pattern of unlawful activity acquired or maintained, directly or indirectly, any interest in or control of any enterprise; or (3) was employed by, or associated with any enterprise and conducted or participated, whether directly or indirectly, in the conduct of that enterprise's affairs through a pattern of unlawful activity. The unlawful activity included three or more violations of securities fraud. This is a violation of Utah Code Ann. §76-10-1603, a second degree felony.

SUMMARY

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

SECURITIES FRAUD
a second degree felony, 4 counts

THEFT
a second degree felony, 2 counts

PATTERN OF UNLAWFUL ACTIVITY
a second degree felony, 1 count

DATED this 16 day of September, 2008.

JEFFERY NIELSEN, Affiant

SUBSCRIBED AND SWORN before me this 16 day of September, 2008.

JUDGE, THIRD DISTRICT COURT

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FILED DISTRICT COURT
Third Judicial District
SEP 16 2008
SALT LAKE COUNTY
By _____
Deputy Clerk

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR

SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH,	:	Bail $ _____
Plaintiff,	:	**WARRANT OF ARREST**
vs.	:	
DAVID LYNN JOHNSON, DOB: March 1, 1962	:	Case No: 081907140
	:	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(s) of: **Securities Fraud, a second degree felony, 4 counts; Theft, a second degree felony, 2 counts; and, Pattern of Unlawful Activity, a second degree felony, 1 count,** has been committed, and that the defendant, DAVID LYNN

JOHNSON, 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 $ 50,000.

DATED this 16 day of September, 2008.

HONORABLE,
JUDGE, THIRD DISTRICT COURT

STATE OF UTAH
THIRD DISTRICT COURT
SALT LAKE CITY

Defendant's Last Known Address:

1100 South State
Richmond, UT 84333

STATE OF UTAH
THIRD DISTRICT COURT
SALT LAKE COUNTY

I CERTIFY THAT THIS IS A TRUE COPY OF THE ORIGINAL DOCUMENT ON FILE IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH.
DATE: 9/10/08

DEPUTY COURT CLERK