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U.S. COURTS

APR 10 2013

Rcvd _____ Filed _____ Time _____
ELIZABETH A. SMITH
CLERK, DISTRICT OF IDAHO

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOUGLAS L. SWENSON, MARK A.
ELLISON, DAVID D. SWENSON, JEREMY S.
SWENSON,

Defendants.

CR No. **CR 13-0091-SBLW**

INDICTMENT

(Redacted Version)

THE GRAND JURY CHARGES THAT:

At all times relevant to this Indictment:

INTRODUCTORY ALLEGATIONS

I. Relevant Persons and Entities

1. Defendant DOUGLAS L. SWENSON was the President of DBSI Housing, Inc., later known as DBSI, Inc. (DBSI Housing), and was the founder and president of numerous entities related to the DBSI Group of Companies (DBSI).

2. Defendant MARK A. ELLISON was an original founder of DBSI, but sold his interest in or around 1992 to go into private legal practice. MARK A. ELLISON returned to DBSI as General Counsel in or around 2004. MARK A. ELLISON held a Bachelor's degree in Accounting, a Master's of Accountancy, a Juris Doctor (law) degree, and a CPA licence in the state of Idaho.

3. Defendant DAVID D. SWENSON was an employee of DBSI and Assistant Secretary for DDRS and FOR1031, affiliated companies of DBSI, with signature authority for both entities. DAVID D. SWENSON held a Bachelor's degree in Accounting and a Master's of Accountancy.

4. Defendant JEREMY S. SWENSON was an employee of DBSI and Assistant Secretary for DDRS and DBSI Housing with signature authority for both entities. JEREMY S. SWENSON held a Bachelor's degree in Accounting and a Master's of Accountancy.

DBSI

5. DBSI was founded in or around 1979 and headquartered in Meridian, Idaho.

6. DBSI was essentially a conglomerate of affiliated companies, including DBSI, Inc., formerly known as DBSI Housing, Inc. (DBSI Housing); DBSI Securities, Inc. (DBSI Securities); DBSI Master Leaseco, Inc. (Master Leaseco); DBSI Investments LLP (DBSI Investments); DBSI Redemption Reserve (DRR); DBSI Discovery Real Estate Services LLC (DDRS); Spectrus Real Estate, Inc., formerly known as FOR1031 LLC (FOR1031); Kastera LLC, Kastera Development LLC, and Kastera Homes, LLC (Kastera); Western Technologies LLC and Western Electronics LLC (Western Technologies); Stellar Technologies LLC (Stellar Technologies); Bio Reaction Industries LLC (Bio Reaction); GigOptix LLC (GigOptix); iTerra Communications (iTerra); Wavetronix LLC (Wavetronix); EmergeCore Networks LLC (EmergeCore); UltraDesign LLC (UltraDesign) BioMatrix Solutions LLC (BioMatrix); DBSI

2008 Notes Corporation (DBSI 2008 Notes); DBSI Florissant Market Place Acquisition, LLC (DBSI Florissant Market Place); DBSI Pinehurst Square East Acquisition, LLC (DBSI Pinehurst Square East); DBSI Pinehurst Square West Acquisition, LLC (DBSI Pinehurst Square West); DBSI Peachtree Corners Pavilion, LLC (DBSI Peachtree Corners Pavilion); DBSI Belton Town Center Acquisition, LLC (DBSI Belton Town Center); Oakwood Plaza Acquisition LLC (DBSI Oakwood Plaza); and Portofino Tech Center Acquisition LLC (DBSI Portofino Tech Center), among others.

7. DBSI was, among other things, engaged in the acquisition, development, management and sale of commercial real estate properties throughout the United States.

8. DBSI purported to be an “industry leader” in “locating, acquiring, developing, managing and providing real estate investment opportunities throughout” the United States. DBSI was involved in both “real estate dealer and real estate development businesses.” DBSI also purported to have “a small non-real estate portfolio,” (technology start-up companies) which DBSI represented to be a diversification strategy through its “acquiring and investing in emerging technology companies.”

9. DBSI sold a range of investment products including, but not limited to, Tenant-in-Common 1031 exchange interests (TIC investments), development fund investments, and other Note and debt investments.

10. From a date unknown, but by around 2001, and continuing through October 2008, both dates being approximate and inclusive, within the District of Idaho and elsewhere, DBSI sold TIC and Note investments as private securities through DBSI Securities, also known as the “security channel.”

11. From 2003, and continuing through October 2007, both dates being approximate and inclusive, within the District of Idaho and elsewhere, DBSI sold TIC investments as real

estate investments through FOR1031, also known as the "real estate channel." FOR1031 stopped selling TIC investments in or around October 2007 after inquiry by the Securities and Exchange Commission (SEC).

12. The majority of TIC investments sold by both DBSI Securities and FOR1031 were subject to DBSI's "Master Lease" (the Master Lease). By no later than 2006, the majority of DBSI's business centered around selling TIC investments and managing properties subject to the Master Lease.

13. To sell TIC investments subject to the Master Lease, DBSI typically purchased commercial and residential real estate properties from unrelated third parties and immediately resold fractional interests in the property to individual investors (TIC investors) for a higher price; DBSI oftentimes sold the property to TIC investors for 20% to 30% more than what DBSI paid for the individual property; this mark-up was known as the "front-end load."

The Master Lease

14. DBSI purchased a particular property, usually subject to a mortgage, and then immediately sold TIC interests in said property to TIC investors, subject to the Master Lease. The Master Lease provided that upon the sale of the property to TIC investors, DBSI became the "Master Tenant" and leased the entire property from said TIC investors for a period of 10 to 20 years. During that period, DBSI was obligated to manage and operate the individual property, make fixed payments to TIC investors, and service the debt on that property. TIC Investors collected their return, approximately 6.5%, by monthly check.

15. As Master Tenant, DBSI was entitled to all of the cash flow from the underlying tenants of the property. DBSI attempted to make each individual property subject to the Master Lease "cash flow," meaning that each property had a positive cash flow because it brought in

more money from underlying tenants than DBSI spent on its Master Lease obligations, including fixed payments to TIC investors and debt service on the individual property's mortgage.

16. TIC investors, after purchasing their respective property for as much as 20% to 30% more than DBSI paid for the property, relied on the Master Lease for a consistent return on their investment. DBSI was obligated to make fixed payments to TIC investors regardless of how the TIC investors' individual property performed (i.e. whether the property's cash flow was positive or negative).

17. Both Master Leaseco and DBSI Housing "guaranteed" the Master Lease. This guarantee meant that if an individual property subject to the Master Lease was cash flow negative, meaning the property was not bringing in enough money to cover payments to TIC investors and debt service payments on the mortgage, both Master Leaseco and DBSI Housing were responsible for making up any shortfall.

18. DBSI Housing and Master Leaseco's finances were represented in TIC disclosure materials, including Private Placement Memoranda (PPMs). In or around 2007 and continuing through 2008, DBSI, including DBSI wholesalers and other DBSI employees, made representations that Master Leaseco was capitalized with \$15.4 million in cash or immediately available funds. DBSI further represented that, through Master Leaseco's capitalization, DBSI could satisfy all payments to TIC investors for a period of two years even if DBSI did not receive any payments from underlying tenants.

19. In or around 2007 and continuing through 2008, DBSI made representations, including in marketing materials and PPMs, that DBSI Housing had "a net worth of more than \$105 million."

20. In truth and in fact, DBSI's actual net worth was materially less than what it represented. DBSI's actual net worth was misrepresented and concealed from investors,

financial advisors, broker dealers, due diligence officers, DBSI wholesalers and other DBSI employees involved with the marketing and selling of TIC and note offerings.

The Master Lease Portfolio

21. In or around 2007 and continuing through 2008, DBSI represented itself as having been in the “real estate investment business” for just under 30 years. Although DBSI was founded in or around 1979, TIC sales were not the major focus of DBSI’s business until in or around 2003. DBSI’s history and prior track record in the real estate investment business was not similar to its TIC syndication business or the Master Lease. The properties that DBSI managed and operated pursuant to the Master Lease (Master Lease portfolio) quickly became unprofitable and dependent on new investors funds to make fixed return payments to prior TIC investors.

22. DBSI was extremely successful in marketing and selling TIC investments, based in large part on the Master Lease and its fixed rate of return. TIC investors were eager to invest with DBSI, believing that the Master Lease largely alleviated risk because the investor would be paid a fixed return, regardless of how their underlying property performed. Said return was guaranteed by Master Leaseco and DBSI Housing which, by June 2007, represented itself as having a net worth in excess of \$105 million.

23. Although DBSI was involved in numerous real estate and non-real estate business ventures throughout 2007 and 2008, the “front end load,” or the difference between the price at which DBSI purchased a property from third party sellers and the price at which DBSI sold the property to TIC investors, represented the only material source of profit for DBSI.

24. Although DBSI received some profit on the initial sale of TIC investments (the front end load), afterwards each new sale meant DBSI was contractually obligated to make fixed payments to TIC investors for the ensuing 10 to 20 years pursuant to the Master Lease.

25. DBSI held out the Master Lease portfolio as self-sustaining and capable of making TIC investor payments, along with debt service payments on the TIC investors' behalf, from the profits it received from managing the Master Lease portfolio properties. In truth and in fact, in and around 2007 and continuing through 2008, the Master Lease portfolio was losing approximately \$3 million dollars per month and using new investor funds to meet existing obligations.

Accountable Reserves

26. Under DBSI's Master Lease, individual TIC investors, although the owners of the property, were responsible only for capital expenses, tenant improvements, and leasing commissions on their respective property. DBSI collected funds to cover these costs at the time individual TIC investors purchased their respective share in an individual property. These funds were referred to as "Accountable Reserves."

27. TIC investors were told and expected that the Accountable Reserves would cover the majority, if not all, of the costs throughout the projected Master Lease of the property; DBSI marketed Accountable Reserves as beneficial to investors because investors could rely on a fixed return every year, rather than receiving an unpredictable cash flow return due to variable amounts of leasing and capital costs.

28. DBSI represented to TIC investors that Accountable Reserves collected from them at the time of sale remained the property of the individual TIC investors. For example, the PPMs specifically represented that Accountable Reserves "cannot be used for operations" and would be "repaid to the Purchasers to the extent not used."

29. DBSI represented to TIC investors that "The funds of the Company will not be commingled with the funds of any other person or entity except for operating revenues from the Property," namely TIC investors' accountable reserves.

30. From in or around 2003, and continuing through in or around November 2008, both dates being approximate and inclusive, DBSI collected approximately \$99 million in Accountable Reserves in connection with improved and unimproved real estate projects sold to TIC investors.

31. In truth and in fact, Accountable Reserves were regularly commingled with DBSI general funds and more than \$80 million in Accountable Reserves were used for purposes not disclosed to TIC investors, including paying returns to TIC investors, loaning money to technology start-up companies, and covering DBSI's general operations.

Technology Start-up Companies

32. DBSI also purported to have "a small non-real estate portfolio," which DBSI represented to be a diversification strategy through its "acquiring and investing in emerging technology companies."

33. In or around 1999 and continuing through at least 2008, DBSI loaned money to technology start-up companies through DBSI's affiliated companies, Western Technologies and Stellar Technologies, which held interests in said technology start-up companies, including, but not limited to, Bio-Reaction, Wavetronix, iTerra, GigOpitx, EmergeCore, BioMatrix, and UltraDesign.

34. Although DBSI Housing actually transferred funds directly to technology start-up companies, the transfers were booked as a series of loans through affiliated entities, including Western Technologies and Stellar Technologies, which on the books made the loans to the specific technology start-up company.

35. By approximately December 31, 2007, Stellar Technologies and Western Technologies owed DBSI approximately \$200 million. The PPMs for DBSI TIC and note offerings represented that said funds were fully collectable, as DBSI considered "all receivables

from affiliated entities as fully collective and no allowance for doubtful accounts was deemed necessary.”

36. By in or around June 30, 2008, Stellar Technologies and Western Technologies owed DBSI approximately \$235 million. The PPMs for DBSI TIC and note offerings continued to represent that said funds were fully collectable, as DBSI considered “all receivables from affiliated entities as fully collective and no allowance for doubtful accounts was deemed necessary.” Despite representing these funds as fully collectable, DBSI never received any material payments on said debt.

37. Although DBSI loaned large sums of money to technology start-up companies, through Stellar Technologies and Western Technologies, this account receivable was not explicitly listed on DBSI Housing’s balance sheet. Instead, DBSI Housing's balance sheet contained a line-item called “Net payables to affiliates” or “Net receivable from affiliates,” which netted, in large part, loans to technology start-up companies against payables to DBSI note and bond investors; the netted figure was represented as a current asset or current liability.

38. The PPMs for DBSI TIC and note offerings issued in 2007 and 2008 represented that DBSI Housing had a net worth of more than \$105 million; this figure included the approximate \$200 to \$235 million of receivables from Stellar Technologies and Western Technologies and assumed said receivables were fully collectible.

DBSI TIC and Note Offerings

39. In or around 2008, DBSI made the following TIC and Note offerings, among others:

DBSI 2008 Notes Offering

40. DBSI 2008 Notes Corporation (DBSI 2008 Notes) was a wholly-owned subsidiary of DBSI Housing.

41. In or about February 2008, DBSI issued, through DBSI 2008 Notes, an offering seeking to raise \$50 million, with the ability to increase to \$90 million, in 9.5 % “Corporate Guaranteed Notes” due on December 31, 2015 (the DBSI 2008 Notes Offering).

42. According to the PPM for the DBSI 2008 Notes Offering, the proceeds from the sale of the 2008 Notes were to be used to lend monies to current and future real estate and non-real estate entities (technology start-up companies) wholly owned by DBSI Housing and certain of its subsidiaries.

43. The 2008 Notes Offering was “unconditionally guaranteed” by DBSI Housing.

44. The PPM for the DBSI 2008 Notes offering represented that:

- a. “The Loans to the borrowing Entities will be evidenced by promissory notes requiring payments sufficient to pay the Note interest and principal on or before the due dates of the Note interest and principal. In order to recoup the offering costs paid by [DBSI 2008 Notes] and to provide a cash flow cushion, the Loans are expected to be made at 11.5% interest rates, 2.0% higher than the Note’s rate.”
- b. “To receive a Loan in accordance with the Loan requirements, an Entity must meet certain Loan requirements including a maximum overall 85% Loan to Value Ratio.”
- c. DBSI Housing has “a net worth of more than \$105 million” and retained earnings of approximately \$105 million.

45. The PPM for the DBSI 2008 Notes included DBSI Housing’s June 30, 2007, balance sheet (June 2007 DBSI Housing Balance Sheet), which represented that DBSI Housing’s retained earnings were approximately \$105 million.

46. From in or around February 2008 up through and including September 2008, DBSI raised approximately \$89 million from DBSI 2008 Note investors.

DBSI North Stafford, LLC

47. DBSI North Stafford, LLC (DBSI North Stafford) was an entity formed to acquire and sell undivided tenant-in-common interests in North Stafford, an office building located in Stafford, Virginia.

48. The acquisition of the North Stafford property by DBSI North Stafford was financed by an approximately \$14.2 million dollar loan from Wachovia Bank.

49. DBSI North Stafford collected approximately \$928,000 in Accountable Reserves from its TIC Investors.

50. The PPM for DBSI North Stafford offering stated the following:

- a. "Accountable Reserves for tenant improvements, leasing commissions and Capital Expenses will be repaid to the Purchasers to the extent not used in the operation of the Property."
- b. "The funds of the Company will not be commingled with the funds of any other person or entity except for operating revenues from the property."
- c. "DBSI Housing has a net worth of more than \$105 million" and retained earnings of approximately \$105 million.
- d. "The Company considers all receivables from affiliated entities as fully collectible and no allowance for doubtful accounts was deemed necessary."

51. The PPM for DBSI North Stafford also included the June 2007 DBSI Housing Balance Sheet, which represented DBSI Housing's retained earnings to be approximately \$105 million. As relevant to interpreting the balance sheet, the PPM stated "The Company considers

all receivables from affiliated entities as fully collectible and no allowance for doubtful accounts was deemed necessary.”

DBSI Oakwood Plaza Offering

52. DBSI Oakwood Plaza Acquisition, LLC (DBSI Oakwood Plaza), was an entity formed to acquire and sell undivided tenant-in-common interests in Oakwood Plaza, a commercial retail property located in Alton, Illinois.

53. The acquisition of Oakwood Plaza by DBSI Oakwood Plaza was financed by an approximately \$4.9 million dollar loan from Wachovia Bank.

54. DBSI Oakwood Plaza collected approximately \$600,000 in Accountable Reserves from its TIC Investors.

55. The PPM for DBSI Oakwood Plaza offering stated the following:

- a. “Accountable Reserves for tenant improvements, leasing commissions and Capital Expenses will be repaid to the Purchasers to the extent not used in the operation of the Property.”
- b. “The funds of the Company will not be commingled with the funds of any other person or entity except for operating revenues from the property.”
- c. “DBSI Housing has a net worth of more than \$105 million” and retained earnings of approximately \$105 million.
- d. “The Company considers all receivables from affiliated entities as fully collectible and no allowance for doubtful accounts was deemed necessary.”

DBSI Shoppes at Trammel Offering

56. DBSI Shoppes at Trammel LLC (DBSI Shoppes at Trammel) was an entity formed to acquire and sell undivided tenant-in-common interests in two buildings located in Cummings, Georgia.

57. The acquisition of Shoppes at Trammel by DBSI Shoppes at Trammel was financed by an approximately \$3.3 million dollar loan from Kinecta Federal Credit Union.

58. DBSI Shoppes at Trammel collected approximately \$400,000 in Accountable Reserves from its TIC Investors.

59. The PPM for DBSI Shoppes at Trammel stated the following:

- a. "Accountable Reserves for tenant improvements, leasing commissions and Capital Expenses will be repaid to the Purchasers to the extent not used in the operation of the Property."
- b. "The funds of the Company will not be commingled with the funds of any other person or entity except for operating revenues from the property."
- c. "DBSI [Housing] has a net worth of more than \$105 million" and retained earnings of approximately \$105 million.
- d. "The Company considers all receivables from affiliated entities as fully collectible and no allowance for doubtful accounts was deemed necessary."

DBSI Florissant Market Place Offering

60. DBSI Florissant Market Place Acquisition, LLC (DBSI Florissant Market Place), was an entity formed to acquire and sell undivided tenant-in-common interests in Florissant Market Place, a commercial retail property located in Florissant, Missouri.

61. The acquisition of Florissant Market Place by DBSI Florissant Market Place was financed by an approximately \$11.2 million dollar loan from Wachovia Bank.

62. DBSI Florissant Market Place collected approximately \$1.25 million in Accountable Reserves from its TIC Investors.

63. The PPM for DBSI Florissant Market Place stated the following:

- a. “Accountable Reserves for tenant improvements, leasing commission, and capital improvements cannot be used for operations, and will be repaid to the Purchasers to the extent not used.”
- b. “The funds of the Company will not be commingled with the funds of any other person or entity except for operating revenues from the property.”
- c. “DBSI has an unaudited net worth of more than \$105 million” and retained earnings of approximately \$105 million.
- d. “The Company considers all receivables from affiliated entities as fully collectible and no allowance for doubtful accounts was deemed necessary.”

DBSI Pinehurst Square East Offering

64. DBSI Pinehurst Square East Acquisitions, LLC (DBSI Pinehurst Square East), was an entity formed to acquire and sell undivided tenant-in-common interests in Pinehurst Square East, a commercial retail property located in Bismark, North Dakota.

65. The acquisition of Pinehurst Square East by DBSI Pinehurst Square East was financed by an approximately \$13.2 million dollar loan from U.S. Bank.

66. DBSI Pinehurst Square East collected approximately \$1.54 million in Accountable Reserves from its TIC Investors.

67. The PPM for the DBSI Pinehurst Square East offering stated the following:

- a. “Accountable Reserves for tenant improvements, leasing commission, and capital improvements cannot be used for operations, and will be repaid to the Purchasers to the extent not used.”
- b. “The funds of the Company will not be commingled with the funds of any other person or entity except for operating revenues from the property.”
- c. “DBSI [Housing] has a net worth of more than \$105 million” and retained earnings of approximately \$105 million.
- d. “The Company considers all receivables from affiliated entities as fully collectible and no allowance for doubtful accounts was deemed necessary.”

DBSI Pinehurst Square West Offering

68. DBSI Pinehurst Square West Acquisition, LLC (DBSI Pinehurst Square West), was an entity formed to acquire and sell undivided tenant-in-common interests in Pinehurst Square West, a commercial retail property located in Bismark, North Dakota.

69. The acquisition of Pinehurst Square West by DBSI Pinehurst Square West was financed by an approximately \$8.2 million dollar loan by U.S. Bank.

70. DBSI Pinehurst Square West collected approximately \$960,000 in Accountable Reserves from its TIC Investors.

71. The PPM for the DBSI Pinehurst Square West offering stated the following:

- a. “Accountable Reserves for tenant improvements, leasing commission, and capital improvements cannot be used for operations, and will be repaid to the Purchasers to the extent not used.”

- b. “The funds of the Company will not be commingled with the funds of any other person or entity except for operating revenues from the property.”
- c. “DBSI [Housing] has a net worth of more than \$105 million” and retained earnings of approximately \$105 million.
- d. “The Company considers all receivables from affiliated entities as fully collectible and no allowance for doubtful accounts was deemed necessary.”

DBSI Peachtree Corners Pavilion Offering

72. DBSI Peachtree Corners Pavilion, LLC (DBSI Peachtree Corners Pavilion), was an entity formed to acquire and sell undivided tenant-in-common interests in Peachtree Corners Pavilion, a commercial retail property located in Norcross, Georgia.

73. The acquisition of Peachtree Corners Pavilion by DBSI Peachtree Corners Pavilion was financed by an approximately \$4.7 million dollar loan by Nexity Bank.

74. DBSI Peachtree Corners Pavilion collected approximately \$340,000 in Accountable Reserves from its TIC Investors.

75. The PPM for the DBSI Peachtree Corners Pavilion offering stated the following:

- a. “Accountable Reserves for tenant improvements, leasing commission, and capital improvements cannot be used for operations, and will be repaid to the Purchasers to the extent not used.”
- b. “The funds of the Company will not be commingled with the funds of any other person or entity except for operating revenues from the property.”
- c. “DBSI [Housing] has a net worth of more than \$105 million” and retained earnings of approximately \$105 million.

- d. “The Company considers all receivables from affiliated entities as fully collectible and no allowance for doubtful accounts was deemed necessary.”

DBSI Portofino Tech Center Offering

76. DBSI Portofino Tech Center Acquisition, LLC (DBSI Portofino Tech Center), was an entity formed to acquire and sell undivided tenant-in-common interests in Portofino Tech Center, a commercial retail property located in Shenandoah, Texas.

77. The acquisition of Portofino Tech Center by DBSI Portofino Tech Center was financed by an approximately \$8.1 million dollar loan by Reliance Bank.

78. DBSI Portofino Tech Center collected approximately \$928,000 from its TIC Investors.

79. The PPM for DBSI Portofino Tech Center offering stated that:

- a. “Accountable Reserves for tenant improvements, leasing commission, and capital improvements cannot be used for operations, and will be repaid to the Purchasers to the extent not used.”
- b. “The funds of the Company will not be commingled with the funds of any other person or entity except for operating revenues from the property.”
- c. “DBSI has an unaudited net worth of more than \$105 million” and retained earnings of approximately \$105 million.
- d. “The Company considers all receivables from affiliated entities as fully collectible and no allowance for doubtful accounts was deemed necessary.”

DBSI Belton Town Center Offering

80. DBSI Belton Town Center Acquisition, LLC (DBSI Belton Town Center), was an entity formed to acquire and sell undivided tenant-in-common interests in Belton Town Center, a commercial retail property located in Belton, Missouri.

81. The acquisition of Belton Town Center by DBSI Belton Town Center was financed by an approximately \$3.4 million dollar loan from Pinnacle Bank.

82. DBSI Belton Town Center collected approximately \$340,000 in Accountable Reserves from its TIC Investors.

83. The PPM for the DBSI Belton Town Center offering stated the following:

- a. "Accountable Reserves for tenant improvements, leasing commission, and capital improvements cannot be used for operations, and will be repaid to the Purchasers to the extent not used."
- b. "The funds of the Company will not be commingled with the funds of any other person or entity except for operating revenues from the property."
- c. "DBSI has an unaudited net worth of more than \$105 million" and retained earnings of approximately \$105 million.
- d. "The Company considers all receivables from affiliated entities as fully collectible and no allowance for doubtful accounts was deemed necessary."

Financial Institutions

84. Kinecta Federal Credit Union and Nexity Bank are financial institutions, as defined by Title 18, United States Code, Section 20.

COUNT ONE

**Conspiracy to Commit Securities Fraud, Wire Fraud, Mail Fraud, Interstate
Transportation of Stolen Property
18 U.S.C. §§ 371, 1341, 1343, 2314;
15 U.S.C. §§ 78j(b), 78ff;
17 C.F.R. § 240.10b-5; 18 U.S.C. § 2**

Scheme to Defraud, Make Material False Statements, and Operation of a Fraud

85. From a date unknown, but by January 1, 2007, and continuing to November 2008, both dates being approximate and inclusive, within the District of Idaho and elsewhere, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, raised funds from investors, typically through non-public offerings known as private placements, by representing DBSI as a profitable company with a net worth in excess of \$105 million. In truth and in fact, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, well knew and believed that contrary to disclosures made to investors, (i) DBSI real estate and non-real estate entities, including technology start-up companies, were almost universally unprofitable, (ii) DBSI relied on new investors funds, including Accountable Reserves, in order to continue operations and pay its existing obligations, including returns to TIC and note investors; and (iii) DBSI raised funds from TIC and note offerings despite not having the ability to make good on its obligation. DBSI's true financial condition was concealed from investors, financial advisors, broker dealers, due diligence officers, DBSI wholesalers, and other DBSI employees involved with the marketing and selling of TIC and note offerings. Said concealment included, but was not limited to, DBSI's reliance on new funds from TIC and note offerings in order to meet even its existing financial obligations in the near future, its loans to technology start-up companies of more than \$200 million dollars that purported to be fully collectible, and its misuse of Accountable Reserves.

86. In furtherance of the scheme, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, sought to and did make and caused to be made, materially false and misleading statements, and material omissions, including but not limited to false and misleading statements and material omissions contained within PPMs for TIC and note offerings.

87. From a date unknown, but by January 1, 2007, and continuing through November 2008, both dates being approximate and inclusive, within the District of Idaho and elsewhere, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, raised funds from investors, typically through private placements, and used material portions of the raised investor funds for purposes other than those specified in the offering PPM, including using Accountable Reserves and DBSI 2008 Note funds for purposes not disclosed in the offering PPM which, was not disclosed to investors.

88. In furtherance of the scheme, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, caused documents, including PPMs and marketing materials, to be distributed to investors, and made, and caused to be made, statements to investors that Accountable Reserves belonged to investors, would be segregated, and would not be used for anything other than tenant improvements, leasing commissions and capital improvements on the investors' specific property. PPMs for TIC offerings specifically stated "Accountable reserves for tenant improvements, leasing commissions and capital improvements cannot be used for operations, and will be repaid to the Purchasers to the extent not used in the operation of the Property" and "The funds of the [specific offering] will not be commingled with the funds of any other person or entity except for operating revenues from the [specific offering]." In truth and in

fact, the defendants caused DBSI to intentionally divert and commingle Accountable Reserves with general funds of DBSI and applied the funds for various purposes, including but not limited to the payment of interest payments to investors, general operations of DBSI, and loans to technology start-up companies.

89. In furtherance of the scheme, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, caused DBSI to collect, spend, and continue collecting and spending investors' Accountable Reserves for purposes other than those specified in the PPMs for the TIC offerings, well knowing and believing that DBSI did not have the financial ability to repay investors these Accountable Reserves.

90. In furtherance of the scheme, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, caused documents, including PPMs and marketing materials, to be distributed to investors, and made and caused to be made representations to investors, that falsely, fraudulently and materially misrepresented DBSI Housing's net worth.

91. In furtherance of the scheme, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, caused documents, including PPMs and marketing materials, to be distributed to investors, and made and caused to be made representations to investors, that falsely, fraudulently and materially misrepresented DBSI Housing's retained earnings on DBSI Housing's Balance Sheet.

92. In furtherance of the scheme, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, caused documents, including PPMs and marketing materials, to be

distributed to investors, and made and caused to be made representations to investors, that falsely, fraudulently and materially misrepresented assets on DBSI Housing's balance sheet, including its cash, account receivables from affiliated entities, and the collectibility of loans to technology start-up companies.

93. In furtherance of the scheme, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, caused documents, including PPMs and marketing materials, to be distributed to investors, and made and caused to be made representations to investors that misrepresented, concealed, and omitted liabilities on DBSI Housing's Balance Sheet in excess of \$200 million, including liabilities of fixed payments to TIC investors pursuant to the Master Lease and funds owed to Note and Bond Investors pursuant to prior note and bond offerings.

94. In furtherance of the scheme, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, caused documents, including PPMs and marketing materials, to be distributed to investors, and made and caused to be made representations to investors that failed to disclose DBSI's cash shortages, deteriorating finances, and inability to make the fixed payments owed to prior TIC investors without raising new funds from new TIC and Note investors.

95. In furtherance of the scheme, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, caused documents, including PPMs and marketing materials, to be distributed to investors, and made and caused to be made representations to investors that failed to disclose that, after October 2007, DBSI was financially dependent on receiving a NAR Exemption to sell TIC investments through the real estate channel because DBSI was unable to

raise enough funds selling TIC investments through the securities channel to meet its existing obligations and also that DBSI was dependent on new investor funds in order to continue operations.

96. In furtherance of the scheme, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, caused documents, including PPMs and marketing materials, to be distributed to investors, and made and caused to be made representations to investors that failed to disclose that, in or around 2008, FOR1031 sales people and others associated with TIC sales through the real estate channel were laid off after DBSI determined that it would likely not receive a NAR Exemption in the foreseeable future.

97. In furtherance of the scheme, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, caused documents, including PPMs and marketing materials, to be distributed to investors, and made and caused to be made representations to investors that failed to disclose DBSI's loans to, and dependence on the loan repayment by, technology start-up companies.

98. In furtherance of the scheme, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, caused documents, including PPMs and marketing materials, to be distributed to investors, and made, and caused to be made, representations to investors that failed to disclose that the Master Lease Portfolio was losing approximately \$3 million dollars per month in 2007 and 2008; and further, that said losses on the Master Lease portfolio were being covered by new funds from note and TIC investors, including the investors' Accountable Reserves.

99. In furtherance of the scheme, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, caused documents, including PPMs and marketing materials, to be distributed to investors, and made, and caused to be made, representations that failed to disclose DBSI's true cash position and its dependence on new investor funds to meet even short-term financial obligations.

100. In furtherance of the scheme, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, knew of and discussed DBSI's true financial position, including inside "cash meetings," but concealed this information from other DBSI employees, including marketing and wholesalers, and further concealed this information from due diligence officers, broker dealers, financial advisors, and TIC and note investors.

101. In furtherance of the scheme, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, caused DBSI not to be audited and made and caused others to make representations that DBSI Housing and related DBSI entities were not audited because it was cost-prohibitive when, Defendants well knew, believed and sought to conceal that an audit of DBSI Housing and related entities would have exposed that DBSI essentially operated like a Ponzi scheme, in that DBSI was almost entirely dependent on funds from new investors to pay old investors, a disclosure that was not made to said investors and which Defendants in fact took steps to conceal from said investors.

B. The Conspiracy

102. The allegations contained in paragraphs 1 through 101, are incorporated by reference as though set forth fully herein.

103. From a date unknown, but by at least January 1, 2007, continuing through November 2008, both dates being approximate and inclusive, within the District of Idaho and elsewhere, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, willfully and knowingly, did combine, conspire, confederate and agree together and with others to commit offenses against the United States, to wit, to commit:

- a. Securities fraud, in violation of Sections 78j(b) and 78ff of Title 15, United States Code, and Title 17, Code of Federal Regulations, Section 240.10b-5k;
- b. Wire fraud, in violation of Title 18, United States Code, Section 1343;
- c. Mail fraud, in violation of Title 18, United States Code, Section § 1341;
- and
- d. Interstate Transportation of Stolen Property, in violation of Title 18, United States Code, Section 2314.

C. Objects of the Conspiracy

104. The allegations contained in paragraphs 1 through 103, are incorporated by reference as though set forth fully herein.

Securities Fraud

105. It was a part and an object of the conspiracy that Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, willfully and knowingly, by the use of the means and instrumentalities of interstate commerce, and the mails, directly and indirectly, in connection with the purchase and sale of securities, would and did use and employ manipulative and deceptive devices and contrivances in violation of Title 17, Code of Federal Regulations, Section

240.10b-5, by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting 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; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon a person, in violation of Title 15, United States Code, Sections 78j(b) and 78ff.

Mail Fraud

106. It was a part and an object of the conspiracy that Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, for the purpose of executing such scheme and artifice and attempting to do so, would and did place in a post office and authorized depository for mail matter, matters and things to be sent and delivered by the Postal Service, and would and did deposit and cause to be deposited matters and things to be sent and delivered by private and commercial interstate carriers, and would and did take and receive therefrom such matters and things, and knowingly would and did cause to be delivered by mail and such carriers according to direction thereon, such matters and things, all in violation of Title 18, United States Code, Section 1341.

Wire Fraud

107. It was further a part and an object of the conspiracy that Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, willfully and knowingly, having devised and intending to devise a scheme and artifice to defraud, and for obtaining money and property by

means of false and fraudulent pretenses, representations, and promises, for the purpose of executing such scheme and artifice and attempting to do so, would and did transmit and cause to be transmitted by means of wire, radio, and television communication in interstate and foreign commerce, writings, signs, signals, pictures, and sounds, all in violations of Title 18, United States Code, Section 1343.

Interstate Transportation of Stolen Property

108. It was further a part and an object of the conspiracy that Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, defendants, and others known and unknown, did (i) cause to be transported, transmitted, and transferred, in interstate commerce, money taken by fraud: to wit, funds raised pursuant to TIC and Note investments, of the value of \$5,000 or more, knowing the same to have been converted and taken by fraud, and (ii) devise and intend to devise a scheme and artifice to defraud, and for obtaining money and property by means of false or fraudulent pretenses, representations, and promises, transported and caused to be transported in interstate commerce in the execution or concealment of a scheme and artifice to defraud that person or those persons of money or property having a value of \$5,000 or more; all in in violation of Title 18, United States Code, Section 2314.

D. Means and Methods of Conspiracy

109. The allegations contained in paragraphs 1 through 108, are incorporated by reference as though set forth fully herein.

110. Among the means and methods by which Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, together with others known and unknown to the grand jury, would and did carry out the conspiracy were the following:

- a. Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, raised money from investors pursuant to Regulation D private placement offerings.
- b. Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, attended meetings and engaged in conversations and communications regarding disclosures made pursuant to Regulation D private placement offerings, including the PPMs.
- c. Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, agreed to omit, conceal, and misrepresent Master Lease portfolio losses.
- d. Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, agreed to omit and conceal DBSI Housing receivables from technology start-up companies by netting said receivable against payables to note and bond investors.
- e. Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, agreed to represent "Net receivables from affiliates" and "Net payables to affiliates" as a current asset and current liability, respectively.

- f. Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, agreed to misrepresent DBSI's net worth by treating loans to technology start-up companies as fully collectible.
- g. Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, agreed to structure payments by DBSI Housing, well knowing and intending that this would affect DBSI's Balance Sheet and make DBSI appear to have more cash on hand.
- h. Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, agreed to commingle and divert material portions of investors' Accountable Reserves for the purposes other than those represented to investors and specified in the PPMs pursuant to which these investor funds were raised.
- i. Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, agreed to use, and did in fact use, investors' Accountable Reserves to purchase TIC properties; to pay commissions on the sales of TIC and note investments; and to pay the promised fixed returns to TIC investors who had invested in prior TIC properties.
- j. Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, made and caused to be made false and

fraudulent documents and representations regarding the Master Lease portfolio's profitability.

- k. Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, made and caused to be made false and fraudulent representations that DBSI was capable of paying both returns on, and the principal of, the DBSI notes offerings, including the DBSI 2008 notes.
- l. Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, agreed to make and caused to be made false, fraudulent, and misleading statements that DBSI's financial condition did not materially change during 2007 and 2008.
- m. Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, agreed to use, and did in fact use, profits from selling properties to TIC investors, known as the "front end load," to purchase TIC properties; to pay commissions on the sales of TIC and note investments; and to pay fixed returns to TIC investors who had invested in prior TIC and note offerings.
- n. Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, used facilities of interstate commerce, including interstate telephone calls and interstate wire transfers, signals,

writings, and sounds, as well as mails, in furtherance of the objects of the conspiracy.

E. Overt Acts

111. The allegations contained in paragraphs one 1 through one through 110, are incorporated by reference as though set forth fully herein.

112. In furtherance of said conspiracy and to effect the objects thereof, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, and others known and unknown to the grand jury, committed the following overt acts, among others, in the District of Idaho and elsewhere:

- a. On or about May 30, 2007, Defendant DOUGLAS L. SWENSON represented that the Master Lease portfolio was overall neutral, being slightly positive at times and slightly negative at times.
- b. On or about January 15, 2008, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, caused PPMs pursuant to the DBSI 2008 Notes Offering to be mailed and distributed to DBSI wholesalers, broker-dealers, financial advisors, and prospective investors.
- c. On or about March 27, 2008, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, caused PPMs pursuant to the DBSI Oakwood Plaza Offering to be mailed and distributed to DBSI wholesalers, broker-dealers, financial advisors, and prospective investors.
- d. On or about May 22, 2008, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S.

SWENSON, caused PPMs pursuant to the DBSI Shoppes at Trammel Offering to be mailed and distributed to DBSI wholesalers, broker-dealers, financial advisors, and prospective investors.

- e. On or about April 28, 2008, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, caused PPMs pursuant to the DBSI Pinehurst Square East Offering to be mailed and distributed to DBSI wholesalers, broker-dealers, financial advisors, and prospective investors.
- f. On or about April 15, 2008, Defendant JEREMY S. SWENSON executed a Purchase agreement between Oakwood Plaza Acquisition LLC and Perego Properties, LLC.
- g. On or about May 6, 2008, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, caused PPMs pursuant to the DBSI Pinehurst Square West Offering to be mailed and distributed to DBSI wholesalers, broker-dealers, financial advisors, and prospective investors.
- h. On or about May 15, 2008, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, caused PPMs pursuant to the DBSI Peachtree Corners Pavilion Offering to be mailed and distributed to DBSI wholesalers, broker-dealers, financial advisors, and prospective investors.
- i. On or about March 27, 2008, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, caused PPMs pursuant to the DBSI Oakwood Plaza Offering

to be mailed and distributed to DBSI wholesalers, broker-dealers, financial advisors, and prospective investors.

- j. On or about May 29, 2008, Executed Property Documents related to the DBSI Oakwood Plaza LLC were mailed to G.P., who had invested approximately \$302,000 in DBSI Oakwood Plaza LLC.
- k. On or about May 29, 2008, Executed Property Documents related to the DBSI Oakwood Plaza LLC were mailed to R.H. and B.H., who had invested approximately \$450,000 in the DBSI Oakwood Plaza LLC.
- l. On or about August 21, 2008, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, caused PPMs pursuant to the DBSI Belton Town Center Offering to be mailed and distributed to DBSI wholesalers, broker-dealers, financial advisors, and prospective investors.
- m. On or about July 16, 2008, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, caused PPMs pursuant to the DBSI Portofino Tech Center Offering to be mailed and distributed to DBSI wholesalers, broker-dealers, financial advisors, and prospective investors.
- n. On or about August 25, 2008, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, defendants caused PPMs pursuant to the DBSI Florissant Market Place Offering to be mailed and distributed to DBSI wholesalers, broker-dealers, financial advisors, and prospective investors.

- o. On or about September 12, 2008, Defendant MARK A. ELLISON sent an email to J.H. stating that DBSI Housing's net worth had increased "from \$105 to nearly 130 [million]."
- p. In or about the summer of 2008, after DBSI moved employees from FOR1031 to DBSI Securities; DBSI held a company-wide meeting during which Defendant DOUGLAS L. SWENSON encouraged DBSI employees to continue selling DBSI TIC and Note offerings, in part by making false and fraudulent statements to DBSI employees regarding DBSI's financial condition.

All in violation of Title 18, United States Code, Sections 371, 1341, 1343, 2314; Title 15, United States Code, Sections 78j(b), 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

COUNT TWO

Conspiracy to Commit Money Laundering 18 U.S.C. §§ 1956(h), 1957

113. The allegations set forth in paragraphs 1 through 101, and 109 through 112 of this Indictment are realleged and incorporated by reference as though set forth fully herein.

114. Beginning on an unknown date, but by at least January 1, 2007, and continuing through November 2008, both dates being approximate and inclusive, within the District of Idaho and elsewhere, Defendant DOUGLAS L. SWENSON and others known and unknown to the grand jury, did knowingly, intentionally, and combine, conspire, confederate, and agree with each other and others both known and unknown to commit certain offenses against the United States, in violation of Title 18, United States Code, Section 1956(h), as follows:

- a. To knowingly engage, attempt to engage, and cause and aid and abet others in engaging in, within the United States, monetary transactions in criminally derived property that was of a value greater than \$10,000 in each transaction and was derived from specified unlawful activity; that is, securities fraud, wire fraud, mail fraud, and interstate transportation of property taken by fraud, in violation of Title 18, United States Code, Section 1957.

In violation of Title 18, United States Code, Sections 1956(h) and 1957.

COUNTS THREE THROUGH TWELVE

(DBSI 2008 Notes Fraud)

Securities Fraud

15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. § 240.10b-5; 18 U.S.C. § 2

115. The allegations contained in paragraphs 1 through 101, and 109 through 112 of this Indictment are realleged and incorporated as if fully set forth herein.

116. On or about the date set forth below, within the District of Idaho and elsewhere, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, did willfully and knowingly, directly and indirectly, in connection with the sale of securities, by use of the means and instrumentalities of interstate commerce, and the mails, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts, and omitting 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; and (c) engaging in acts, practices, and courses of

business which operated and would operate as a fraud and deceit upon other persons, to wit: the DBSI 2008 Notes offering.

Count	Approximate Date of Investment	Investor	Approximate Amount of Investment
Three	4/18/2008	K.S.	\$ 25,000.00
Four	4/30/2008	H.K.	\$ 85,000.00
Five	4/30/2008	L.M.	\$ 600,000.00
Six	5/23/2008	P.C.	\$ 50,000.00
Seven	5/30/2008	R.P.	\$ 30,000.00
Eight	7/17/2008	M.P. and P.P.	\$ 25,000.00
Nine	8/7/2008	F.H.	\$ 50,000.00
Ten	9/2/2008	C.H.	\$ 50,000.00
Eleven	7/18/2008	J.E.P.	\$ 75,000.00
Twelve	7/8/2008	B.E.	\$ 50,000.00

All in violation of Title 15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. § 240.10b-5; 18 U.S.C. § 2.

COUNTS THIRTEEN THROUGH EIGHTEEN

(DBSI 2008 Notes Fraud)

**Wire Fraud
18 U.S.C. § 1343**

117. The allegations contained in paragraphs 1 through 101, and 109 through 112 of this Indictment are realleged and incorporated as if fully set forth herein.

118. From a date unknown, but by January 1, 2007, and continuing through November 2008, both dates being approximate and inclusive, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, devised and intended to devise a scheme and artifice for obtaining money and property by means of material false and fraudulent pretenses, representations, and promises, by causing investors to provide funds to DBSI 2008 Notes pursuant to the DBSI 2008 Notes offering.

119. That on or about the dates set forth below, for the purpose of executing, and attempting to execute, the scheme and artifice, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON and JEREMY S. SWENSON caused to be transmitted in interstate commerce, by means of a wire communication, certain writings, signs, signals, pictures and sounds, that is, causing said funds to be transferred from said investor to DBSI or an affiliated entity.

Count	Approximate Date of Wire	Investor	Approximate Amount of Wire
Thirteen	4/18/2008	K.S.	\$25,000.00
Fourteen	7/16/2008	M.P. and P.P.	\$25,000.00
Fifteen	7/22/2008	J.E.P.	\$75,000.00
Sixteen	7/23/2008	B.E.	\$50,000.00
Seventeen	8/6/2008	F.H.	\$50,000.00
Eighteen	8/29/2008	C.H.	\$50,000.00

All in violation of Title 18, United States Code, Section 1343.

COUNTS NINETEEN THROUGH TWENTY-FOUR

(DBSI 2008 Notes Fraud)

Interstate Transportation of Property Taken by Fraud
18 U.S.C. § 2314

120. The allegations contained in paragraphs 1 through 101, and 109 through 112 of this Indictment are realleged and incorporated as if fully set forth herein.

121. From a date unknown, but by at least January 1, 2007, and continuing through November 2008, both dates being approximate and inclusive, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, did cause to be transported, transmitted and transferred, in interstate commerce, money of the value of \$5,000 or more, knowing the same to have been taken by fraud to wit: by then and there causing investors to provide funds to DBSI 2008 Notes pursuant to the DBSI 2008 Notes offering.

122. The defendants devised and intended to devise a scheme and artifice to defraud as to material matters and to obtain money and property by means of material false and fraudulent pretenses, representations, and promises to cause investors to fund said DBSI 2008 Notes by falsely, fraudulently and materially misrepresenting the financial condition of DBSI Housing and its affiliated entities, in order to induce investors to purchase said DBSI 2008 Notes.

Count	Approximate Date of Interstate Transaction	Investor	Approximate Amount of Interstate Transaction
Nineteen	4/21/2008	R.S.	\$ 130,000.00
Twenty	4/30/2008	H.K.	\$ 85,000.00
Twenty-one	4/30/2008	H.K.	\$ 15,000.00
Twenty-two	4/30/2008	L.M.	\$ 600,000.0
Twenty-three	5/23/2008	P.C.	\$ 50,000.00

Twenty-four	6/3/2008	R.P.	\$ 30,000.00
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All in violation of Title 18, United States Code, Section 2314.

COUNTS TWENTY-FIVE THROUGH THIRTY-FOUR

(DBSI North Stafford Fraud)

**Wire Fraud
18 U.S.C. § 1343**

123. The allegations contained in paragraphs 1 through 101, and 109 through 112 of this Indictment are realleged and incorporated as if fully set forth herein.

124. From a date unknown, but by January 1, 2007, continuing through November 2008, both dates being approximate and inclusive, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, devised and intended to devise a scheme and artifice for obtaining money and property by means of material false and fraudulent pretenses, representations, and promises, as alleged above and incorporated herein, by causing TIC investors to provide funds to DBSI North Stafford pursuant to the DBSI North Stafford offering.

125. On or about the dates set forth below, for the purpose of executing and attempting to execute the scheme and artifice, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON caused to be transmitted in interstate commerce, by means of a wire communication, certain writings, signs, signals, pictures and sounds, that is, causing said funds to be transferred from said investor to DBSI or an affiliated entity.

Count	Approximate Date of Wire	Investor	Approximate Amount of Wire
Twenty-five	5/13/2008	R.H.	\$384,002.33
Twenty-six	5/19/2008	M.W.	\$384,002.33
Twenty-seven	5/7/2008	V.C.	\$388,756.73
Twenty-eight	5/20/2008	W.S.	\$348,287.48
Twenty-nine	4/29/2008	G.A.	\$492,823.03
Thirty	4/30/2008	M.W.	\$258,435.94
Thirty-one	5/7/2008	T.W.	\$1,086,390.25
Thirty-two	4/24/2008	E.F.	\$2,318,051.48
Thirty-three	5/13/2008	G.P.	\$431,487.74
Thirty-four	6/24/2008	P.R.	\$280,128.39

All in violation of Title 18, United States Code, Section 1343.

COUNTS THIRTY-FIVE THROUGH FORTY-FOUR**(DBSI North Stafford Fraud)****Securities Fraud****15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. § 240.10b-5; 18 U.S.C. § 2**

126. The allegations contained in paragraphs one (1) through one hundred and one (101), and one hundred and nine (109) through one hundred and twelve (112) of this Indictment are realleged and incorporated as if fully set forth herein.

127. On or about the dates set forth below, in the District of Idaho and elsewhere, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, willfully and knowingly, directly and indirectly, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting 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; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon other persons, to wit: the DBSI North Stafford offering.

Count	Approximate Date of Investment	Investor	Approximate Amount Invested
Thirty-five	4/24/2008	E.F.	\$2,350,000.00
Thirty-six	4/29/2008	G.A.	\$500,000.00
Thirty-seven	4/30/2008	M.W.	\$285,666.07
Thirty-eight	5/7/2008	T.W.	\$1,100,000.00

Thirty-nine	5/7/2008	V.C.	\$416,000.00
Forty	5/13/2008	R.H.	\$390,000.00
Forty-one	5/13/2008	G.P.	\$438,000.00
Forty-two	5/19/2008	M.W.	\$390,000.00
Forty-three	5/20/2008	W.S.	\$353,898.10
Forty-four	6/24/2008	P.R.	\$285,000.00

All in violation of Title 15, United States Code, Sections 78j(b), 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

COUNTS FORTY-FIVE THROUGH FORTY-SEVEN

(DBSI Oakwood Plaza Fraud)

**Wire Fraud
18 U.S.C. § 1343**

128. The allegations contained in paragraphs 1 through 101, and 109 through 112 of this Indictment are realleged and incorporated as if fully set forth herein.

129. From a date unknown, but by January 1, 2007, and continuing through November 2008, both dates being approximate and inclusive, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, devised and intended to devise a scheme and artifice for obtaining money and property by means of material false and fraudulent pretenses, representations, and promises, as alleged above and incorporated herein, by causing TIC investors to provide funds to DBSI Oakwood Plaza, pursuant to the DBSI Oakwood Plaza offering

130. On or about the dates set forth below, for the purpose of executing and attempting to execute the scheme and artifice, Defendants DOUGLAS L. SWENSON, MARK A.

ELLISON, DAVID D. SWENSON and JEREMY S. SWENSON, caused to be transmitted in interstate commerce, by means of a wire communication, certain writings, signs, signals, pictures and sounds, that is, causing said funds to be transferred from said investor to DBSI or an affiliated entity.

Count	Approximate Date of Wire	Investor	Approximate Amount of Wire
Forty-five	5/23/2008	R.H.	\$141,426.33
Forty-six	6/3/2008	B.H.	\$149,139.50
Forty-seven	7/16/2008	S.S.	\$142,465.00

All in violation of Title 18, United States Code, Section 1343.

COUNTS FORTY-EIGHT THROUGH FIFTY-ONE

(DBSI Oakwood Plaza Fraud)

Securities Fraud

15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. § 240.10b-5; 18 U.S.C. § 2

131. The allegations contained in paragraphs 1 through 101, and 109 through 112 of this Indictment are realleged and incorporated as if fully set forth herein.

132. On or about the dates set forth below, in the District of Idaho and elsewhere, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, and JEREMY S. SWENSON, willfully and knowingly, directly and indirectly, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce, and the mails, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting 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; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon other persons, to wit: the DBSI Oakwood Plaza Offering.

Count	Approximate Date of Investment	Investor	Approximate Amount of Investment
Forty-eight	5/27/2008	R.H.	\$145,000.00
Forty-nine	5/27/2008	B.H.	\$305,000.00
Fifty	5/27/2008	G.P.	\$302,000.00
Fifty-one	7/16/2008	S.S.	\$150,000.00

All in violation of Title 15, United States Code, Sections 78j(b), 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

COUNTS FIFTY-TWO THROUGH FIFTY-FOUR

(DBSI Shoppes at Trammel Fraud)

Wire Fraud 18 U.S.C. § 1343

133. The allegations contained in paragraphs 1 through 101, and 109 through 112 of this Indictment are realleged and incorporated as if fully set forth herein.

134. From a date unknown, but by January 1, 2007, and continuing through November 2008, both dates being approximate and inclusive, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON and JEREMY S. SWENSON, devised and intended to devise a scheme and artifice for obtaining money and property by means of material false and fraudulent pretenses, representations, and promises, as alleged above and incorporated

herein, by causing TIC investors to provide funds to DBSI Shoppes at Trammel pursuant to the DBSI Shoppes at Trammel offering.

135. That on or about the dates set forth below, for the purpose of executing and attempting to execute the scheme and artifice, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON and JEREMY S. SWENSON, caused to be transmitted in interstate commerce, by means of a wire communication, certain writings, signs, signals, pictures and sounds, that is, causing said funds to be transferred in interstate commerce from said investor to DBSI or a related entity.

Count	Approximate Date of Wire	Investor	Approximate Amount of Wire
Fifty-two	7/03/2008	D.F.-Traditional Inns	\$794,935.60
Fifty-three	7/30/2008	B.B.	\$231,840.00
Fifty-four	9/11/2008	S.D.	\$247,590.00

All in violation of Title 18, United States Code, Section 1343.

COUNT FIFTY-FIVE

(DBSI Shoppes at Trammel)

Securities Fraud

15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. § 240.10b-5; 18 U.S.C. § 2

136. The allegations contained in paragraphs 1 through 101, and 109 through 112 of this Indictment are realleged and incorporated as if fully set forth herein.

137. On or about May 22, 2008, in the District of Idaho and elsewhere, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON and JEREMY S. SWENSON, willfully and knowingly, directly and indirectly, in connection with the purchase

and sale of securities, by use of the means and instrumentalities of interstate commerce, and the mails, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting 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; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon other persons, to wit: the DBSI Shoppes at Trammel offering.

All in violation of Title 15, United States Code, Sections 78j(b), 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

COUNT FIFTY-SIX

(Fraud on Kinecta Federal Credit Union)

**Bank Fraud
18 U.S. C. § 1344(1) and (2)**

138. The allegations contained in paragraphs 1 through 101, and 109 through 112 of this Indictment are realleged and incorporated as if fully set forth herein.

139. Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON and JEREMY S. SWENSON devised and intended to devise a scheme and artifice to defraud as to material matters, and to obtain money, funds, credits and property under the custody and control of a financial institution, by means of material false and fraudulent pretenses, representations, and promises to Kinecta Federal Credit Union by providing materially false and fraudulent financial information, to wit: the financial statement for DBSI Housing dated December 31, 2007 (December 2007 DBSI Housing financial statement).

140. On or about April 15, 2008, in the District of Idaho, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON and JEREMY S. SWENSON, for the purpose of executing and attempting to execute the scheme and artifice, knowingly executed the scheme to defraud as to material matters, and to obtain money, funds, credits, and property owned by and under the custody and control of Kinecta Federal Credit Union, by causing the funding of said loan for approximately \$3.3 million.

All in violation of Title 18, United States Code, Section 1344.

COUNTS FIFTY-SEVEN THROUGH SIXTY

(DBSI Florissant Market Place Fraud)

**Wire Fraud
18 U.S.C. § 1343**

141. The allegations contained in paragraphs 1 through 101, and 109 through 112 of this Indictment are realleged and incorporated as if fully set forth herein.

142. From a date unknown, but by at least January 1, 2007, and continuing through November 2008, both dates being approximate and inclusive, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON and JEREMY S. SWENSON devised and intended to devise a scheme and artifice for obtaining money and property by means of material false and fraudulent pretenses, representations, and promises, as alleged above and incorporated herein, by causing TIC investors to provide funds to DBSI Florissant Market Place pursuant to the DBSI Florissant Market Place offering.

143. That on or about the dates set forth below, for the purpose of executing and attempting to execute the scheme and artifice, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON and JEREMY S. SWENSON caused to be transmitted in

interstate commerce, by means of a wire communication, certain writings, signs, signals, pictures and sounds, that is, causing said funds to be transferred from said investor to DBSI or an affiliated entity.

Count	Approximate Date of Wire	Investor	Approximate Amount of Wire
Fifty-seven	9/18/2008	G.B.	\$840,814.60
Fifty-eight	9/18/2008	J.B.	\$641,499.35
Fifty-nine	9/18/2008	G.P.	\$174,053.05
Sixty	9/23/2008	J.V.	\$297,353.70

All in violation of Title 18, United States Code, Section 1343.

COUNT SIXTY-ONE

(DBSI Florissant Market Place Fraud)

Securities Fraud

15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. § 240.10b-5; 18 U.S.C. § 2

144. The allegations contained in paragraphs 1 through 101, and 109 through 112 of this Indictment are realleged and incorporated as if fully set forth herein.

145a. On or about August 25, 2008, in the District of Idaho and elsewhere, Defendnats DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON and JEREMY S. SWENSON, willfully and knowingly, directly and indirectly, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce, and the mails, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting 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; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon other persons, to wit: the DBSI Florissant Market Place offering.

All in violation of Title 15, United States Code, Sections 78j(b), 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

COUNTS SIXTY-TWO THROUGH SIXTY-FIVE

(DBSI Pinehurst Square East Fraud)

**Wire Fraud
18 U.S.C. § 1343**

145b. The allegations contained in paragraphs 1 through 101, and 109 through 112 of this Indictment are realleged and incorporated as if fully set forth herein.

146. From a date unknown, but by at least January 1, 2007, and continuing through November 2008, both dates being approximate and inclusive, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON and JEREMY S. SWENSON devised and intended to devise a scheme and artifice for obtaining money and property by means of material false and fraudulent pretenses, representations, and promises, as alleged above and incorporated herein, by causing TIC investors to provide funds for DBSI Pinehurst Square East pursuant to the DBSI Pinehurst Square East offering.

147. That on or about the dates set forth below, for the purpose of executing and attempting to execute the scheme and artifice, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON and JEREMY S. SWENSON caused to be transmitted in interstate commerce, by means of a wire communication, certain writings, signs, signals, pictures

and sounds, that is, causing said funds to be transferred in interstate commerce from said investor to DBSI or an affiliated entity.

Count	Approximate Date of Wire	Investor	Approximate Amount of Wire
Sixty-two	7/15/2008	B.B.	\$122,660.00
Sixty-three	8/08/2008	S.A.	\$337,142.60
Sixty-four	9/10/2008	T.M.	\$509,565.56
Sixty-five	9/19/2008	M.G.	\$809,181.80

All in violation of Title 18, United States Code, Section 1343.

COUNT SIXTY-SIX

(DBSI Pinehurst Square East Fraud)

Securities Fraud

15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. § 240.10b-5; 18 U.S.C. § 2

148. The allegations contained in paragraphs 1 through 101, and 109 through 112 of this Indictment are realleged and incorporated as if fully set forth herein.

149. On or about April 28, 2008, in the District of Idaho and elsewhere, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON and JEREMY S. SWENSON, willfully and knowingly, directly and indirectly, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce, and the mails, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting 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; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon other persons, to wit: the DBSI Pinehurst Square East offering.

All in violation of Title 15, United States Code, Sections 78j(b), 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

COUNTS SIXTY-SEVEN THROUGH SEVENTY

(DBSI Pinehurst Square West Fraud)

**Wire Fraud
18 U.S.C. § 1343**

150. The allegations contained in paragraphs 1 through 101, and 109 through 112 of this Indictment are realleged and incorporated as if fully set forth herein.

151. From a date unknown, but by at least January 1, 2007, and continuing through November 2008, both dates being approximate and inclusive, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON and JEREMY S. SWENSON devised and intended to devise a scheme and artifice to defraud and to obtain money and property by means of material false and fraudulent pretenses, representations, and promises, as alleged above and incorporated herein, by causing TIC investors to provide funds to DBSI Pinehurst Square West pursuant to the DBSI Pinehurst Square West offering.

152. That on or about the dates set forth below, for the purpose of executing and attempting to execute the scheme and artifice, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON and JEREMY S. SWENSON caused to be transmitted in interstate commerce, by means of a wire communication, certain writings, signs, signals, pictures

and sounds, that is, causing said funds to be transferred from said investor to DBSI or an affiliated entity.

Count	Approximate Date of Wire	Investor	Approximate Amount of Wire
Sixty-seven	7/7/2008	G.F.	\$102,593.00
Sixty-eight	7/22/2008	B.F.	\$174,076.00
Sixty-nine	7/30/2008	S.A.	\$82,796.84
Seventy	8/21/2008	N.C.	\$88,513.00

All in violation of Title 18, United States Code, Section 1343.

COUNT SEVENTY-ONE

(DBSI Pinehurst Square West Fraud)

Securities Fraud

15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. § 240.10b-5; 18 U.S.C. § 2

153. The allegations contained in paragraphs 1 through 101, and 109 through 112 of this Indictment are realleged and incorporated as if fully set forth herein.

154. On or about April 28, 2008, in the District of Idaho and elsewhere, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON and JEREMY S. SWENSON, willfully and knowingly, directly and indirectly, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce, and the mails, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting 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; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon other persons, to wit: the DBSI Pinehurst Square West offering.

All in violation of Title 15, United States Code, Sections 78j(b), 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; and Title 18, United States Code, Section 2.

COUNTS SEVENTY-TWO THROUGH SEVENTY-NINE

(DBSI Peachtree Corners Pavilion Fraud)

Securities Fraud

15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. § 240.10b-5; 18 U.S.C. § 2

155. The allegations contained in paragraphs 1 through 101, and 109 through 112 of this Indictment are realleged and incorporated as if fully set forth herein.

156. On or about the date set forth below, in the District of Idaho and elsewhere, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON and JEREMY S. SWENSON willfully and knowingly, directly and indirectly, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce, the mails, and the facilities of national securities exchanges, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting 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; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon other persons, in the manner and means as realleged

and incorporated above, in connection with the sale of a security, to wit: the DBSI Peachtree Corners Pavilion offering.

Count	Approximate Date of Investment	Investor	Approximate Amount of Investment
Seventy-two	8/28/2008	K.R.	\$151,327.16
Seventy-three	8/28/2008	B.B.	\$270,619.14
Seventy-four	8/28/2008	V.H.	\$600,000.00
Seventy-five	8/29/2008	D.C.	\$280,000.00
Seventy-six	8/29/2008	N.C.	\$150,000.00
Seventy-seven	8/29/2008	K.S.	\$150,000.00
Seventy-eight	9/2/2008	N.C.	\$500,000.00
Seventy-nine	9/4/2008	M.D.	\$283,087.21

All in violation of Title 15, United States Code, Sections 78j(b), 78ff; Title 17, Code of Federal Regulations Section 240.10b-5; and Title 18, United States Code, Section 2.

COUNT EIGHTY

(Fraud on Nexity Bank)

**Bank Fraud
18 U.S. C. § 1344**

157. The allegations contained in paragraphs 1 through 101, and 109 through 112 of this Indictment are realleged and incorporated as if fully set forth herein.

158. Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON and JEREMY S. SWENSON devised and intended to devise a scheme and artifice to defraud as to material matters, and to obtain money, funds, credits, and property under the custody and control of a financial institution, Nexity Bank, by means of material false and

fraudulent pretenses, representations, and promises to Nexity Bank, by providing materially false and fraudulent financial information, to wit: the December 2007 DBSI Housing financial statement.

159. On or about August 28, 2008, in the District of Idaho and elsewhere, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON and JEREMY S. SWENSON, for the purpose of executing and attempting to execute the scheme and artifice, knowingly executed the scheme to defraud as to material matters, and to obtain money, fund, credits, and property owned by or under the custody or control of Nexity Bank, by then and there causing the funding of said loan of \$4.7 million dollars.

All in violation of Title 18, United States Code, Section 1344.

COUNTS EIGHTY-ONE AND EIGHTY-TWO

(DBSI Portofino Technology Center Fraud)

Securities Fraud

15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. § 240.10b-5; 18 U.S.C. § 2

160. The allegations contained in paragraphs 1 through 101, and 109 through 112 of this Indictment are realleged and incorporated as if fully set forth herein.

161. On or about the dates set forth below, in the District of Idaho and elsewhere, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON and JEREMY S. SWENSON, willfully and knowingly, directly and indirectly, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce, and the mails, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices, schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting 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; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon other persons, to wit: the DBSI Portofino Technology Center offering.

Count	Approximate Date of Investment	Investor	Approximate Amount of Investment
Eighty-one	8/05/2008	H.V.	\$ 4,509,982.25
Eighty-two	8/05/2008	B.W.	\$ 1,500,017.75

All in violation of Title 15, United States Code, Sections 78j(b), 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; Title 18, United States Code, Section 2.

COUNT EIGHTY-THREE

(DBSI Belton Town Center Fraud)

Securities Fraud

15 U.S.C. §§ 78j(b), 78ff; 17 C.F.R. § 240.10b-5; 18 U.S.C. § 2

162. The allegations contained in paragraphs 1 through 101, and 109 through 112 of this Indictment are realleged and incorporated as if fully set forth herein.

163. On or about the date set forth below, in the District of Idaho and elsewhere, Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON and JEREMY S. SWENSON, willfully and knowingly, directly and indirectly, in connection with the purchase and sale of securities, by use of the means and instrumentalities of interstate commerce, and the mails, did use and employ manipulative and deceptive devices and contrivances, in violation of Title 17, Code of Federal Regulations, Section 240.10b-5, by (a) employing devices,

schemes, and artifices to defraud; (b) making untrue statements of material facts and omitting 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; and (c) engaging in acts, practices, and courses of business which operated and would operate as a fraud and deceit upon other persons, to wit: the DBSI Belton Town Center offering.

Count	Approximate Date of Investment	Investor	Approximate Amount of Investment
Eighty-three	9/23/2008	K.R.	\$200,000.00

All in violation of Title 15, United States Code, Section 78j(b), 78ff; Title 17, Code of Federal Regulations, Section 240.10b-5; Title 18, United States Code, Section 2.

CRIMINAL FORFEITURE ALLEGATIONS

FORFEITURE ALLEGATION ONE

(Violation: 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461)

164. The allegations contained in all paragraphs of this Indictment are incorporated by reference as though set forth in full herein for the purpose of noticing forfeitures pursuant to Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461.

165. The United States hereby gives notice to Defendants DOUGLAS L. SWENSON, MARK A. ELLISON, DAVID D. SWENSON, JEREMY S. SWENSON that, upon conviction of the offenses charged in this Indictment, the government will seek forfeiture, in accordance with Title 18, United States Code, Section 981(a)(1)(C), and Title 28, United States Code, Section 2461, of any and all property, real or personal, that constitutes or is derived from proceeds

traceable to the violations of Title 15, United States Code, Sections 78j(b) and 78ff, Title 17, Code of Federal Regulations, Sections 240.10b-5, and Title 18, United States Code, Sections 371, 1341, 1343 and 2314, alleged above, as to which property the said defendants are jointly and severally liable, to include but not be limited to the following:

a. **Cash Proceeds**: At least \$169 million in United States currency and all interest and proceeds traceable thereto in that such sum in aggregate is property which constituted proceeds of the charged offenses which were subsequently expended, spent, distributed or otherwise disposed of by the defendants, and as to which the defendants are liable.

b. **Real Property**: All right, title and interest in land and appurtenances and improvements, including buildings and residences, and proceeds of sale thereof, more fully described below:

1. All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments, and easements, located at Sparkford Way, Boise, Ada County, Idaho, being parcel number , and more particularly described as follows:

A. LOT NUMBER: 7; SUBDIVISION: BRISTOL HEIGHTS
NO 14; BLOCK: 18; SEC/TWN/RNG/MER: SEC 29 TWN
4N RNG 1E.

2. All that lot or parcel of land, together with its buildings, appurtenances, improvements, fixtures, attachments, and easements, located at Waggle Place, Meridian, Ada County, Idaho, being parcel number and more particularly described as follows:

A. LOT NUMBER: 11; SUBDIVISION: ASHFORD
GREENS SUB NO 04; BLOCK: 19;
SEC/TWN/RNG/MER: SEC 3 TWN 3N RNG 1W.

c. **Bank Accounts/Investment Accounts/Management Accounts:** All funds received on behalf of, or credited to, bank accounts, investment accounts, or management accounts, held in the United States or overseas, in which the said defendants have an interest, including but not limited to, the following bank accounts, investment and management accounts:

1. Accounts held at TD Ameritrade, Inc.:
 - A. Douglas Leon Swenson IRA
 - B. Ellen Swenson IRA
 - C. Code Six LLC
Attn: Douglas L. Swenson
 - D. Code Six Trading Co. LLC
Attn: Douglas L. Swenson
 - E. David Swenson Roth IRA
 - F. David Swenson

FORFEITURE ALLEGATION TWO

(Violation 18 U.S.C. § 982(a)(1))

166. The allegations contained in all paragraphs of this Indictment are incorporated by reference as though set forth in full herein for the purpose of noticing forfeitures pursuant to Title 18, United States Code, Section 982(a)(1).

167. The United States hereby gives notice to Defendant DOUGLAS L. SWENSON that upon conviction of the offenses charged in this Indictment, the government will seek

forfeiture, in accordance with Title 18, United States Code, Section 982(a)(1), of any and all any and all property, real and personal, involved in the violation of Title 18, United States Code, Sections 1956 and 1957, and all property traceable to such property, including the property set out in Forfeiture Allegation One above numbered as paragraph 165, Section c. A – F, which is re-alleged and incorporated herein, and further including the following:

a. **Cash Proceeds:**

1. At least \$3 million in United States currency and all interest and proceeds traceable thereto in that such sum in aggregate is property which constituted property involved in the money laundering violation set out above, or money traceable to such property, as to which Defendant DOUGLAS L. SWENSON is liable.

168. **Substitute Assets as to All Forfeiture Allegations:**

a. If any of the properties and interests described above as being subject to forfeiture, as a result of any action or omission of the defendants above named:

1. Cannot be located upon the exercise of due diligence;
2. Has been transferred or sold to, or deposited with, a third person;
3. Has been placed beyond the jurisdiction of the court;
4. Has been substantially diminished in value; or
5. Has been commingled with other property which cannot be subdivided without difficulty; it is the intention of the United States, pursuant to Title 21 United States Code, Section 853(p), as incorporated by Title 18 United States Code, Section 982(b)(1) and Title 28 United States Code, Section § 2461(c), to seek forfeiture

of any other property of said defendants up to the value of the
forfeitable property described above.

Respectfully submitted this 10th day of April, 2013.

A TRUE BILL

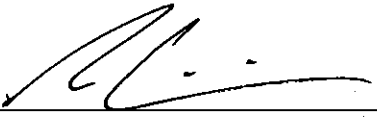
/s/ [Signed on Reverse]

Foreman

WENDY J. OLSON
United States Attorney
By:



George W. Breitsameter
Assistant United States Attorney



Mark L. Williams, Trial Attorney
United States Department of Justice