

**FILED**

AUG 19 2014

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

THE STATE OF UTAH  
Plaintiff,

vs. Andre Esquivel  
Defendant.

STATEMENT OF DEFENDANT  
IN SUPPORT OF GUILTY PLEA  
AND CERTIFICATE OF COUNSEL

Case No. 111701135

I, Andre Esquivel, hereby acknowledge and certify that I have been advised of and that I understand the following facts and rights:

**Notification of Charges**

I am pleading guilty to the following crime(s):

|   | Crime & Statutory Provision                            | Degree                           | Punishment<br>Min/Max and/or<br>Minimum Mandatory                      |
|---|--|----------------------------------|--|
| A | <u>UCA (a40) 6d-1-1 + 6d-1-21<br/>Securities Fraud</u> | <u>3rd<br/>degree<br/>felony</u> | <u>0-5 yrs. Prison + Max Fine<br/>of \$5000.00 + 90%<br/>surchage</u>  |
| B | <u>Securities Fraud</u>                                | <u>3rd<br/>degree<br/>felony</u> | <u>0-5 yrs. Prison + Max. Fine<br/>of \$5000.00 + 90%<br/>surchage</u> |

I have received a copy of the (Amended) Information against me. I have read it, or had it read to me, and I understand the nature and the elements of crime(s) to which I am pleading guilty.

The elements of the crime(s) to which I am pleading guilty are:

That during March 2008 Through March 2009 at the place aforesaid The defendant did willfully, in connection with the offer, sale, or purchase of a security (directly or indirectly (1)(a) employ a device, scheme, or artifice to defraud; (b) make an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engage in an act, practice, or course of business which operated or would operate as a fraud or deceit upon any person; and (2) at the time the crime was committed, the property, money, or thing unlawfully obtained or sought to be obtained was worth less than \$10,000.00 This happened on two occasions (TWO VICTIMS).

I understand that by pleading guilty I will be admitting that I committed the crime(s) listed above. I stipulate and agree that the following facts describe my conduct and the conduct of other persons for which I am criminally liable. These facts provide a basis for the court to accept my guilty plea and prove the elements of the crime(s) to which I am pleading guilty:

During the period of time from March 2008 through April 2009, defendant operated a business known as XTagged. Defendant represented XTagged was an internet based business in which the user creates an online profile for meeting & dating. During that period of time defendant met with 3 individuals. At various meetings, defendant represented that XTagged was a registered LLC, that XTagged was patented & The Dept. of Motor Vehicles had authorized XTagged to communicate and access their data bases. That My Space, Michael Jackson & Google were interested in purchasing XTagged & that in near future XTagged would become a public corporation.

I am entering this plea voluntarily. I understand that I have the following rights under the constitutions of Utah and the United States. I also understand that if I plead guilty I will give up all the following rights:

See

**Counsel.** I know that I have the right to be represented by an attorney and that if I cannot afford one, an attorney will be appointed by the court at no cost to me. I understand that I might later, if the judge determined that I was able, be required to pay for the appointed lawyer's service to me.

I (have not) (have) waived my right to counsel, I certify that I have read this statement and that I understand the nature and elements of the charges and crime(s) to which I am pleading guilty. I also understand my rights in this case and other cases and the consequences of my guilty plea.

If I have not waived my right to counsel, my attorney is Matthew Anderson My attorney and I have fully discussed this statement, my rights, and the consequences of my guilty plea.

**Jury Trial.** I know that I have a right to a speedy and public trial by an impartial (unbiased) jury and that I will be giving up that right by pleading guilty.

**Confrontation and cross-examination of witnesses.** I know that if I were to have a jury trial, (a) I would have the right to see and observe the witnesses who testified against me and (b) my attorney, or myself if I waived my right to an attorney, would have the opportunity to cross-examine all of the witnesses who testified against me.

**Right to compel witnesses.** I know that if I were to have a jury trial, I could call witnesses if I chose to and I would be able to obtain subpoenas requiring the attendance and testimony of those witnesses. If I could not afford to pay for the witnesses to appear, the State would pay those costs.

**Right to testify and privilege against self-incrimination.** I know that if I were to have a jury trial, I would have the right to testify on my own behalf. I also know that if I chose not to testify, no one

I understand that by pleading guilty I will be admitting that I committed the crime(s) listed above. I stipulate and agree that the following facts describe my conduct and the conduct of other persons for which I am criminally liable. These facts provide a basis for the court to accept my guilty plea and prove the elements of the crime(s) to which I am pleading guilty:

Continued from pg 2. Based upon defendant's representations these individuals purchased stock in Xtagged. They did not receive any return for their investment as promised and defendant failed to return their investment when asked. A records searched showed Xtagged was never registered in the State of Utah and no patents held in its name. The DMV was contacted and they never gave permission for Xtagged to access their data base. No evidence that any offer to purchase Xtagged was made or that it ever went public.

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If I have not waived my right to counsel, my attorney is C M Arrington. My attorney and I have fully discussed this statement, my rights, and the consequences of my guilty plea.

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could make me testify or make me give evidence against myself I also know that if I chose not to testify, the jury would be told that they could not hold my refusal to testify against me.

**Presumption of innocence and burden of proof.** I know that if I do not plead guilty, I am presumed innocent until the State proves that I am guilty of the charged crime(s). If I choose to fight the charges against me, I need only plead “not guilty,” and my case will be set for a trial. At a trial, the State would have the burden of proving each element of each charge beyond a reasonable doubt. If the trial is before a jury, the verdict must be unanimous, meaning that each juror would have to find me guilty.

I understand that if I plead guilty, I give up the presumption of innocence and will be admitting that I committed the crime(s) stated above.

**Appeal.** I know that under the Utah Constitution, if I were convicted by a jury or judge, I would have the right to appeal my conviction and sentence. If I could not afford the costs of an appeal, the State would pay those costs for me. I understand that I am giving up my right to appeal my conviction if I plead guilty.

I know and understand that by pleading guilty, I am waiving and giving up all the statutory and constitutional rights as explained above.

#### **Consequences of Entering a Guilty Plea**

**Potential penalties.** I know the maximum sentence that may be imposed for each crime to which I am pleading guilty. I know that by pleading guilty to a crime that carries a mandatory penalty, I will be subjecting myself to serving a mandatory penalty for that crime. I know my sentence may include a prison term, fine, or both.

I know that in addition to a fine, and ninety percent (90%) surcharge will be imposed. I also know that I may be ordered to make restitution to any victim(s) of my crime(s), including any restitution that may be owed on charges that are dismissed as part of a plea agreement.

If I have been represented by an attorney appointed by the Court and paid for by Davis County, I understand and agree that the Court may order me to pay Davis County a recoupment fee of up to \$500.00 for providing an attorney to represent me in this case.

I understand and agree that the Court may order me to reimburse Davis County for any costs or expenses paid by Davis County on behalf of my defense, including those paid pursuant to a court order. Specifically, I understand and agree that the Court may order me to reimburse Davis County for the costs of investigative services, expert witnesses, and any other expense exceeding \$500.00. I understand and agree that such an order may be in the form of an order to pay restitution to Davis County.

I understand and agree that the Court may also order me to reimburse Davis County or any law enforcement agency for any transportation or extradition costs or expenses paid by Davis County or any law enforcement agency in connection with my case. I understand and agree that such an order may be in the form of an order to pay restitution to Davis County or any law enforcement agency.

**Consecutive/concurrent prison terms.** I know that if there is more than one crime involved, the sentences may be imposed one after another (consecutively), or they may run at the same time (concurrently). I know that I may be charged an additional fine for each crime that I plead to. I also know that if I am on probation or parole, or awaiting sentencing on another offense of which I have been convicted or which I have plead guilty, my guilty plea now may result in consecutive sentences being imposed on me. If the offense to which I am now pleading guilty occurred when I was imprisoned or on parole, I know the law requires the court to impose consecutive sentences unless the court finds and states on the record that consecutive sentences would be inappropriate.

**Plea bargain.** My guilty plea is the result of a plea bargain between myself and the prosecuting attorney. All the promises, duties, and provisions of the plea bargain, if any, are fully contained in this statement, including those explained below:

Plead to counts 2 & 3, both 3<sup>rd</sup> degree felonies  
run concurrent. State recommending credit for time  
served as a penalty with release from custody upon  
submitting a presentence application/review to A.P.P.  
No objection to a 402 motion to Class A misdemeanor  
upon successful probation and restitution paid

**Trial judge not bound.** I know that any charge or sentencing concession or recommendation of probation or suspended sentence, including a reduction of the charges for sentencing, made or sought by either defense counsel or the prosecuting attorney are not binding on the judge. I also know that any opinions they express to me as to what they believe the judge may do are not binding on the judge.

**Immigration/Deportation:** I understand that if I am not a United States citizen, my plea(s) today may, or even will, subject me to deportation under United States immigration laws and regulations, or otherwise adversely affect my immigration status, which may include permanently barring my re-entry into the United States. I understand that if I have questions about the effect of my plea on my immigration status, I should consult with an immigration attorney.

#### **Defendant's Certification of Voluntariness**

I am entering this plea of my own free will and choice. No force, threats, or unlawful influence of any kind have been made to get me to plead guilty. No promises except those contained in this statement have been made to me.

I have read this statement, or I have had it read to me by an attorney, and I understand its contents and adopt each statement in it as my own. I know that I am free to change or delete anything contained in this statement, but I do not wish to make any changes because all of the statements are correct.

I am satisfied with the advice and assistance of my attorney.


I am 43 years of age. I have attended school through the 12<sup>th</sup> grade. I can read and understand the English language. If I do not understand English, an interpreter has been provided to me.

I was not under the influence of any drugs, medication, or intoxicants which would impair my judgment when I decided to plead guilty. I am not presently under the influence of any drug, medication, or intoxicants which impair my judgment.

I believe myself to be of sound and discerning mind and to be mentally capable of understanding these proceedings and the consequences of my plea. I am free of any mental disease, defect, or impairment that would prevent me from understanding what I am doing or from knowingly, intelligently, and voluntarily entering my plea.


I understand that if I want to withdraw my guilty plea, I must move to withdraw my plea before my sentence is announced. I will only be allowed to withdraw my plea if I show it was not knowingly and voluntarily made.

Dated this 19<sup>th</sup> day of August 2014.

  
DEFENDANT

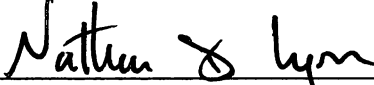
**Certificate of Defense Attorney**

I certify that I am the attorney for \_\_\_\_\_, the defendant above, and that I know defendant has read the statement or that I have read it to defendant; I have discussed it with defendant and believe that defendant fully understands the meaning of its contents and is mentally and physically competent. To the best of my knowledge and belief, after an appropriate investigation, the elements of the crime(s) and the factual synopsis of the defendant's criminal conduct are correctly stated; and these, along with the other representations and declarations made by the defendant in the foregoing affidavit, are accurate and true.

  
ATTORNEY FOR DEFENDANT

**Certificate of Prosecuting Attorney**

I certify that I am the attorney for the State of Utah in the case against \_\_\_\_\_, defendant. I have reviewed this Statement of Defendant and find that the factual basis of the defendant's criminal conduct which constitutes the offense(s) is true and correct. No improper inducements, threats, or coercion to encourage a plea has been offered defendant. The plea negotiations are fully contained in the Statement and in the attached Plea Agreement or as supplemented on the record before the Court. There is reasonable cause to believe that the evidence would support the conviction of defendant for the offense(s) for which the plea is entered and that the acceptance of the plea would serve the public interest.

  
PROSECUTION ATTORNEY 10171

Order

Based on the facts set forth in the foregoing Statement and the certification of the defendant and counsel, and based on any oral representations in court, the Court witnesses the signatures and finds that the defendant's guilty plea is freely, knowingly, and voluntarily made.

IT IS HEREBY ORDERED that the defendant's guilty plea to the crime(s) set forth in the Statement be accepted and entered.

Dated this 19 day of Aug, 2014.

  
DISTRICT COURT JUDGE

