

DEC 20 2007

By KA / SALT LAKE COUNTY
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, :
 :
 Plaintiff, : **CRIMINAL INFORMATION**
 :
 vs. :
 :
 DOUGLAS WAYNE MERRITT : Case No: 071909388
 DOB: 08/17/1961 :
 :
 GREGORY K. HOWELL : Case No: 071909389
 DOB: 07/12/1972 :
 :
 Defendants. : Judge: _____

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

(DOUGLAS MERRITT)

SECURITIES FRAUD, a second degree felony, 4 counts

THEFT, a second degree felony, 4 counts

PATTERN OF UNLAWFUL ACTIVITY
a second degree felony, 1 count

(GREGORY K. HOWELL)

SECURITIES FRAUD, a second degree felony, 2 counts

COUNT 1
SECURITIES FRAUD
a second degree felony
(MERRITT)

Commencing on or about September 2006, in the State of Utah, County of Salt Lake, and elsewhere, MERRITT, in connection with the offer or sale of a security, directly or indirectly, to **CHARLES BRISSETTE**, 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
(MERRITT)

From on or about September 2006, MERRITT obtained or exercised unauthorized control over the property of **CHARLES BRISSETTE**, with a purpose to deprive him thereof. The value of the property 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
(MERRITT and HOWELL)

Commencing on or about October 2006, in the State of Utah, County of Salt Lake, and elsewhere, MERRITT and HOWELL, in connection with the offer or sale of a security, directly or indirectly, to **DAVID CHRISTIANSEN**, 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
(MERRITT)

From on or about October 2006, MERRITT obtained or exercised unauthorized control over the property of **DAVID CHRISTIANSEN**, with a purpose to deprive him thereof. The value of the property 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
(MERRITT)

Commencing on or about September 2006, in the State of Utah, County of Davis, and elsewhere, MERRITT, in connection with the offer or sale of a security, directly or indirectly, to

LINDA O'CCELLI, 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
THEFT
a second degree felony
(MERRITT)

From on or about September 2006, MERRITT obtained or exercised unauthorized control over the property of **LINDA O'CCELLI**, with a purpose to deprive her thereof. The value of the property exceeds \$5,000.00. This is a violation of Utah Code Ann. § 76-6-404, a second degree felony.

COUNT 7
SECURITIES FRAUD
a second degree felony
(MERRITT and HOWELL)

Commencing on or about February 2007, in the State of Utah, County of Davis, and elsewhere, MERRITT and HOWELL, in connection with the offer or sale of a security, directly or indirectly, to **J. HEATHER WOLL**, 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
THEFT
a second degree felony
(MERRITT)

From on or about February 2007, MERRITT obtained or exercised unauthorized control over the property of **J. HEATHER WOLL and EUGENE GEMMER**, with a purpose to deprive them thereof. The value of the property exceeds \$5,000.00. This is a violation of Utah Code Ann. § 76-6-404, a second degree felony.

COUNT 9
PATTERN OF UNLAWFUL ACTIVITY
a second degree felony
(MERRITT)

Commencing on or about June 2006, MERRITT 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 (1995). The defendant: (1) received proceeds derived, directly or indirectly, from a pattern of unlawful activity as more fully defined in Counts 1 through 8 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.

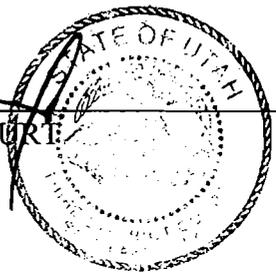
§76-10-1601 and § 76-10-1603(5) (1995), et seq. a second degree felony.

DATED this 20 day of Dec, _____, 2007

Diana Parrish
DIANA PARRISH, Affiant

SUBSCRIBED AND SWORN to before
me on this 20 day of December,
2007.

[Signature]
JUDGE, THIRD DISTRICT COURT



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

1. Charlie Brissette
2. David Christiansen
3. Troy Ferencak
4. Margaret Gauthier
5. Ernestine Hayes
6. Ric Hepburn
7. Isabelle Miller
8. Linda O'Ccelli
9. Heather J. Woll
10. and others

AUTHORIZED for presentment and filing this 19 day of December, 2007

MARK L. SHURTLEFF
Utah Attorney General

By:



E. NEAL GUNNARSON
Assistant Attorney General

the Utah Attorney General's Office as an investigator and the South Salt Lake Police Department in various capacities. I am currently investigating possible violations of securities fraud statutes and related criminal code violations by DOUGLAS WAYNE MERRITT and GREGORY K. HOWELL.

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 Charlie Brissette, David Christiansen, Troy Ferencak, Margaret Gauthier, Ernestine Hayes, Ric Hepburn, Isabelle Miller, Linda O'Ccelli, Heather J. Woll and others.

PARTIES

3. DOUGLAS WAYNE MERRITT (MERRITT) at all pertinent times maintained a residence in Utah.
4. MERRITT's last known address is 500 West 290 North, #112, Bountiful, Davis County, Utah 84010.
5. Utah court records reveal that MERRITT has been sued many times since 1995 and judgments entered against him total more than \$5,300,000.
6. Utah court records reveal that MERRITT was charged with Theft in Third District Court on May 8, 1996. MERRITT entered into a plea agreement and the Theft charge was amended from a second degree felony to a class a misdemeanor on July 15, 1996. MERRITT was fined and sentenced to 18 months court probation on August 26, 2006.

7. Utah court records reveal that MERRITT was charged in Third District Court with Attempted Unlawful Dealing by a Fiduciary, Unlawful Dealing with Property by a Fiduciary, and two counts of Securities fraud on June 17, 1997. MERRITT pleaded guilty to Attempted Unlawful Dealing by a Fiduciary and one count of Securities Fraud on August 29, 2007. MERRITT was sentenced on November 10, 1997 to prison and ordered to pay \$295,000 in restitution. On October 22, 2002, the Utah Board of Pardons entered and abstract of judgment against MERRITT for \$399,782.26.
8. Utah court records reveal that on August 19, 2004, MERRITT was charged with three counts of Securities Fraud, one count of Sales by an Unlicensed Broker-Dealer or Agent, and one count of Sale of an Unregistered Security. On December 11, 2006, MERRITT pleaded guilty to one count of Securities Fraud and Sale of an Unregistered Security and on February 5, 2007, MERRITT was placed on 36 months probation and ordered to pay \$73,900 in restitution. On September 19, 2007, a \$50,000 warrant was issued for MERRITT's arrest for violation of his probation agreement.
9. Utah Division of Securities records reveal that MERRITT has never been licensed as a broker-dealer, agent, investment adviser, or investment adviser representative in Utah.
10. GREGORY K. HOWELL (HOWELL) at all pertinent times maintained a residence in Utah.
11. HOWELL's last known address is 9545 South Stornoway Circle, South Jordan, Salt Lake County, Utah 84095.

12. Utah Division of Securities records reveal that HOWELL has never been licensed as a broker-dealer, agent, investment adviser, or investment adviser representative in Utah.
13. GKH Real Estate Services, LLC (GKH) is a Utah limited liability corporation. Its only member is HOWELL who is listed as the Registered Agent and Member. GKH registered with the Utah Department of Commerce, Division of Corporations on September 17, 2004. GKH's status is Active: Good Standing. Utah Division of Securities records reflect no registration, exemption from registration or notice filing in any manner with respect to securities offerings of GKH.

SECURITIES FRAUD

14. Between June 2006 and May 2007 MERRITT and HOWELL sold investment opportunities in property options to eleven individuals in Utah, California, Colorado, Florida and Nevada raising more than \$1,218,750.
15. MERRITT and HOWELL told investors that MERRITT knew of properties which had been listed with real estate agents but the agents were unable to sell the properties. MERRITT and HOWELL said the owners of the properties were willing to give MERRITT a 90-day option to purchase the properties. MERRITT and HOWELL said MERRITT had buyers lined-up for the properties because of MERRITT's contacts in the oil industry. MERRITT and HOWELL said they make money on the spread between the option price and the sales price of the property. MERRITT and HOWELL said the minimum investment was \$25,000 which would be placed in MERRITT's private

account where the money would remain through the 90-day option period for verification by the property owner. MERRITT and HOWELL said the property owner is paid for the option only if MERRITT sells the property, if MERRITT does not sell the property the investors money is returned to the investor. MERRITT and HOWELL said the investment is without risk because MERRITT controls the money at all times. MERRITT prohibited investors from contacting the property owners directly.

16. A typical Option Agreement provided to investors states “OPTION AGREEMENT by and between Harold Farn (Owner) and Douglas W. Merritt (Buyer) . . . for the sum of \$100,000 in consideration of this option which option payment shall be credited to the purchase price if the option is exercised.”
17. Investors purchased options or portions of options from MERRITT with the expectation they would earn a profit within a certain period of time. In fact, the Option Agreements were fabricated though the properties actually exist.
18. Investment contracts and profit-sharing agreements are securities as defined by Utah Code Annotated § 61-1-13.
19. MERRITT represented to investors he had purchased property options from property owners when, in fact, MERRITT had no interest in the properties. The options MERRITT provided to investors were fabricated and the true owners of the properties had never met or spoken to MERRITT and had not entered into any agreement with MERRITT.

20. MERRITT told investors their investment dollars would be used to purchase property options or used in relation to the sale of property, a statement that was not true. In fact MERRITT used investor money for, among other things, cash withdrawals at ATMs, cash withdrawals at bank branch locations, payments to prior investors, payments to GKH (HOWELL), personal expenses, and to pay MERRITT's attorney.
21. MERRITT told investors that there was little or no risk associated with their investment, a statement that was not true. Risk is associated with every investment.
22. In connection with the offer and sale of an investment contract or profit-sharing agreement to at least one Utah investor and investors in California, Colorado, Florida, and Nevada, MERRITT and HOWELL failed to disclose material information normally found in a prospectus including but not limited to:
 - a. how long MERRITT had been in business;
 - b. financial statements;
 - c. competition;
 - d. capitalization;
 - e. the track record of MERRITT to his investors;
 - f. risk;
 - g. the number of people invested with MERRITT;
 - h. suitability factors for investors;
 - i. the involvement of MERRITT in legal proceedings, including bankruptcy and

prior violations of state or federal securities laws; and

j. whether the investment contract MERRITT offered were registered or exempt from registration.

23. Specifically, MERRITT and HOWELL did not tell investors about MERRITT's fourteen-year history of civil litigation. MERRITT and HOWELL did not disclose that many judgments had been entered against MERRITT including a \$5,300,00 judgment entered October 18, 1996 in Howard M. Lee vs. Douglas W. MERRITT. MERRITT and HOWELL did not disclose MERRITT's history of violating state securities laws.
24. Investors sustained more than \$1,200,000 in losses.

COUNT 1
SECURITIES FRAUD, a second degree felony
(MERRITT)

25. Charles Brissette (Brissette) resides in California. Brissette said he met MERRITT through HOWELL. HOWELL told Brissette he had done successful real estate deals with MERRITT over the past three years. HOWELL said Brissette would make a high return if he partnered with MERRITT. HOWELL provided Brissette with Merritt's Utah cell phone number.
26. Brissette, who was in California at the time, said he telephoned MERRITT in early September 2006. MERRITT said he had been "doing this stuff for years" and he had a land option deal in Banning, California in which Brissette could invest. MERRITT provided Brissette with the physical address of the property. MERRITT said they could

each invest \$150,000 to obtain an option on 65 acres in Banning. MERRITT said when they secured the option, they would annex the land to the city and then sell the land to a developer. MERRITT said he already had a purchaser, KB Homes, interested in buying the property for the purpose of building single family homes. Once the property sold, MERRITT said they would split the profits less expenses. MERRITT predicted they would each make \$400,000 on the deal. Brissette said he asked MERRITT about risk. MERRITT responded that the investment was secured by the land and the worst that could happen was it would take eight or nine months to sell the property.

27. On or about September 11, 2006, Brissette and his wife, Sandra, agreed to invest \$150,000 with MERRITT to purchase an option agreement for 65 acres of land in Banning, California. The contract was faxed from MERRITT to HOWELL in Utah and then by HOWELL to Brissette in California. The contract attachment states:

The division of profits shall be based on the following percentage. Profit shall mean the amount of money earned above the initial contribution amounts. At such time as the Option is sold the initial contribution will be returned to the rightful parties after which the profit will be divided as follows:

Douglas W. Merritt: 50%
GKH Real Estate Services LLC: 15%
Charles and Sandra Brissette 35%

At the bottom of the contract is a handwritten section initialed by "C.B." on September 21, 2006 and "D.M." on October 15, 2006. The section states:

. . . All funds will be held in [the] escrow account of Douglas W.

Merritt until such time that the option is sold or the parties agree to withdraw from the option to purchase agreement. The option is expected to be sold within 6 to 8 months after execution of this contract.

28. On September 21, 2006, Brissette wired \$150,000 from his account at Washington Mutual to MERRITT's account at U.S. Bank in Bountiful, Utah. Brissette said he borrowed the money to invest on his home equity line but he did not share this fact with MERRITT until April 2007. Brissette said when the six to eight months were up, MERRITT began making excuses about why he could not pay Brissette.
29. On or about January 2007, Brissette said he received a phone call from MERRITT. MERRITT said he had a buyer for the land but the offer would only double Brissette's principal investment. MERRITT said the offer was a "bird in hand" and said Brissette should take the deal. Brissette said he told MERRITT to ask the buyers for an additional 10 percent. Later MERRITT told Brissette the buyers had agreed to the increased price but wanted the closing extended from February to March 2007. Brissette agreed to the new terms and MERRITT said Brissette should have his money, \$290,000.67, by April 2, 2007. Brissette said he requested a copy for the sales agreement from MERRITT but MERRITT never produced the document.
30. Brissette said at the end of March 2007, he began calling MERRITT to find out if the Banning sale had closed and for details about when he could expect payment. MERRITT, during many phone calls between March and July, assured Brissette the

funds would be wired to Brissette's account any day and offered fantastic excuses explaining the delays. On July 9, 2007, MERRITT, in an e-mail to Brissette, said he was meeting his attorney at the bank and Brissette's funds would be wired immediately.

31. After many unfulfilled promises of payment by MERRITT, Brissette said he contacted his attorney who did some research and found that MERRITT had a history of fraud.

32. Brissette said he located the real estate agent who listed the property in Banning, CA, Mark Burnham. Burnham told Brissette that no one named MERRITT had ever been involved in a deal for the Banning property. Burnham told Brissette that the owners of the property are an elderly couple, Gerry and Shirlin Farrar, and that the Farrars have decided to do nothing with the property valued at nine million dollars.

33. Brissette said he invested for profit and had no role in management of the funds or property after he invested.

34. Brissette said his loss is \$150,000.00.

COUNT 2
THEFT, a second degree felony
(MERRITT)

35. Bank records reveal that Brissette wired \$150,000 to MERRITT's account at U.S. Bank on September 21, 2006. Brissette's wire brought the account balance to \$151,483.05. Between September 21 and October 25, 2006 charges of \$133,569.80 and one small credit reduced the account balance to \$17,916.70. The charges are accounted for as follows:

Bank Charges	\$62.00
Cash pulled from ATM machines in Mesquite, Bogota, and elsewhere	\$4,201.29
Cash withdrawn using UT drivers' license #168337399 belonging to Merritt as identification	\$110,549.00
Personal and miscellaneous expenses	\$1,757.48
Check to U.S. Bank signed by Merritt	\$5,000.00
Transfer to Citibank	\$12,000.00

36. Brissette said he did not authorize MERRITT to use Brissette's money for any other purpose but the acquisition of the Banning option, specifically he did authorize MERRITT to use his money for personal expenses or to withdraw in cash.
37. MERRITT obtained and exercised unauthorized control over Brissette's funds with the intent to permanently deprive them thereof.

COUNT 3
SECURITIES FRAUD, a second degree felony
(MERRITT and HOWELL)

38. David Christiansen (Christiansen) said he has known HOWELL for about two years. Christiansen said he learned of the opportunity to invest in MERRITT's property options from HOWELL. Christiansen said he was at his home office in Highland, Utah County, Utah and HOWELL was at his office in Salt Lake County. Christiansen said he never met or spoke to MERRITT and all the information and documentation he received about

the investment came from HOWELL. HOWELL said MERRITT had exercised options in the past with positive results. HOWELL said each option period was 90 days in length. At the end of the option period, HOWELL said Christiansen would receive his principal and \$25,000 profit on each option. However, if the option were not exercised, HOWELL said Christiansen would receive his principal back. Christiansen said HOWELL and MERRITT would be paid from the profits when the property sold.

39. Christiansen invested \$50,000 each into two real estate options in the state of Washington and received contracts and option agreements as proof of his investment. Christiansen said those agreements were faxed to him by HOWELL.
40. Christiansen said he borrowed \$100,000 on his home equity line and wired the money to MERRITT's U.S. Bank account at HOWELL's direction on October 26, 2006. Christiansen said he told HOWELL he was a novice investor and that he borrowed the money he invested against his home. Christiansen said he understood from his conversations with HOWELL that Christiansen's money would be used to purchase investment options and did not authorize his money to be used for any other purpose.
41. At the end of April 2006, Christiansen said he phoned HOWELL. HOWELL said there were delays and said the parties involved had funds tied up with the Internal Revenue Service. Later HOWELL said MERRITT was in jail.
42. Christiansen said his loss is \$100,000.

COUNT 4
THEFT, a second degree felony
(MERRITT)

43. Bank records reveal that on October 26, 2006, Christiansen wired \$100,000 to MERRITT's account at U.S. Bank bringing the account balance to \$117,916.70. Following Christiansen's deposit but also on October 26, 2006, MERRITT withdrew \$24,007.00 in cash and a \$15 wire fee was charged to the account by the bank. On October 27, 2006, Isabelle F. Miller¹, an investor, wired \$100,000 to MERRITT's account bringing the balance to \$193,894.70. Between October 27 and November 6, 2006, the following charges to the account reduced the balance to \$59,292.70.

Bank Charges	\$96
Cash pulled from ATM machines in Nevada	\$2,006
Cash withdrawn by Merritt	\$42,500
Wire to Margaret Gauthier ² (prior investor)	\$30,000
Wire to Troy Ferencak (prior investor)	\$30,000
Transfer to Merritt's account at Citibank	\$30,000

44. Christiansen said he did not authorize MERRITT or HOWELL to use his investment money for anything other than the acquisition of property options. Christiansen said he

¹Miller invested through Howell. Miller said she never spoke to Merritt. Miller said her principal has been returned.

²Gauthier invested through Howell. Gauthier said she never spoke to Merritt. Gauthier said her principal has been returned along with \$5,000 in profits.

did not authorize HOWELL or MERRITT to pay prior investors, to withdraw his funds in cash, or to transfer funds to another account MERRITT owns.

45. MERRITT obtained and exercised unauthorized control over Christiansen 's funds with the intent to permanently deprive him thereof.

COUNT 5
SECURITIES FRAUD, a second degree felony
(MERRITT)

46. Linda O'Ccelli (O'Ccelli) said she first learned of MERRITT and his investment opportunity through Greg HOWELL. HOWELL said he had known MERRITT for about five years and had done investments with MERRITT in the past. HOWELL said he trusted MERRITT.
47. Prior to investing, O'Ccelli said she spoke to MERRITT by phone from her home in California. MERRITT said he had done investing in the past, he made lots of money, and he worked for major foreign companies. MERRITT said he knew of properties which had been listed with real estate agents in the Washington area but the agents were unable to sell the properties. MERRITT said he knew of a property which was under renovation in which O'Ccelli could invest. MERRITT said he had an option on the property and he had buyers lined-up. MERRITT said he makes money on the spread between the option price and the sales price of the property. MERRITT said the minimum investment was \$25,000 which would be placed in MERRITT's private account so the property owner could verify the funds. MERRITT said the property owner is paid for the option only if

MERRITT sells the property, if MERRITT does not sell the property the investors money is returned to the investor so there was no risk O’Ccelli would lose her investment.

MERRITT said “big-time people” make money this way and he was part of the “good old boy network” that makes these things happen. MERRITT said he had four or five more properties into which O’Ccelli could invest if she wanted to make more money.

48. O’Ccelli said the contract for her investment was faxed back and forth between Utah and California for signatures. She said MERRITT told her to expect about a \$30,000 profit on her investment by December 8, 2006. O’Ccelli said the property into which she invested is located at 17524 10th Ave., NW, Shoreline, WA.

49. O’Ccelli was provided with a document titled Option to Purchase by HOWELL and/or MERRITT which is an agreement between Tom Arvil as the owner of the property located at 17524 10th Ave., NW, Shoreline, WA and Doug MERRITT as the buyer of the option. The home is actually owned by Jimmy Victoria. Victoria said he has owned the house since 2002 and has never heard of Tom Arvil or MERRITT. Victoria said he did not enter into an option agreement with MERRITT.

50. O’Ccelli said she invested for profit and her only role was to provide capital. O’Ccelli said her loss is \$50,000.

COUNT 6
THEFT, a second degree felony
(MERRITT)

51. Bank records reveal that on September 14, 2006, O’Ccelli wired \$50,000 to MERRITT’s

checking account at Goldenwest Credit Union increasing MERRITT's account balance to \$51,000. By September 20, 2006, the following charges to the account had reduced the balance to \$2,500.

Cash withdrawals	\$11,000.00
Mike N. Martinez (Merritt's attorney)	\$37,500.00

52. O'Ccelli said she did not authorize MERRITT to use her investment funds to pay for his attorney or as cash withdrawals from his account.
53. MERRITT obtained and exercised unauthorized control over Christiansen's funds with the intent to permanently deprive them thereof.

COUNT 7
SECURITIES FRAUD, a second degree felony
(MERRITT and HOWELL)

54. J. Heather Woll (Woll) is a limited partner in FELD Resources, LP. Woll said she met Greg HOWELL through a national training academy for investors and HOWELL introduced her to MERRITT shortly before she invested with MERRITT. Woll said she and Eugene Gemmer (Gemmer) are friends and that when Gemmer heard the details of her investment with MERRITT, Gemmer wanted to invest. Woll said Gemmer invested on his own but that some information he received was filtered through her and that she wrote letters and communicated information to MERRITT and HOWELL on behalf of herself and Gemmer. Woll said she had several phone conversations with MERRITT and HOWELL prior to investing and she received email correspondence from MERRITT and

HOWELL. During these communications, Woll said she was in Colorado and MERRITT and HOWELL were in Utah.

55. On February 15, 2007, MERRITT signed agreements with FELD and Gemmer for property options that would be sold to the Timberlakes Group REIT.
56. On February 21, 2007, Eugene W. Gemmer Jr. (age 73) wired \$50,000 to MERRITT's account at U.S. Bank. MERRITT wired Gemmer \$30,000 on April 18, 2007 and \$20,000 on April 27, 2007 because, for his investment, Gemmer used money from his IRA which needed to be returned within 60 days.
57. Gemmer's Option to Purchase was for property located at 3630 84th Ave SE, Mercer Island, WA purportedly owned by Ray Krug. The true owner of the property is, Margaret Morency. Morency said she purchased the property in early February 2007. Morency said she has never heard of Ray Krug or MERRITT and those names should not be associated in any way with her or her property.
58. Woll invested in two Options to Purchase through MERRITT, "5100+ Acres Adams & Arapaho Co. CO" purportedly owned by J. C. Combs of Longmont, Colorado and 7431 Mercer Way, Mercer Island, WA, purportedly owned by James Cook.
59. On or about February 21, 2007, J. Heather Woll wired \$175,000 to MERRITT's account at U.S. Bank for FELD. On May 3, 2007, MERRITT wired \$50,000 to FELD.
60. Woll discovered MERRITT had a criminal history on or about February 26, 2007 while doing research on MERRITT. Woll said after finding the information she called

HOWELL and HOWELL called MERRITT for a three-way conversation. MERRITT said he had been in some trouble but he had been “set-up” and therefore the information Woll found was not significant. After MERRITT left the conversation, HOWELL said MERRITT’s past should keep MERRITT from swindling again but if MERRITT did, MERRITT would go to jail.

61. Research into the James Cook option agreement on property located 7431 Mercer Way, Mercer Island, WA revealed that the property was actually owned by Sudha Shetty. Shetty said she owned the property until June 8, 2007 when she sold it to someone in California. Shetty said she does not know James Cook or MERRITT and she did not enter into an option agreement with MERRITT.
62. On August 21, 2007, Woll sent MERRITT a demand letter for payment for FELD and Eugene W. Gemmer, Jr. Woll said MERRITT has not responded to her letter.
63. Woll said her loss is \$125,000.

COUNT 8
THEFT, a second degree felony
(MERRITT)

64. Bank records reveal that the wires from Gemmer and Woll, \$50,000 and \$175,000 respectively, were deposited on February 21, 2007 bringing MERRITT’s account balance to \$227,287.68. Between February 21 and April 25, 2007 only one cash deposit of \$150 was made and \$1.63 of interest was posted to the account. \$224,928.92 in charges to the account during that time frame reduced the account balance to \$2,510.39. A summary of

the charges to the account follows:

Bank charges and fees	\$225.00
Cash withdrawn from ATMs in Utah, Nevada, and outside the U.S.	\$5,390.96
Cash withdrawn from the account	\$61,323.49
Wire to Eugene Gemmer (prior investor)	\$30,000.00
Wire to Phyllis Nelson	\$20,000.00
Wire to Placer Title Company	\$20,000.00
GCA Virgin River, Mesquite NV	\$2,084.99
Wires to R&D Exploration and Development (Merritt has a 35% interest in R&D)	\$30,500.00
Transfers to Merritt's Citibank Account	\$55,000.00
Hampton Inn	\$404.48

65. Woll said she did not authorize MERRITT or HOWELL to use her investment money for anything other than the acquisition of property options. Woll said he did not authorize MERRITT or HOWELL to pay prior investors, withdraw his funds in cash, or to invest in R&D's silver mine.
66. MERRITT obtained and exercised unauthorized control over Woll's funds with the intent to permanently deprive her thereof.

COUNT 9
PATTERN OF UNLAWFUL ACTIVITY, a second degree felony

67. Commencing on or about June 2006, MERRITT engaged in conduct which constituted the commission of at least three episodes of unlawful activity as defined in Utah Code

Ann. §76-10-1603. MERRITT: (1) received proceeds derived, directly or indirectly, from a pattern of unlawful activity as more fully defined in Counts 1 through 8 above, in which he participated as principal, or he 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(5), a second degree felony.

SUMMARY

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

SECURITIES FRAUD
a second degree felony, 4 counts

THEFT
a second degree felony, 4 counts

PATTERN OF UNLAWFUL ACTIVITY
a second degree felony, 1 count

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

SECURITIES FRAUD
a second degree felony, 2 counts

DATED this 20 day of Dec, 2007.

Diana Parrish
DIANA PARRISH, Affiant

SUBSCRIBED AND SWORN before me this
20 day of December,
2007.

Sumner
JUDGE, THIRD DISTRICT COURT

