

FILED  
APR 04 2011  
Layton District Court

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IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR  
DAVIS COUNTY, STATE OF UTAH

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THE STATE OF UTAH, : Bail \$ 25,000.00 bondable  
 :  
 Plaintiff, :  
 : **WARRANT OF ARREST**  
 vs. :  
 :  
 LANE D. BIRD, : Case No: 111700523  
 DOB: January 21, 1966 :  
 : Judge: Alphin  
 Defendant. :

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

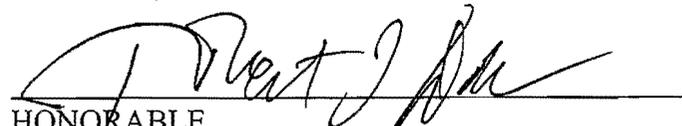
GREETINGS:

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, 1 count; and, Theft, a second degree felony, 1 count,** has been committed, and that the defendant, LANE D. BIRD, 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.

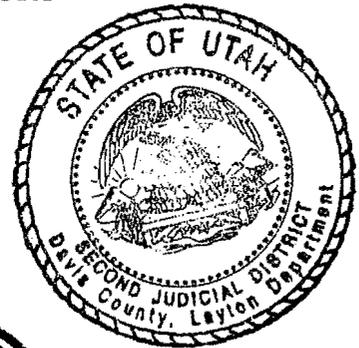
Bail is set in the amount of \$ 25,000.00 bonds 60

DATED this 4 day of April, 2011.

  
HONORABLE,  
JUDGE, SECOND DISTRICT COURT

Defendant's Last Known Address:

2520 East 8125 South  
South Weber, Utah



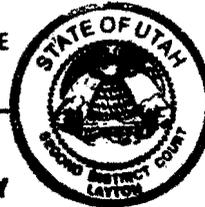
STATE OF UTAH } ss.  
COUNTY OF DAVIS

I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF THE ORIGINAL ON FILE IN MY OFFICE.

DATED THIS 4 DAY OF April 20 11  
ALYSON E. BROWN  
CLERK OF THE COURT

BY Robbie DEPUTY

2 pages



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**Attorneys for Plaintiff**

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IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR  
DAVIS COUNTY, STATE OF UTAH

---

THE STATE OF UTAH. : Bail \$ 25000.00 bondable  
 :  
Plaintiff, :  
 : **CRIMINAL INFORMATION**  
vs. :  
 :  
LANE D. BIRD, : Case No. 111700523  
DOB: January 21, 1966 :  
 : Judge Allphin  
Defendant. :

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The undersigned, 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**

**COUNT 1**  
**SECURITIES FRAUD**  
**a second degree felony**

Commencing on or about February 2007, in the State of Utah, the defendant, in connection with the offer or sale of a security, directly or indirectly, to **WILLIAM and SUSAN**

**MARKHAM**, 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 February 2007, the defendant obtained or exercised unauthorized control over the property of another (**William and Susan Markham**) 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.

PURSUANT to Utah Code Annotated §78B-5-705(2008), I declare under criminal penalty of the State of Utah that the foregoing is true and correct.

AUTHORIZED for presentment and filing this 29<sup>th</sup> day of March,  
2011.

  
By: **CHÉ ARGUELLO**  
Assistant Attorney General

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

1. William Markham
2. Susan Markham
3. And Others.

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Attorneys for the State of Utah

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IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR  
DAVIS COUNTY, STATE OF UTAH

---

THE STATE OF UTAH, :  
 :  
 Plaintiff, : **AFFIDAVIT OF PROBABLE CAUSE**  
 :  
 vs. :  
 :  
 **LANE D. BIRD** : Case No: 111700523  
 DOB: January 21, 1966 :  
 :  
 Defendant. : Judge: Allphin

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STATE OF UTAH )  
 :ss  
 COUNTY OF DAVIS )

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 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 violations of securities fraud statutes and related criminal code violations by LANE D. BIRD.

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 William Markham, Susan Markham, and others.

#### **PARTIES**

3. LANE D. BIRD, at all pertinent times, resided in Utah. BIRD's last known address is 2520 E 8125 S, South Weber, UT 84405. According to FINRA records, BIRD has never held a securities license, but did take and fail the series 6 exam in 1990.
4. ClarconLab, LLC registered with the Utah Division of Corporations on July 29, 2005. Omar Bonada is listed as a Member. ClarconLab was voluntarily dissolved on April 10, 2007.
5. Powerslide Tools, Inc. registered with the Utah Division of Corporations on January 2, 2007. BIRD is listed as an Incorporator. Powerslide was voluntarily dissolved on February 11, 2008.
6. Clarcon Distributing, Inc. registered with the Utah Division of Corporations on April 3, 2007. Judy Johnson is listed as the Incorporator, and William Markham (Bill) is listed as Director and Officer. Clarcon Distributing was voluntarily dissolved on January 31, 2008.

7. Clarcon Labs, Inc. registered with the Utah Division of Corporations on April 10, 2007. Both BIRD and Bonada are listed as Incorporators. Clarcon Labs was voluntarily dissolved on June 8, 2007.

### **BACKGROUND**

8. Starting in or about early 2007, BIRD began working with ClarconLab and Bonada as a non-paid “consultant” to help ClarconLab expand. BIRD planned to dissolve ClarconLab and start two new businesses in its place, Clarcon Distributing and Clarcon Labs.<sup>1</sup> Prior to incorporating Clarcon Distributing and Clarcon Labs, BIRD looked to bring some capital into Clarcon.
9. In or about February 2007, BIRD told Bill and Susan Markham about an opportunity to invest \$250,000 with Clarcon. BIRD offered Bill two investment options: (1) Bill could provide the funds as a loan, and in return, Clarcon would repay the loan with interest, or (2) Bill could invest the money with Clarcon in return for stock in both Clarcon Distributing and Clarcon Labs. The offering of profit in return for the use of another person’s funds could be an investment contract. Investment contracts and stocks are securities as defined by Utah Code Annotated §61-1-13. Bill agreed to invest the funds with Clarcon in return for the stock.

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<sup>1</sup>ClarconLab, Clarcon Distributing, and Clarcon Labs are collectively referred to as Clarcon.

10. Prior to any investments, BIRD did not provide Bill and Susan with the information ordinarily provided in a prospectus, including but not limited to: audited 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.
11. BIRD did not disclose other material facts to Bill and Susan, including but not limited to: BIRD having to "nurse" along Clarcon after becoming involved with the company; BIRD's involvement in a prior "ponzi scheme" operated by Wayne Ogden; BIRD was not licensed to sell securities; BIRD having used some of Bill and Susan's initial funds to pay for salaries and staffing; BIRD having "loaned" approximately \$60,000 of Powerslide's funds to Clarcon; BIRD using Bill and Susan's funds to repay the Powerslide "loans"; and, BIRD, during an interview with a Utah Division of Securities investigator, admitting he would have to "start [Clarcon] over" because there was no way he "could even begin to...invest money in [Clarcon's] current mess" at the time he became affiliated with Clarcon.
12. BIRD was involved in numerous civil suits between 1991 and 2006, and owed about \$140,000 in judgments at the time he raised money for Clarcon. BIRD failed to disclose this information to Bill and Susan.
13. BIRD filed Chapter 7 bankruptcies in 1992 and 1999, which BIRD failed to disclose to Bill and Susan.

14. Prior to investing with Clarcon, BIRD told Susan and Bill he had put everything he had into Clarcon-which BIRD said was about \$500,000-including home equity funds and funds borrowed from his father. Bill and Susan allege BIRD later admitted he never provided \$500,000 to Clarcon, but valued his time with Clarcon as the equivalent thereof.
15. Between about March 8, 2007, and May 17, 2007, Bill invested \$247,000 with Clarcon. On or about April 11, 2007, BIRD and Bill signed an agreement whereby Bill would receive a 5% equity share of Clarcon Labs and a 25% equity share of Clarcon Distributing in return for the funds, and Bill would be Executive Vice President of Clarcon Distributing and COO/Vice President of Clarcon Labs.

**COUNT 1**  
**SECURITIES FRAUD, a second degree felony**

16. Bill and Susan said BIRD was their neighbor. Bill said BIRD was an entrepreneur who helped launch different business ventures, had owned a company called Some Dude's Playground, and another company in the business of catalogue furniture sales.
17. Susan said based on her previous conversations with BIRD, Susan knew BIRD was affiliated with an entrepreneurial center near the Davis Applied Tech Center whereby the center would refer people to BIRD, and BIRD would help the people with new start up

companies. BIRD had also mentioned he was affiliated with Powerslide and would be making a lot of money from his involvement in Powerslide.<sup>2</sup>

18. Starting in or about January or February 2007, BIRD and Bill had multiple conversations about Clarcon and its hand care lotion product. Bill said the conversations usually occurred at BIRD's office located in Layton, Utah, Clarcon's office in Roy, Utah, or at Bill's home and BIRD's home, both located in South Weber, Utah. Susan was present for a couple of the initial conversations.
19. During the conversations, Susan asked BIRD about what kind of an investment he had made with Clarcon. BIRD told Susan and Bill he had put everything he had into the company, including home equity funds and funds borrowed from his father, which totaled about \$500,000.<sup>3</sup> BIRD said he invested with Clarcon to develop the business from a "mom and pop business" into a bigger business. BIRD said the deal was "solid," or else BIRD would not have put \$500,000 into Clarcon. BIRD said Clarcon needed an additional \$250,000 to improve production, upgrade equipment, and get the product into

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<sup>2</sup>Susan said she did a mortgage loan for BIRD and his wife in about 2005, which was in the name of BIRD's parents. Susan said BIRD may have mentioned having financial issues as the reason for the loan not being in his name. Susan said she may have reviewed BIRD's credit report as part of the mortgage loan process, but was unsure if she did. Susan said she could not recall having seen BIRD's judgments or previous bankruptcies if she reviewed BIRD's credit history.

<sup>3</sup>Susan said BIRD may not have said an exact amount during the initial meetings, but at some point, BIRD told Susan and Bill he had invested about \$500,000.

the market place. Susan said BIRD did not discuss using the funds for other day-to-day business expenses, such as salaries.

20. Susan said she was not interested in investing in a start up company. BIRD said Clarcon had already been manufacturing product and making sales. Susan said BIRD showed her and Bill a list of companies to which Clarcon was allegedly selling product, and BIRD provided Susan and Bill with some alleged projections on Clarcon sales. Susan said while at BIRD's office, BIRD showed Susan and Bill some cases of Clarcon's product as proof that Clarcon was already making product. BIRD said the product at his office could later be sold to cover funds invested by the Markhams if needed.
21. Bill said when he and BIRD went to Clarcon's production facility, Bill observed numerous employees working and some "antiquated" production equipment. While at the Roy location, BIRD showed Bill some unaudited financial statements on Clarcon. BIRD also provided Bill with some alleged invoices and receipts, showing Clarcon was producing a monthly income.
22. BIRD said he wanted Bill to invest the \$250,000 with Clarcon. BIRD said Bill could provide the funds as a lender, in which Bill would not have any oversight or managerial duties, but BIRD could personally guarantee the funds. BIRD said in the alternative, Bill could provide the funds as an investor, which would earn more money for Bill. BIRD said as an investor, Bill would be allowed to help with sales and marketing, with which Bill had experience.

23. BIRD said he was forming Clarcon Distributing and Clarcon Labs to replace ClarconLab. BIRD said Clarcon Labs would develop and manufacture the product, then Clarcon Distributing would market and sell the product. BIRD said he would own 100% of Clarcon Distributing and 40% of Clarcon Labs. BIRD said he would sell Bill 25% of Clarcon Distributing and 5% of Clarcon Labs in return for an investment. BIRD said if Bill could invest the money within a couple of weeks, he would increase the Clarcon Labs offering to 10% or 15% if Bill “was lucky.” BIRD said he would have to clear the increase with his business partner.
24. BIRD said he was in a hurry to raise the money because Clarcon was not able to meet demand without upgrading production equipment. BIRD said he had other investors ready to go if Bill did not invest. Bill said he could come up with the funds, but Bill would have to use funds from a 401k, savings, and from a second mortgage on his home.
25. On or about March 7, 2007, Bill hand delivered two checks totaling \$25,000 to BIRD at BIRD’s home, and Bill began gathering the rest of the \$250,000. Bill said he and BIRD signed a document entitled *Initial Investment Stipulation* when Bill provided the checks.
26. Prior to the \$25,000 investment and subsequent investments, BIRD failed to provide Bill and Susan with any disclosure documents. BIRD also failed to provide the information found in paragraphs 10, 11, 12, and 13 of this affidavit.

27. Bill said about a week after giving BIRD the initial \$25,000, Bill hand delivered a \$142,000 check to BIRD at Clarcon's Roy office. Bill said he did not receive any documents in return for the \$142,000 investment.<sup>4</sup>
28. Bill said he briefly met Bonada, BIRD's business partner, soon after providing BIRD with the \$167,000. Bill also spoke with BIRD about working on a part time basis in order to observe how Clarcon operated, so BIRD set up a small office for Bill.
29. Bill said he became a little concerned when he and BIRD did not have a written investment agreement in place by early April 2007, so Bill and BIRD began negotiating terms for an agreement. Bill said he also started to have concerns with Clarcon's accounting practices at about this time because BIRD had a hot tub delivered to Clarcon's office for his sister, Judy Johnson, who was Clarcon's bookkeeper. Bill said he wanted to be more involved with the accounting, so Bill asked Johnson to see Clarcon's accounting files. Johnson told Bill that BIRD told her not to show accounting documents to Bill. Bill said he spoke with BIRD about reviewing the accounting records, and about requiring two signatures on checks for future purchases.
30. Bill said after about a week of negotiating terms for an agreement, Bill and BIRD created a document entitled *Letter of Intent and Investment Agreement*, which Bill and BIRD

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<sup>4</sup>Wells Fargo Bank records show Bill also made the following three deposits: \$50,000 check on or about April 16, 2007 (provided by Bill's aunt, Patricia McNemar); \$10,000 check on or about May 3, 2007; and a \$20,000 check on or about May 17, 2007.

signed together at the Roy office on or about April 11, 2007. As per the terms of the *Letter of Intent and Investment Agreement*, Bill was to provide Clarcon with the remaining \$83,000 by the end of April 2007. In the agreement, BIRD offered stock in the companies as previously discussed, and BIRD acknowledged he had “actual ownership of common stock of Clarcon Labs” and “the right to assign such stock to [Bill].” The agreement also states “any financial investment made in either [Clarcon Labs and Clarcon Distributing] shall become property of the [companies],” and both companies “have no obligation to repay the money invested by [Bill] nor any interest on such money” since the money was used to purchase equity positions in the companies.

31. Also on or about April 11, 2007, Bill was added as a signer to Clarcon Labs’ Wells Fargo Bank account,<sup>5</sup> and BIRD gave Bill access to the Clarcon’s ledger sheets. Bill said when reviewing the records, it appeared some of his investment funds were used to purchase label machines, a modified drill press, and to cover previous “bad debts,” including bills for raw ingredients, utilities, staffing, Bonada’s salary, and about \$60,000 sent to Powerslide.<sup>6</sup>

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<sup>5</sup>The last three deposits were made into the Clarcon Labs’ account after Bill became a signer on the account. Bill never was a signer on the Clarcon Distributing account.

<sup>6</sup>Wells Fargo Bank records show about \$68,000 was transferred from the Clarcon accounts to Powerslide. About \$58,000 came from the Clarcon Distributing account. All of the money paid to Powerslide from the Clarcon accounts came from funds invested by Bill or Patricia McNemar.

32. Bill said he confronted BIRD about the use of investment funds, because BIRD had said the funds would be used to purchase updated equipment, improve production, and get Clarcon's product into the marketplace. BIRD said it was, but Clarcon had to get caught up financially or else Clarcon would have had trouble. Bill also asked BIRD about the \$60,000 paid to Powerslide. BIRD said he was a part owner of Powerslide, which had previously loaned \$60,000 to Clarcon. Bill asked BIRD for a copy of a loan agreement between the two companies, but BIRD said he did not need an agreement because he was a part owner of both companies. Bill and Susan said BIRD did not tell them about the Powerslide loan prior to investing.
33. Bill said he spoke with Bonada at the Roy office sometime after confronting BIRD about the use of investment funds. Bill said he asked Bonada about the \$500,000 BIRD had provided to Clarcon. Bonada said BIRD had not given \$500,000 to him or Clarcon.
34. Bonada said he was not happy with BIRD because he and BIRD had not come to an agreement on how to run the Clarcon companies. Bonada said he had let BIRD essentially run Clarcon up until then even though Bonada owned Clarcon. Bonada said BIRD wanted to own 40% of Clarcon Labs, but Bonada and BIRD had not come to an agreement on the issue. Bill told Bonada he was to receive 10% of Clarcon Labs stock in return for his investment, but Bonada said BIRD was not able to offer the stock because Bonada owned it.

35. In or about May 2007, Bill, Bonada, and BIRD met at the Roy office. Bill said Bonada confronted BIRD about Clarcon's debts, the transfer of money to Powerslide, and the \$500,000 BIRD never provided to Bonada. Bill said BIRD became upset, and said the conversation should be between Bonada and himself. Bill said when Bonada asked where the \$500,000 was, BIRD said he did not put the money into the company. BIRD said the \$500,000 was what BIRD was worth to the company. Bill said Bonada had police remove both BIRD and Johnson from Clarcon's offices in or about June 2007.
36. In or about July 2007, Bill and Susan met with BIRD at BIRD's office in Layton, Utah. Susan said the purpose of the meeting was to "pin down certain details" regarding BIRD's time at Clarcon. Susan said she and Bill confronted BIRD about the transfers to Powerslide and other uses of their funds, which included uses BIRD did not discuss in initial conversations. BIRD showed Susan and Bill some of Powerslide's bank records to show how BIRD had previously transferred some funds to Clarcon as a loan prior to the Markhams' investment. Susan said BIRD also showed in Powerslide's records how BIRD had also paid some of Clarcon's expenses directly from the Powerslide account. BIRD said the \$60,000 was used to pay back the loans and expenses paid. Susan also asked about BIRD using the investment funds for purposes other than discussed. BIRD said he needed the money to keep Clarcon afloat, so he used it accordingly.
37. Also during the meeting, Susan asked about the \$500,000 BIRD claimed he provided to Clarcon. BIRD told Susan and Bill he had not invested \$500,000 of his own funds in

Clarcon, but the \$500,000 was what BIRD's time was worth to Clarcon. BIRD said he had not been paid while working for Clarcon. Bill and Susan said BIRD used a large figure, between \$100 and \$500 per hour, as the figure he used to justify what his time was worth. Susan said BIRD apologized for the misstatement regarding his investment. BIRD said he told the Markhams he had invested because he thought the Markhams would not have invested if he had not invested.

38. To date, Bill has been unable to recover any funds he invested with the company.

**COUNT 2**  
**THEFT, a second degree felony**

39. BIRD represented to Bill and Susan that he would use their funds to improve Clarcon's production, upgrade Clarcon's equipment, and get Clarcon's product into the market place. Wells Fargo Bank records show about \$60,000 of Bill's funds was transferred from Clarcon's accounts to Powerslide. Bank records also shows funds were used for Clarcon's employee salaries.
40. Bill and Susan authorized BIRD to use the funds to improve Clarcon's production, upgrade Clarcon's equipment, and get Clarcon's product into the market place. Bill and Susan did not authorize their funds to be used for any other purpose.
41. BIRD obtained money from Bill and Susan and exercised unauthorized control of the money with the purpose to deprive them thereof.

**SUMMARY**

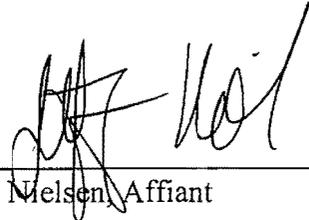
Based on my review of the evidence, there is probable cause to believe that BIRD committed the crimes of:

**SECURITIES FRAUD**  
**a second degree felony, 1 count**

**THEFT**  
**a second degree felony, 1 count**

PURSUANT to Utah Code Annotated §78B-5-705(2008), I declare under criminal penalty of the State of Utah that the foregoing is true and correct.

EXECUTED on this 4 day of April, 2011.

  
\_\_\_\_\_  
Jeffery Nielsen, Affiant