

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801)530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

**ANDRES ESQUIVEL d.b.a. XTagged,

Respondent.**

ORDER TO SHOW CAUSE

Docket No. 10-11-0023

It appears to the Director of the Utah Division of Securities (Director) that Andres Esquivel d.b.a. XTagged has engaged in acts and practices that violate the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, et seq. (the Act). Those acts are more fully described herein. Based upon information discovered in the course of the Utah Division of Securities' (Division) investigation of this matter, the Director issues this Order to Show Cause in accordance with the provisions of § 61-1-20(1) of the Act.

STATEMENT OF JURISDICTION

1. Jurisdiction over Respondent and the subject matter is appropriate because the Division alleges that he violated § 61-1-1 (securities fraud) of the Act while engaged in the offer and sale of securities in or from Utah.

STATEMENT OF FACTS

THE RESPONDENT

2. Andres Esquivel (Esquivel) was, at all relevant times, a resident of the State of Utah. Esquivel has never been licensed as a broker/dealer, agent, or as an investment adviser representative in Utah. Esquivel also operated under the name XTagged, which is not a registered entity.

GENERAL ALLEGATIONS

3. From March 2008 to April 2009, Respondent offered and sold securities to a group of investors, in or from Utah, and collected a total value of \$17,000.
4. Respondent made material misstatements and omissions in connection with the offer and sale of securities to the investors below.
5. The investors lost \$13,000 of their investment funds and \$17,000 in total value.

INVESTORS K.C. AND C.E.

6. K.C. and C.E. met Esquivel in Bountiful, Utah at a gym where K.C. and C.E. worked. K.C. was a personal trainer and C.E. owned the gym.
7. In February 2008, Esquivel met with K.C. and C.E. in C.E.'s office in the gym to discuss an investment opportunity in XTagged.
8. Esquivel told K.C. and C.E. that XTagged was a multimillion dollar type of social networking website in which a user creates an online profile to include pictures and their

license plate number.

9. During the meeting Esquivel made the following statements about an investment in XTagged:
 - a. He owned XTagged;
 - b. The government gave Esquivel \$2 million for startup research money to keep kids safe with XTagged;
 - c. He was scheduled to appear on Oprah Winfrey's television show, but pushed it back six months because his server would not handle the "hits;"
 - d. Myspace, Michael Jordan, and Google were interested in purchasing XTagged;
 - e. The Utah Division of Motor Vehicles (DMV) was going to authorize XTagged to communicate with the DMV's databases;
 - f. In two weeks XTagged was going to be a public company;
 - g. XTagged's stock price would be the same as Google's after going public;
 - h. C.E.'s investment would be a type of endorsement in XTagged and when XTagged became a public company the endorsements would convert to shares of stock;
 - i. Every 1\$ invested would convert to one share of stock;
 - j. If XTagged was not a public company in two years, Esquivel would return C.E.'s money with 7% interest;
 - k. XTagged is a "win-win" because either it would go public or it would be bought out

and either way K.C. and C.E. would become millionaires; and

- l. There was no risk in the investment.
10. After finishing the meeting in C.E.'s office, Esquivel and K.C. met in K.C.'s office to create a fitness plan for Esquivel.
 11. During that meeting, Esquivel continued making statements about the investment such as:
 - a. A minimum of \$500 was required to invest;
 - b. XTagged's stock would be \$30-\$40 per share immediately after XTagged became a public company;
 - c. If XTagged didn't work, Esquivel would return K.C.'s funds with 3% interest;
 - d. XTagged had a twenty-year patent with eighteen years remaining; and
 - e. Myspace offered \$5 million for XTagged, which Esquivel turned down.
 12. Based on Esquivel's statements, K.C. invested \$10,000 in XTagged and C.E. invested \$2,000.
 13. On or about March 11, 2008, K.C. gave Esquivel a cashier's check for \$4,000 while in Davis County, Utah. In exchange, K.C. received a contract reflecting 4,000 shares in XTagged.
 14. On or about March 11, 2008, C.E. gave Esquivel a personal check for \$2,000 while in Davis County, Utah. In exchange, C.E. received a convertible promissory note.
 15. In or about May 2008, Esquivel called K.C. saying that a 1% royal share of XTagged became available for \$50,000. K.C. told Esquivel that he could not afford that.

16. A few days later, Esquivel forwarded an e-mail from his attorney, Jason Webb from Advantia Law Group in Sandy, Utah, to K.C. verifying that 1% of XTagged was worth \$50,000.
17. Esquivel contacted K.C. the following day and offered the 1% share for \$20,000 in the following manner:
 - a. \$2,000 in cash;
 - b. The title to K.C.'s 1998 Chevy Cavalier in exchange for a \$2,000 credit;
 - c. A fitness/diet plan created by K.C. for Esquivel in exchange for a \$2,000 credit;
 - d. Transferring K.C.'s original \$4,000 investment to the 1%; and
 - e. \$10,000 financed by Esquivel.
18. On or about June 2, 2008, K.C. gave Esquivel a \$2,000 cashier's check and the title to K.C.'s 1998 Chevy Cavalier.
19. In exchange, Esquivel returned the original contract he had with K.C. and gave him a convertible promissory note instead.
20. K.C. and C.E. have both made requests for their money back, but have received no payments.
21. K.C. is still owed \$6,000 in principal alone in addition to a 1998 Chevy Cavalier and payment for services rendered by creating a fitness/diet plan.
22. C.E. is still owed \$2,000 in principal alone.

INVESTOR R.B. AND L.L.

23. In April 2009, R.B. met Esquivel in Davis County, Utah at a gym where R.B. worked. R.B. was referred to Esquivel through K.C.
24. Esquivel met with R.B. and L.L., a juice bar cashier at the gym, to discuss an investment opportunity in XTagged.
25. During the meeting Esquivel made the following statements about an investment in XTagged:
 - a. 1% of ownership was left in XTagged for \$5,000;
 - b. The 1% was actually worth \$30,000, but R.B. could work off the difference by promoting, setting up events, and producing a promotional video for XTagged;
 - c. He had investors willing to pay \$1 million for 1% of XTagged in the following month;
 - d. The 1% would be worth \$50,000 the following week and worth \$1 million in the following month;
 - e. Any time R.B. wanted out, Esquivel would return R.B.'s funds with 12% interest;
 - f. Google wanted to buy XTagged for \$1 billion and Esquivel was going to fly out to meet with Google executives two weeks from then;
 - g. XTagged was worth more than Facebook and Myspace;
 - h. Hugh Hefner wanted to buy into XTagged for millions of dollars, but Esquivel turned him down because he wanted to "keep it clean;"

- i. If Mitt Romney came on board with XTagged he would win the presidential election in 2012;
 - j. Google or Microsoft was going to buy XTagged and R.B. would get 1% of the sale;
 - k. Esquivel would not sell XTagged for less than \$500 million and had already turned down an offer for \$5 million;
 - l. XTagged was a registered LLC in Utah;
 - m. XTagged was patented;
 - n. Esquivel had ten lawyers – five in Utah and five in California;
 - o. R.B. should not be surprised if movie stars or others called to offer \$500,000 - \$1 million for his 1% share;
 - p. The DMV approved XTagged; and
 - q. Esquivel met with a room of Federal Bureau of Investigation (FBI) agents and “put them in their place” and they approved of XTagged.
26. Based on Esquivel’s statements, R.B. invested \$5,000 in XTagged and L.L. invested \$2,500.
27. On April 7, 2009, R.B. met Esquivel in Davis County, Utah and gave him a personal check for \$2,500 in exchange for 1/2% in XTagged and gave Esquivel \$2,500 in cash on behalf of L.L. in exchange for 1/2% in XTagged.
28. A week later, Esquivel called R.B. and said that another 1/2% was available for \$2,500. Esquivel said that 1% of XTagged was now worth \$50,000.

29. Based on this statement, R.B. invested another \$2,500 in XTagged. On April 17, 2009, R.B. gave Esquivel another personal check for \$2,500.
30. In May 2009, R.B. requested his funds be returned. Esquivel said it would take some time because he “needed to get things worked out because it might have to do with insider trading.”
31. R.B. never received his funds back and is owed \$5,000 in principal alone
32. L.L. received all of his principal back from Esquivel.

CAUSES OF ACTION

COUNT I

Securities Fraud under § 61-1-1 of the Act (Investors K.C. and C.E.)

33. The Division incorporates and re-alleges paragraphs 1 through 32.
34. The investment opportunities offered and sold by Respondent are securities under § 61-1-13 of the Act.
35. In connection with the offer and sale of a security to the investors, Respondent, directly or indirectly, made false statements, including, but not limited to, the following:
 - a. The DMV was going to authorize XTagged to communicate with the DMV’s databases, when in fact the DMV had no contact with Esquivel and would not allow such activity:
 - b. XTagged was going to be a public company two weeks from the offer, when in fact

Respondent had no reasonable basis for making such a statement;

- c. XTagged was patented, when in fact a search through the U.S. Patent and Trademark Office shows no listing for XTagged.

36. In connection with the offer and sale of a security to the investors, Respondent, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make statements made not misleading:

- a. How the stock price of XTagged would go from \$1 per share to \$30-\$40 per share;
- b. How XTagged's stock price would be more than Google's;
- c. Esquivel had three civil judgments against him totaling \$10,211;
- d. Some or all of the information typically provided in an offering circular or prospectus regarding Esquivel and XTagged, such as:
 - i. Financial statements;
 - ii. Risk factors;
 - iii. Suitability factors for the investment;
 - iv. Nature of competition;
 - v. Whether the investment was a registered security or exempt from registration;and
 - vi. Whether Respondent was licensed to sell securities.

COUNT II
Securities Fraud under § 61-1-1 of the Act
(Investor R.B. and L.L.)

37. The Division incorporates and re-alleges paragraphs 1 through 32.
38. The investment opportunities offered and sold by Respondent are securities under § 61-1-13 of the Act.
39. In connection with the offer and sale of a security to the investors, Respondent, directly or indirectly, made false statements, including, but not limited to, the following:
 - a. XTagged was worth more than Facebook and Myspace, when in fact Respondent had not basis for making such a statement;
 - b. If Mitt Romney came on board he would win the 2012 Presidential Election, when in fact Respondent had no reasonable basis for making such a statement;
 - c. XTagged was a registered LLC in Utah, when in fact the Utah Division of Corporations shows no listing for XTagged;
 - d. XTagged was patented, when in fact a search through the U.S. Patent and Trademark Office shows no listing for XTagged; and
 - e. The DMV approved XTagged's plan, when in fact, a representative from the DMV refutes this claim.
40. In connection with the offer and sale of a security to the investors, Respondent, directly or indirectly, failed to disclose material information, including, but not limited to, the following,

which was necessary in order to make statements made not misleading:

- a. Why he was selling 1% shares for \$5,000 if they were worth \$30,000;
- b. How a 1% share would be worth \$50,000 a week later and \$1 million a month later;
- c. Why he was offering the 1% share for \$5,000 when others would pay him \$1 million for it;
- d. Why he was offering R.B. and L.L. an investment in XTagged when Google was going to buy XTagged for \$1 billion;
- e. How XTagged was worth more than Facebook and Myspace;
- f. How Mitt Romney would win an election if he became involved with XTagged;
- g. Why he would not sell XTagged for less than \$500 million;
- h. Why he was selling 1% shares for \$5,000 when movie stars or others would offer \$500,000 to \$1 million;
- i. Esquivel had a UCC filing effective October 16, 2008;
- j. Esquivel had three civil judgments against him totaling \$10,211;
- k. Some or all of the information typically provided in an offering circular or prospectus regarding Esquivel and XTagged, such as:
 - i. Financial statements;
 - ii. Risk factors;
 - iii. Suitability factors for the investment;

- iv. Nature of competition;
- v. Whether the investment was a registered security or exempt from registration;
and
- vi. Whether Respondent was licensed to sell securities.

ORDER

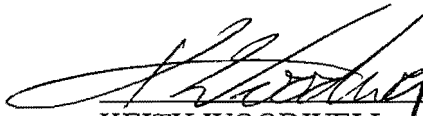
The Director, pursuant to § 61-1-20 of the Act, hereby orders Respondent to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63G-4-202, -204 through -208, and held before the Utah Division of Securities. The hearing will occur on Wednesday, July 6, 2011, at 9:00 a.m., at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2nd Floor, Salt Lake City, Utah. The purpose of the hearing is to establish a scheduling order and address any preliminary matters. If Respondent fails to file an answer and appear at the hearing, the Division of Securities may hold Respondent in default, and a fine may be imposed in accordance with Utah Code Ann. § 63G-4-209. In lieu of default, the Division may decide to proceed with the hearing under § 63G-4-208. At the hearing, Respondent may show cause, if any he has:


- a. Why Respondent should not be found to have engaged in the violations alleged by the Division in this Order to Show Cause;
- b. Why Respondent should not be ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1, or any other section of the

Act;


- c. Why Respondent should not be barred from (i) associating with any broker-dealer or investment adviser licensed in Utah; (ii) acting as an agent for any issuer soliciting investor funds in Utah, and (iii) from being licensed in any capacity in the securities industry in Utah; and
- d. Why Respondent should not be ordered to pay to the Division a fine amount to be determined by stipulation or by the presiding officer after a hearing in accordance with the provisions of Utah Admin. Rule R164-31-1, which may be reduced by restitution paid to the investors.

DATED this 10th day of May, 2011.


KEITH WOODWELL
Director, Utah Division of Securities



Approved:


SCOTT DAVIS
Assistant Attorney General
A.S.

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:

**ANDRES ESQUIVEL d.b.a. XTagged,

Respondent.**

NOTICE OF AGENCY ACTION

Docket No. SD-11-1077

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENT:

You are hereby notified that agency action in the form of an adjudicative proceeding has been commenced against you by the Utah Division of Securities (Division). The adjudicative proceeding is to be formal and will be conducted according to statute and rule. See Utah Code Ann. §§ 63G-4-201 and 63G-4-204 through -209; see also Utah Admin. Code R151-4-101, *et seq.* The facts on which this action is based are set forth in the accompanying Order to Show Cause. The legal authority under which this formal adjudicative proceeding is to be maintained is Utah Code Ann. § 61-1-20. You may be represented by counsel or you may represent yourself in this proceeding. Utah Admin. Code R151-4-110.

You must file a written response with the Division within thirty (30) days of the mailing date of this Notice. Your response must be in writing and signed by you or your representative. Your response must include the file number and name of the adjudicative proceeding, your version of the

facts, a statement of what relief you seek, and a statement summarizing why the relief you seek should be granted. Utah Code Ann. § 63G-4-204(1). In addition, pursuant to Utah Code Ann. § 63G-4-204(3), the presiding officer requires that your response:

- (a) admit or deny the allegations in each numbered paragraph of the Order to Show Cause, including a detailed explanation for any response other than an unqualified admission. Allegations in the Order to Show Cause not specifically denied are deemed admitted;
- (b) identify any additional facts or documents which you assert are relevant in light of the allegations made; and
- Ⓢ state in short and plain terms your defenses to each allegation in the Order to Show Cause, including affirmative defenses, that were applicable at the time of the conduct (including exemptions or exceptions contained within the Utah Uniform Securities Act).

Your response, and any future pleadings or filings that should be part of the official files in this matter, should be sent to the following:

Signed originals to:

Administrative Court Clerk
c/o Julie Price
Utah Division of Securities
160 E. 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
(801) 530-6600

A copy to:

D. Scott Davis
Assistant Attorney General
Utah Division of Securities
160 East 300 South, 5th Floor
Salt Lake City, UT 84114-0872
(801) 366-0358

An initial hearing in this matter is set for **July 5, 2011** at the Division of Securities, 2nd Floor, 160 E. 300 S., Salt Lake City, Utah, at **9:00 A.M.** The purpose of the initial hearing is to enter a

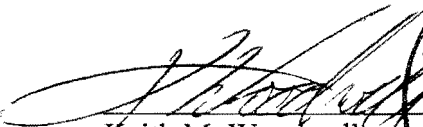
scheduling order addressing discovery, disclosure, and other deadlines, including pre-hearing motions, and to set a hearing date to adjudicate the matter alleged in the Order to Show Cause.

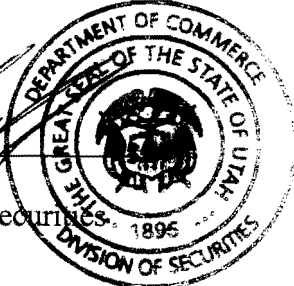
If you fail to file a response, as described above, or fail to appear at any hearing that is set, the presiding officer may enter a default order against you without any further notice. Utah Code Ann. § 63G-4-209; Utah Admin. Code R151-4-710(2). After issuing the default order, the presiding officer may grant the relief sought against you in the Order to Show Cause, and will conduct any further proceedings necessary to complete the adjudicative proceeding without your participation and will determine all issues in the proceeding. Utah Code Ann. § 63G-4-209(4). In the alternative, the Division may proceed with a hearing under § 63G-4-208.

The Administrative Law Judge will be J. Steven Eklund, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6648. This adjudicative proceeding will be heard by Mr. Eklund and the Utah Securities Commission. You may appear and be heard and present evidence on your behalf at any such hearings.

You may attempt to negotiate a settlement of the matter without filing a response or proceeding to hearing. To do so, please contact the Utah Attorney General's Office. Questions regarding the Order to Show Cause should be directed to D. Scott Davis, Assistant Attorney General, 160 E. 300 South, 5th Floor, Box 140872, Salt Lake City, UT 84114-0872, Tel. No. (801) 366-0358.

Dated this 10th day of May, 2011


Keith M. Woodwell
Director, Division of Securities

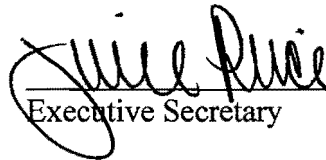


Certificate of Mailing

I certify that on the 14th day of MAY, 2011, I mailed, by certified mail, a true and correct copy of the Notice of Agency Action and Order to Show Cause to:

Andres Esquivel
473 Pages Lane
Bountiful, UT 84010

Certified Mail # 7007 0220 0001 00103 5250



Executive Secretary