

FILED DISTRICT COURT
Third Judicial District

JUL 19 2007

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, : Bail \$ _____
 :
 Plaintiff, :
 : **CRIMINAL INFORMATION**
 vs. :
 :
 BRIAN ARTHUR KITTS : Case No. 071905099
 DOB: November 15, 1955 :
 :
 Defendant. : Judge _____

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

SECURITIES FRAUD, a second degree felony, 4 counts

SECURITIES FRAUD, a third degree felony, 4 counts

THEFT, a second degree felony, 7 counts

THEFT, a third degree felony, 1 count

PATTERN OF UNLAWFUL ACTIVITY
a second degree felony, 1 count

COUNT 1
SECURITIES FRAUD
a third degree felony

Commencing on or about February 2004, in the State of Utah, County of Summit, the defendant, in connection with the offer or sale of an investment, directly or indirectly, to **MICHAEL W. WIENER**, 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 third degree felony under Utah Law.

COUNT 2
THEFT, a second degree felony

From on or about February 2004, the defendant obtained or exercised unauthorized control over the property of **MICHAEL W. WIENER**, 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

Commencing on or about February 2004, in the State of Utah, County of Summit, the defendant, in connection with the offer or sale of an investment, directly or indirectly, to

MICHAEL L. PASCARELLA, 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 February 2004, the defendant obtained or exercised unauthorized control over the property of **MICHAEL PASCARELLA**, 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 third degree felony

Commencing on or about July 2004, in the State of Utah, County of Summit, the defendant, in connection with the offer or sale of an investment, directly or indirectly, to **MICHAEL L. PASCARELLA**, 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 third degree felony under Utah Law.

COUNT 6
THEFT, a third degree felony

From on or about July 2004, the defendant obtained or exercised unauthorized control over the property of **MICHAEL PASCARELLA**, with a purpose to deprive him thereof. The value of the property exceeds \$1,000.00 but is less than \$5,000.00. This is a violation of Utah Code Ann. § 76-6-404, a third degree felony.

COUNT 7
SECURITIES FRAUD
a third degree felony

Commencing on or about February 2004, in the State of Utah, County of Summit, the defendant, in connection with the offer or sale of an investment, directly or indirectly, to **WILLIE J. MUSHATT**, 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 third degree felony under Utah Law.

COUNT 8
THEFT, a second degree felony

From on or about March 2004, the defendant obtained or exercised unauthorized control over the property of **WILLIE MUSHATT**, 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 9
SECURITIES FRAUD
a second degree felony

Commencing on or about January 2004, in the State of Utah, County of Salt Lake, the defendant, in connection with the offer or sale of an investment, directly or indirectly, to **CULLEY W. DAVIS**, made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit, in violation of Utah Code Ann. §§61-1-1 and 61-1-21. This violation is a second degree felony under Utah Law.

COUNT 10
THEFT, a second degree felony

From on or about January 2004, the defendant obtained or exercised unauthorized control over the property of **CULLEY W. DAVIS**, 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 11
SECURITIES FRAUD
a third degree felony

Commencing on or about July 2003, in the State of Utah, County of Summit, the defendant, in connection with the offer or sale of an investment, directly or indirectly, to **LEE O'NEILL**, made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were

made, not misleading; or engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit, in violation of Utah Code Ann. §§61-1-1 and 61-1-21. This violation is a second degree felony under Utah Law.

COUNT 12
THEFT, a second degree felony

From on or about July 2003, the defendant obtained or exercised unauthorized control over the property of **LEE O'NEILL**, 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 13
SECURITIES FRAUD
a second degree felony

Commencing on or about April 2004, in the State of Utah, County of Summit, the defendant, in connection with the offer or sale of an investment, directly or indirectly, to **ROBERT M. O'NEILL**, made untrue statements of material facts or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or engaged in an act, practice, or course of business which operated or would operate as a fraud or deceit, in violation of Utah Code Ann. §§61-1-1 and 61-1-21. This violation is a second degree felony under Utah Law.

COUNT 14
THEFT, a second degree felony

From on or about May 2004, the defendant obtained or exercised unauthorized control

over the property of **ROBERT M. O'NEILL**, 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 15
SECURITIES FRAUD
a second degree felony

Commencing on or about March 2005, in the State of Utah, County of Salt Lake, the defendant, in connection with the offer or sale of an investment, directly or indirectly, to **PENNY H. BREIMAN**, 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 16
THEFT, a second degree felony

From on or about March 2005, the defendant obtained or exercised unauthorized control over the property of **PENNY H. BREIMAN**, 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 17
PATTERN OF UNLAWFUL ACTIVITY
a second degree felony

Commencing on or about July 2003, the defendant engaged in conduct which constituted

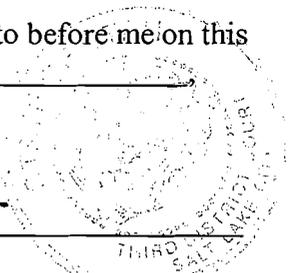
the commission of at least three episodes of unlawful activity as defined in Utah Code Ann. § 76-10-1601 (1995). The defendant: (1) received proceeds derived, directly or indirectly, from a pattern of unlawful activity as more fully defined in Counts 1 through 16 above, in which he participated as a 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) were employed by, or associated with any enterprise and conducted or participated, whether directly or indirectly, in the conduct of that enterprise's affairs through a pattern of unlawful activity. The unlawful activity included three or more 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 19 day of July, 2007.

Susan M Jones
SUSAN JONES, Affiant

SUBSCRIBED AND SWORN to before me on this 19 day of July, 2007.

Tom J. [Signature]
Judge, Third District Court



I CERTIFY THAT THIS IS A TRUE COPY OF AN ORIGINAL DOCUMENT ON FILE IN THE THIRD DISTRICT COURT, SALT LAKE COUNTY, STATE OF UTAH
DATE: 7/19/07
[Signature]
DEPUTY COURT CLERK

This CRIMINAL INFORMATION is based upon evidence from the

following witnesses:

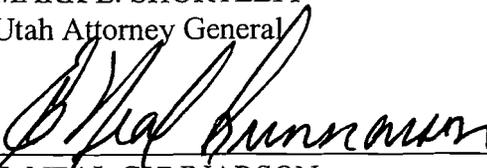
1. Michael L. Pascarella
2. Michael W. Wiener
3. Willie J. Mushatt
4. Culley W. Davis
5. Lee O'Neill
6. Robert M. O'Neill
7. Penny Breiman
8. Wayne Klein, Director, Utah Division of Securities
9. And others.

APPROVED FOR PRESENTMENT AND FILING this 18 day of

July, 2007.

MARK L. SHURTLEFF
Utah Attorney General

By:



E. NEAL GUNNARSON
Assistant Attorney General

FILED DISTRICT COURT
Third Judicial District

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SALT LAKE COUNTY

by _____
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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. :
 :
 BRIAN ARTHUR KITTS : Case No. 071905099
 DOB: November 15, 1955 :
 :
 Defendant. : Judge _____

STATE OF UTAH)
 :ss
COUNTY OF SALT LAKE)

I, SUSAN JONES, being first duly sworn upon oath, depose and state as follows:

1. I am a certified law enforcement officer of 30 years and am currently employed as a Securities Compliance Investigator for the Utah Department of Commerce, Division of Securities. Prior to my employment with the Division of Securities, I was employed by the Criminal Investigations Bureau of the Department of Public Safety. I am currently investigating possible

violations of securities fraud statutes and related criminal code violations by BRIAN ARTHUR KITTTS.

2. The facts set forth in this affidavit are based upon the results of an investigation during which I have collected and reviewed business and personal records from witnesses and other sources. I have received information from the following individuals: Michael L. Pascarella, Michael W. Wiener, Willie J. Mushatt, Culley W. Davis, Lee O'Neill, Robert M. O'Neill, Penny Breiman, and Wayne Klein.

PARTIES

3. BRIAN ARTHUR KITTTS, at all pertinent times, resided in Park City, Utah.

4. NevWest Corp. is a Nevada corporation registered with the Nevada Secretary of State on May 24, 2002. Brian Kitts is the President, Secretary, Treasurer, and Director. NevWest Corp. has not been registered as a foreign corporation in Utah.

5. Brisam Corp. is a Nevada corporation registered with the Nevada Secretary of State on November 21, 2002 and revoked December 1, 2004. Brian Kitts was the President, Secretary, and Treasurer. Brisam Corp. was not registered as a foreign corporation in Utah. Based on the activity in the Brisam Corp. bank account, there is evidence that it was never engaged in any business.

BACKGROUND

6. Brian Arthur Kitts (Kitts) began selling stock in NevWest Corp. (NevWest) on or before July 2003. Kitts told prospective investors he was preparing to take NevWest public within two to three months. Money from the sale of the stock was to fund the IPO. When the company went public,

the stock would sell for considerably more than what Kitts was offering it to the investors. Early investors were told that the stock would open at \$5 to \$6 per share. Later investors were told it would open at \$2 to \$3 per share. This same opening sales pitch was used for all cooperating investors over the period July 2003 through March 2005.

7. Kitts had the investors sign a *Private Placement Subscription Agreement* and an *Accredited Investor Questionnaire*. Kitts did not provide any other disclosure documents.

8. When investors contacted Kitts several months after their investments asking when the IPO would take place, Kitts told them NevWest would not be doing an IPO. Rather, there was to be a merger with a public company. The first company NevWest was reportedly going to merge with was a furniture company in Canada.

9. In an e-mail addressed "To all NevWest Corp. shareholders" dated September 30, 2005, Kitts stated, in part:

When this project was first started in May of 2002, no one would have been able to predict the amount of changes that had taken place inside the Securities and Exchange Commission. Candles [sic] involving public companies that you have probably read about over the last few years have led to numerous changes in SEC rules and regulation as well as procedures for bringing private companies public. The process use [sic] to take 60 - 90 days to complete. The process can now take up to a year or longer.

10. This email went on to say that the Canadian furniture company NevWest was going to merge with had notified them in April that a large law suit had been filed against the company. Because of the suit, NevWest had cancelled the merger. Further, NevWest had signed an agreement with Elite Nutrition Centers (ENC) and was looking for other investments.

11. An e-mail dated January 26, 2006, from Kitts to investors states NevWest had signed a Stock Purchase Agreement with GTDR , which was described as “a completely clean pink sheet shell with all of there [sic] accounting records in order.” A search of Edgar and the Pink Sheets produced no record of this symbol. In a reply e-mail dated January 28, 2006, one of the investors asked what happened to the “gym” as well as the Canadian furniture company.

12. As investors kept pressing Kitts for information and expressing their concern and displeasure with what was not happening, Kitts cut off communication. He would not answer his telephone and would not return telephone messages. Nor would he answer e-mails.

13. All of the cooperating investors have asked for their money back, either directly or indirectly. To date, nothing has been refunded.

SECURITIES FRAUD

14. My investigation has revealed that BRIAN ARTHUR KITTS offered or sold investments in NevWest Corp. to at least seven investors and in Brisam Corp. to at least one investor. The transactions cited above involve shares of stock which are securities as defined by Utah Code Annotated 1953 as amended §61-1-13.

15. BRIAN ARTHUR KITTS made certain misrepresentations of material facts to one or more investors in connection with the offer or sale of a security, to-wit:

- With respect to all cooperating investors, that Kitts needed funds to prepare a prospectus and other processes necessary to take NevWest public, when in fact Kitts used the funds for personal expenditures.

- With respect to all cooperating investors, that NevWest would go public in 60 to 90 days, when Kitts had no reasonable expectation that the time frame was accurate.
- With respect to all cooperating investors, that when NevWest went public, the stock would open at a significantly greater price than the subscription price, when Kitts had no reasonable way to predict the opening price.
- With respect to investor Pascarella, that Brisam Corp. was engaged in the business of manufacturing dietary supplements, when in fact, Brisam Corp. existed on paper only and was not engaged in any business, as evidenced by the activity in the company bank account.

16. BRIAN ARTHUR KITTS also made certain omissions of material facts to one or more investors in connection with the offer or sale of a security, to-wit:

- With respect to all cooperating investors, that Kitts had an outstanding judgment in the amount of \$107,516.46.
- With respect to all cooperating investors, that Kitts had an outstanding tax lien in the amount of \$7,779.89.
- With respect to investor Breiman, that Kitts had an additional outstanding judgment in the amount of \$2,222.83.
- With respect to all cooperating investors except L. O'Neill, that Sunpeak Holdings, Inc., a company for which Kitts was President, Secretary and Treasurer, had filed a Chapter 11 bankruptcy in October 2003.
- With respect to all cooperating investors, the risk factors associated with the investment.

- With respect to all cooperating investors, the disclosures typically found in a registration statement.
- With respect to all cooperating investors, whether the investment is a registered security or exempt from registration.
- With respect to all cooperating investors, whether the person selling the investment was licensed.

COUNT 1
SECURITIES FRAUD, a third degree felony

17. **Michael Wiener** (Wiener) first met Brian Kitts in 1999 when Wiener invested in a company Kitts was running called InvestAmerica, Inc. (InvestAmerica). In conjunction with that investment, Kitts went to New York and “wined and dined” Wiener. Kitts left InvestAmerica in approximately 2003.

18. Kitts contacted Wiener from Park City, Utah, in early February 2004 about investing in his new company, NevWest, Corp. Kitts told Wiener he was preparing to do an initial public offering (IPO) on NevWest in two to three months. When it went public, the opening price for the stock was expected to be \$5 to \$6. Because money was needed immediately to prepare a prospectus and other functions needed to take the company public, Kitts was doing private placements at \$.25 per share, in \$5,000 increments. Kitts would also pay Wiener a commission for bringing in other investors.

19. Wiener invested in February 2004 by buying 20,000 shares at \$.25 per share, for a total of \$5,000. He also contacted two acquaintances, Michael Pascarella and Willie Mushatt, and convinced each of them to invest.

20. Wiener was not provided with any investment documents other than a Subscription Agreement prior to investing. Wiener was not told that Kitts had a judgment exceeding \$100,000 and a tax lien outstanding against him. Wiener was not told Sunpeak Holdings, Inc., a company for which Kitts was President, Secretary and Treasurer, had filed for bankruptcy.

21. Wiener did not meet the SEC Regulation D definition of an accredited investor at the time he invested in NevWest.

COUNT 2
THEFT, a second degree felony

22. A NevWest account was opened at Wells Fargo on January 21, 2004 and closed on February 10, 2004 by using the balance to open a second account at Wells Fargo. The second account closed on March 10, 2004. Since there was no overlap of time when they were both open, they have been treated as one account. A total of \$30,000 was deposited, which included a \$10,000 investment from Culley W. Davis, a \$10,000 investment from Michael L. Pascarella, a \$5,000 investment from **Michael W. Wiener** and \$5,000 from another individual. Expenditures were to Paul Wood, an attorney who defended Sunpeak Holdings, Inc. and Kitts in a civil suit unrelated to NevWest (\$2,000); Steve Gindrat, purpose unknown (\$500); bank fees (\$115.19); Brisam Corp. (\$18), and bank originated debits, purpose unknown (\$11,390.81). The last of the bank originated debits, \$6,212.87 on March 10, 2004, is the same amount as a counter credit made to a NevWest account at Bank of America on March 11, 2004. Of the remaining \$15,976, wire transfers to an account belonging to Kitts' wife Laurel totaled \$9,000 and the rest went to Kitts in the form of cash withdrawals and checks written to him.

COUNT 3
SECURITIES FRAUD, a second degree felony

23. **Michael Pascarella** (Pascarella) was approached by Wiener in early February 2004 about investing in NevWest. When Pascarella expressed some interest, Wiener put him in contact with Kitts in Park City, Utah.

24. Kitts told Pascarella that he was preparing to take NevWest public in June 2004. Funds were needed to accomplish the IPO. When the company went public, shares would open at \$6 per share. Based on Kitts' statements and the endorsement of Wiener, Pascarella purchased 40,000 shares of NevWest stock at \$0.25 per share. The \$10,000 used for this purchase came from Pascarella's retirement account. Pascarella told Kitts the investment funds were coming from a retirement account at the time he invested. Pascarella received a stock certificate for this purchase on June 25, 2004.

25. Pascarella was not provided with any investment documents other than a Subscription Agreement prior to investing. Pascarella was not told that Kitts had a judgment exceeding \$100,000 and a tax lien outstanding against him. Pascarella was not told Sunpeak Holdings, Inc., a company for which Kitts was President, Secretary and Treasurer, had filed for bankruptcy.

26. Pascarella did not meet the SEC Regulation D definition of an accredited investor at the time he invested in NevWest.

COUNT 4
THEFT, a second degree felony

27. A NevWest account was opened at Wells Fargo on January 21, 2004 and closed on February

10, 2004 by using the balance to open a second account at Wells Fargo. The second account closed on March 10, 2004. Since there was no overlap of time when they were both open, they have been treated as one account. A total of \$30,000 was deposited, which included a \$10,000 investment from Culley W. Davis, a \$10,000 investment from **Michael L. Pascarella**, a \$5,000 investment from Michael W. Wiener and \$5,000 from another individual. Expenditures were to Paul Wood, an attorney who defended Sunpeak Holdings, Inc. and Kitts in a civil suit unrelated to NevWest (\$2,000); Steve Gindrat, purpose unknown (\$500); bank fees (\$115.19); Brisam Corp. (\$18), and bank originated debits, purpose unknown (\$11,390.81). The last of the bank originated debits, \$6,212.87 on March 10, 2004, is the same amount as a counter credit made to a NevWest account at Bank of America on March 11, 2004. Of the remaining \$15,976, wire transfers to an account belonging to Kitts' wife Laurel totaled \$9,000 and the rest went to Kitts in the form of cash withdrawals and checks written to him.

COUNT 5
SECURITIES FRAUD, a third degree felony

28. In July 2004, Kitts approached **Michael Pascarella** again, to purchase stock in another one of Kitts' companies. Kitts told Pascarella that Brisam Corp. (Brisam) was a company that produced dietary supplements. Kitts was offering these shares at \$0.25 a share as well. Pascarella purchased 10,000 shares of Brisam for \$2,500 on July 21, 2004. Pascarella has never received a stock certificate for this stock. In August 2005, Pascarella asked Kitts to return the \$2,500 because he had not yet received a stock certificate. Kitts told Pascarella it would not be a problem to return the funds, but, to date, Pascarella has not received any money back.

29. Pascarella was not provided with any disclosure documents nor told about Kitts' judgment and tax lien. His status as a non-accredited investor had not changed.

COUNT 6
THEFT, a third degree felony

30. The Brisam account at Wells Fargo Bank was opened on July 26, 2004 with the investment check from **Michael Pascarella**. No other deposits were made to the account. Expenditures from the account include a check to Kitts for \$500, two checks to Victor Rodriguez (\$260 and \$640 respectively) for an unknown purpose, a check to NevWest in the amount of \$1,000 for a "subscription agreement," and a payment of \$29.95 to Friendfinder. The remainder of the deposit went to bank fees. The account was closed by the bank after it had been in overdraft for two months.

COUNT 7
SECURITIES FRAUD, a third degree felony

31. **Willie Mushatt** (Mushatt) was approached by Wiener in early February 2004 about investing in NevWest. When Mushatt expressed some interest, Wiener put him in contact with Kitts in Park City, Utah.

32. Kitts told Mushatt that he was preparing to take NevWest public in June 2004. Funds were needed to accomplish the IPO. Kitts said everyone who bought in early would make a big profit. Based on Kitts' statements and the endorsement of Wiener, Mushatt purchased 20,000 shares of NevWest stock at \$0.25 per share, for a total of \$5,000. Mushatt received a stock certificate for this purchase in November 2004.

33. Mushatt was not provided with any disclosure documents other than a Subscription

Agreement prior to investing. Mushatt was not told that Kitts had a judgment exceeding \$100,000 and a tax lien outstanding against him. Mushatt was not told Sunpeak Holdings, Inc., a company for which Kitts was President, Secretary and Treasurer, had filed for bankruptcy.

34. Mushatt's joint income with his spouse met the SEC Regulation D definition of an accredited investor at the time he invested in NevWest.

35. Mushatt called Kitts in late 2005 or early 2006 and asked for his investment to be returned. To date, he has received nothing back.

COUNT 8
THEFT, a second degree felony

36. The NevWest account at Bank of America was opened on March 10, 2004 with the investment check from **Willie Mushatt**, and was still open at the time the records were subpoenaed. The opening deposit was followed by a counter credit on March 11, 2004, in the amount of \$6,212.87, which is the amount of the last bank originated debit in the Wells Fargo account. Expenditures following these two deposits were \$750 to Viviana Gallardo (purpose unknown), \$1,000 cash withdrawal, \$6,946 to Bank of America with notation "Permanent resident card", \$1,000 to Gary Lotzitz with the notation "Mortgage depreciation on H. Faulk," and \$3,328.50 to Farmers with the notation "House Insurance 2580 Bear Hollow Drive..." (Kitts' personal residence).

COUNT 9
SECURITIES FRAUD, a second degree felony

37. Brian Kitts' step-son, Jared Bird, approached Culley Davis' son, Jared Davis, asking if Kitts could visit with **Culley Davis** (Davis). A meeting took place on January 24, 2004, at Davis' office

in Draper, Utah.

38. Kitts told Davis he was doing a Private Placement to take NevWest public in about 90 days. Kitts compared this deal to a couple of other companies he had taken public, stating those deals had made some people a lot of money.

39. Davis invested on January 24, 2004, by purchasing 40,000 shares of NevWest for \$0.25 per share for a total of \$10,000. These funds came from Davis' personal checking account.

40. Kitts approached Davis again in October 2004. Kitts stated the offering was almost closed, so Davis would be one of the last ones to get in if he made another investment. Davis invested a second time on October 26, 2004, by purchasing 100,000 shares of NevWest for \$0.25 per share, 75,000 shares for himself and 25,000 shares for his son, Jared Davis. The total of \$25,000 was spread over three checks in the amounts of \$6,000, \$10,000, and \$9,000 respectively.

41. Davis was not provided with any investment documents other than a Subscription Agreement prior to investing. Davis asked Kitts for financial statements and other information about the company on more than one occasion, but has received nothing.

42. Davis was not told that Kitts had a judgment exceeding \$100,000 and a tax lien outstanding against him. Davis was not told Sunpeak Holdings, Inc., a company for which Kitts was President, Secretary and Treasurer, had filed for bankruptcy.

43. Davis' net worth met the SEC Regulation D definition of an accredited investor at the time he invested in NevWest.

44. Davis has been asking Kitts for his money back for over two years, but, to date, has not

received anything.

COUNT 10
THEFT, a second degree felony

45. A NevWest account was opened at Wells Fargo on January 21, 2004 and closed on February 10, 2004 by using the balance to open a second account at Wells Fargo. The second account closed on March 10, 2004. Since there was no overlap of time when they were both open, they have been treated as one account. A total of \$30,000 was deposited, which included a \$10,000 investment from **Culley W. Davis**, a \$10,000 investment from Michael L. Pascarella, a \$5,000 investment from Michael W. Wiener and \$5,000 from another individual. Expenditures were to Paul Wood, an attorney who defended Sunpeak Holdings, Inc. and Kitts in a civil suit unrelated to NevWest (\$2,000); Steve Gindrat, purpose unknown (\$500); bank fees (\$115.19); Brisam Corp. (\$18), and bank originated debits, purpose unknown (\$11,390.81). The last of the bank originated debits, \$6,212.87 on March 10, 2004, is the same amount as a counter credit made to a NevWest account at Bank of America on March 11, 2004. Of the remaining \$15,976, wire transfers to an account belonging to Kitts' wife Laurel totaled \$9,000 and the rest went to Kitts in the form of cash withdrawals and checks written to him.

COUNT 11
SECURITIES FRAUD, a third degree felony

46. **Lee O'Neill**(L. O'Neill) first became acquainted with Kitts when L. O'Neill invested in InvestAmerica, Inc. After leaving InvestAmerica and starting NevWest, Kitts approached L. O'Neill to invest in NevWest in July 2003.

47. In telephone conversations, Kitts, from Park City, Utah, told L. O'Neill he was in the process of taking NevWest public. Money was needed to fund the process. Kitts told L. O'Neill that if he invested in NevWest, when it went public L. O'Neill would make up all his losses from his InvestAmerica investment, plus more.

48. L. O'Neill purchased 500,000 shares of NevWest at \$0.01 per share, for a total of \$5,000, in July 2003. He was issued stock certificate number 560 on August 27, 2003 by the transfer agent, Pacific Stock Transfer Company.

49. L. O'Neill was not provided with any investment documents other than a Subscription Agreement prior to investing. L. O'Neill asked Kitts for financial statements and other information about the company NevWest was to merge with on more than one occasion, but has received nothing.

50. L. O'Neill was not told that Kitts had a judgment exceeding \$100,000 and a tax lien outstanding against him.

51. L. O'Neill's joint income with his spouse met the SEC Regulation D definition of an accredited investor at the time he invested in NevWest.

52. L. O'Neill has requested the return of his investment many times via e-mail. To date Kitts has not responded to the e-mails, nor has he returned any of the funds.

COUNT 12
THEFT, a second degree felony

53. The NevWest account at Zions Bank was opened on July 29, 2003, with Lee O'Neill's investment, and closed on September 8, 2003. A total of \$26,412.50 was deposited in the account,

excluding a \$5,000 check deposited, then subsequently returned. Expenditures prior to the next deposit include, but are not limited to, a counter check for \$1,000 for cash to Brian Kitts, a cash withdrawal of \$1,600 and a check to Brian Kitts for \$3,500 which was subsequently deposited into a personal checking account belonging to Laurie and Brian Kitts. The account balance prior to the next deposit was -\$2,552.98.

COUNT 13
SECURITIES FRAUD, a second degree felony

54. **Robert O'Neill** (R. O'Neill) was told about the investment in NevWest by his brother, Lee. Kitts was familiar with R. O'Neill because R. O'Neill was also an investor in Kitts' former company, InvestAmerica.

55. In April 2004, Kitts approached L. O'Neill asking if R. O'Neill would be interested in investing in NevWest. Information provided to R. O'Neill from Kitts through L. O'Neill included that NevWest would be going public within a few weeks; that when NevWest went public, the stock would start trading at \$2 to \$3 per share; that R. O'Neill could purchase shares at \$0.25 per share; that the money from the purchase of shares would be used in the process to take the company public; that R. O'Neill's money was safe, and that he would not lose it.

56. R. O'Neill purchased 40,000 shares of NevWest at \$0.25 per share for a total of \$10,000 on May 11, 2004. He was issued a stock certificate on June 25, 2004.

57. R. O'Neill was not provided with any investment documents other than a Subscription Agreement prior to investing. R. O'Neill was not told that Kitts had a judgment exceeding \$100,000 and a tax lien outstanding against him. R. O'Neill was not told Sunpeak Holdings, Inc., a company

for which Kitts was President, Secretary and Treasurer, had filed for bankruptcy.

58. R. O'Neill did not meet the SEC Regulation D definition of an accredited investor at the time he invested in NevWest.

59. R. O'Neill has requested the return of his investment through his brother Lee. To date Kitts has not returned any of the funds.

COUNT 14
THEFT, a second degree felony

60. **Robert O'Neill's** investment check was deposited to the NevWest account at Bank of America on May 17, 2004. Expenditures from that account following the deposit include, but are not limited to, Park City Golf Course \$67; Wildoats \$107.80; Friendfinder \$119.96; Galyan's #29 \$234.49; Pacific Sunwear #1055 \$238.65; cash withdrawal through Wells Fargo Bank with fees \$503.50; NC Founders LLC for Laurie \$3,500; Paul Wood (defense attorney for Kitts and Sunpeak Holdings, Inc. on a civil matter unrelated to NevWest) \$3,000; Park City Golf Course \$47; Friendfinder \$49.85; Jeremy Store \$50; Sunpeak Homeowner's Association Lot 25, 26 \$1,200; and Terry's RV Center \$321.69.

COUNT 15
SECURITIES FRAUD, a second degree felony

61. **Penny Breiman** learned about the investment opportunity in NevWest from her daughter, Christine Ashton and her daughter's friend, Roberto McFarlane in March 2005. McFarlane had been acquainted with Kitts for several years. They introduced her to Kitts.

62. Kitts met with Breiman at her home in Salt Lake City and told her that NevWest was about

to go public. When the company went public, the stock would be worth significantly more than the price he was offering to Breiman. Kitts told Breiman that he had many investors who had invested \$100,000, but he would let Breiman and McFarlane invest lesser amounts because McFarlane was a friend of his. (No \$100,000 investors were identified in the bank records.)

63. Kitts told Breiman if she wanted to invest she had to do so immediately as the offering was actually over. Breiman purchased 60,000 shares of NevWest stock for \$0.25 per share, for a total of \$15,000 on March 18, 2005. She was issued a stock certificate on October 10, 2005.

64. Breiman was not provided with any investment documents other than a Subscription Agreement prior to investing. Breiman was not told that Kitts had two judgments and a tax lien outstanding against him. Breiman was not told Sunpeak Holdings, Inc., a company for which Kitts was President, Secretary and Treasurer, had filed for bankruptcy.

65. Breiman did not meet the SEC Regulation D definition of an accredited investor at the time she invested in NevWest.

66. Breiman has requested the return of her investment, both directly and through Roberto McFarlane. To date Kitts has not returned any of the funds.

COUNT 16
THEFT, a second degree felony

67. **Penny Breiman's** investment check was deposited to the NevWest account at Bank of America on March 18, 2005. Expenditures from that account following the deposit include, but are not limited to, Discover - Payment for Laurel Kitts \$2,000.00; Octavio Perez (purpose unknown) \$780; Roberto McFarlane (purpose unknown) \$252; Discover Card \$4,000; Auto Spa Express \$10;

Barnes & Noble\$11.30; Mimi's \$27.09; Dollar Tree \$29.32; Smiths \$31.84; Wildoats \$32.93; Blue Boutique \$43.17; Rite Aid \$86.47; and State Liquor Store \$107.80.

COUNT 17
PATTERN OF UNLAWFUL ACTIVITY, a second degree felony

68. Commencing on or about July 2003, the defendant engaged in conduct which constituted the commission of at least three episodes of unlawful activity as defined in Utah Code Ann. § 76-10-1603. The defendant: (1) received proceeds derived, directly or indirectly, from a pattern of unlawful activity as more fully defined in Counts 1 through 16 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/or theft. This is a violation of Utah Code Ann. § 76-10-1603(5), a second degree felony.

SUMMARY

69. Based on my review of the evidence there is probable cause to believe that BRIAN ARTHUR KITTS has committed the crimes of:

SECURITIES FRAUD
a second degree felony, 4 counts

SECURITIES FRAUD
a third degree felony, 4 counts

THEFT
a second degree felony, 7 counts

THEFT
a third degree felony, 1 count

PATTERN OF UNLAWFUL ACTIVITY
a second degree felony, 1 count

DATED this 19 day of July, 2007.

Susan M Jones
Susan M. Jones, Affiant

SUBSCRIBED AND SWORN to before me on this 19
day of July, 2007.

Erin J. ...
JUDGE, THIRD DISTRICT COURT

I CERTIFY THAT THIS IS A TRUE COPY OF
AN ORIGINAL DOCUMENT ON FILE IN THE
THIRD DISTRICT COURT, SALT LAKE
COUNTY, STATE OF UTAH.
DATE: 7/19/07
W
DEPUTY COURT CLERK

FILED DISTRICT COURT
Third Judicial District

JUL 19 2007

SALT LAKE COUNTY

by _____
Deputy Clerk

E. NEAL GUNNARSON, Bar No. 1273
Assistant Attorney General
MARK L. SHURTLEFF, Bar No. 4666
Utah Attorney General
5272 South College Drive, #200
Murray, UT 84123
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IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

THE STATE OF UTAH, : Bail \$ 50,000⁰⁰ OR PTS
 :
 Plaintiff, :
 : **WARRANT OF ARREST**
 vs. :
 :
 BRIAN ARTHUR KITTS, : Case No. 071905099
 DOB: November 15, 1955 :
 : 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 Susan Jones, 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; Securities Fraud, a third degree felony, 4 counts; Theft, a second degree felony, 7 counts; Theft, a third degree felony, 1 count; and, Pattern of Unlawful Activity, a**

second degree felony, 1 count, has been committed, and that the defendant, BRIAN ARTHUR KITTS, 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.

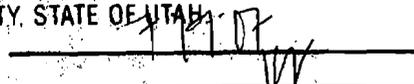
Bail is set in the amount of \$ 50,000⁰⁰ OR ITS.

DATED this 19 day of July, 2007.


HONORABLE, Trease
JUDGE, THIRD DISTRICT COURT

Defendant's Address:

2580 Bear Hollow Drive
Park City, UT 84098
435-615-8800 (cell)

I CERTIFY THAT THIS IS A TRUE COPY OF
AN ORIGINAL DOCUMENT ON FILE IN THE
THIRD DISTRICT COURT, SALT LAKE
COUNTY, STATE OF UTAH
DATE: 7/19/07

DEPUTY COURT CLERK