

JAN 14 2009

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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR ADA COUNTY**

STATE OF IDAHO, DEPARTMENT OF  
FINANCE, SECURITIES BUREAU,

Plaintiff,

vs.

DOUGLAS L. SWENSON, DBSI, INC.,  
FOR 1031 LLC, FOR 1031 QUORUM  
LLC, and FOR 1031 QUORUM  
OFFICES LLC,

Defendants.

Case No. **CV 00 0900859**

**COMPLAINT**

Fee category: Exempt

COMES NOW the State of Idaho, Department of Finance, Gavin M. Gee, Director, by and through its counsel, Alan Conilogue, Deputy Attorney General, and upon information and belief, complains and alleges as follows:

1. This action is brought pursuant to the Idaho Securities Act, Idaho Code § 30-1401 *et seq.* (the Act), and in particular Idaho Code § 30-1442(3), wherein the Department is

authorized to bring actions seeking injunctive and other relief against persons who have either violated or are about to violate provisions of the Act or any rule promulgated thereunder.

2. Defendants are individuals or businesses residing or domiciled in Ada County, Idaho. The acts and practices herein comprising violations of law by the above-named Defendants occurred in Ada County, elsewhere in the state of Idaho, and in other states.

### CASE SUMMARY

3. In order to understand how Defendants violated Idaho securities law in regards to the Quorum property transactions described below, it is necessary to understand how these transactions relate to a larger enterprise. Defendants, and related entities not named in this Complaint, raised hundreds of millions of dollars by issuing securities in the form of investment contracts to thousands of investors in every state and numerous foreign countries involving hundreds of real estate properties. Defendants conducted an enterprise that identified properties and investors, purchased the properties, and then sold the properties at an inflated price to the investors. Defendants kept a small interest in the properties and managed the properties on behalf of the investors. Defendants typically set up a limited liability company for each property, eventually organizing hundreds of companies.

4. Integral to the enterprise was Defendants' ability to use the profits from new sales, as well as revenue generated by managing the properties, to purchase new properties.

5. The Quorum property transactions described below are similar to those related to hundreds of other properties involved in the enterprise.

6. The Quorum property involved seventeen (17) investors and an aggregate investment of nineteen million five hundred thousand dollars (\$19,500,000).

7. Early in this decade, Defendants identified a market opportunity based on a 2002

IRS rule that allowed investors in commercial real estate to sell the property and avoid income tax on the appreciation by purchasing another commercial property. This transaction is known as a 1031 exchange, named after the code section that created it.

8. Defendants noted that some owners of commercial real estate grew weary over time of managing the property, yet did not want to sell and have to pay income tax on an appreciated value. Defendants identified this as a market and an opportunity, and developed a program whereby commercial property owners could sell their property, reinvest in other commercial property, and avoid management of the property. The new program involved Defendants creating a tenancy in common (TIC) agreement, coupled with a property management plan called a “master lease.”

9. Property sellers took the proceeds from the sale of their commercial property and bought a fractional ownership interest in a new property owned by Defendants, which the sellers then owned along with other tenants in common. As part of this transaction, Defendants also set themselves up as the manager of the property and agreed to lease the property to sub-tenants, to collect rents, to maintain the property, to pay the debt service on the property, and to pay the investors a return on their investment. All the investors had to do regarding the property was cash a monthly check.

10. Defendants were aware that such programs were typically considered to be securities, but preferred to market them as real estate products for reasons set forth in detail below. Under Idaho law, transactions in Defendants’ TIC program constituted securities.

11. Defendants defrauded investors by misrepresenting the investment as a real estate investment, and by omitting material information from the investor solicitations. Defendants failed to register these securities, and Defendants failed to register as securities broker-dealers as

required by law.

### DEFENDANTS

12. Defendant DBSI, Inc., (DBSI) is a company organized in Idaho. DBSI is affiliated with hundreds of other companies, including companies related to FOR 1031 LLC, all of which are essentially owned or controlled by Defendant Douglas L. Swenson. DBSI is headquartered and does business in Ada County, Idaho.

13. Defendant FOR 1031 LLC (For1031) is a limited liability company organized in Idaho on August 22, 2003 to facilitate the TIC transactions described in this Complaint. For1031 is affiliated with hundreds of other companies, including companies related to DBSI, Inc., all of which are essentially owned or controlled by Defendant Swenson. For1031 is headquartered and does business in Ada County, Idaho.

14. Defendants FOR 1031 QUORUM LLC and FOR 1031 QUORUM OFFICES LLC are limited liability companies organized in Idaho on May 5, 2004 to facilitate the TIC transactions described in this Complaint.

15. Defendant Douglas L. Swenson (Swenson) is an individual residing in Eagle, Ada County, Idaho. He owns, manages or controls the Defendant companies and the many For1031 related companies and affiliated DBSI companies.

### FACTS

16. Defendant Swenson formed or caused to be formed DBSI Motels, Inc. on February 20, 1980. He changed the name of DBSI Motels, Inc. to DBSI Housing, Inc. on January 30, 1986. DBSI Housing, Inc. became DBSI, Inc. on March 26, 2008. Swenson does business through many corporations with slightly differing names, virtually all of which contain DBSI in the name, such as DBSI Realty, Inc., and DBSI Amarillo Apartments LeaseCo LLC. A

recent bankruptcy filing listed 144 such like-named entities. These DBSI companies are mere alter egos for Defendant Swenson. These DBSI companies were used to make the fraudulent and unlawful offer or sale of securities as described in this Complaint, and were formed for the purpose of shielding Swenson from accountability and for perpetrating fraud on the investors. The companies have such a unity of interest with Swenson that the separate personalities of the companies and Swenson no longer exist. Further, if Swenson is allowed to hide behind these corporate facades it will sanction the fraud and promote injustice. Their corporate existence should be ignored.

17. On August 22, 2003, Swenson caused to be formed FOR 1031 LLC. As with DBSI, over time Swenson caused to be formed an unknown number, but probably in the hundreds, of LLCs which contain the FOR 1031 name, and others. This Complaint focuses on FOR 1031 LLC (For1031), FOR 1031 QUORUM LLC (Quorum) and FOR 1031 QUORUM OFFICES LLC (Quorum Offices). As with DBSI, these and all similarly named FOR 1031 companies are mere alter egos for Defendant Douglas L. Swenson. They were used to make the fraudulent and unlawful offer or sale of securities as described in this Complaint, and were formed for the purpose of shielding Swenson from accountability and for perpetrating fraud on the investors. The companies have such a unity of interest with Swenson that the separate personalities of the companies and Swenson no longer exist. Further, if Swenson is allowed to hide behind these corporate facades it will sanction the fraud and promote injustice. Their corporate existence should be ignored.

18. On May 5, 2004 Swenson caused to be formed FOR 1031 QUORUM (Quorum) and FOR 1031 QUORUM OFFICES (Quorum Offices). Quorum is managed by Quorum Offices, which is in turn managed by For1031. Quorum and Quorum Offices both relate to a

commercial property, an office building, located at 14801 Quorum Drive, in Addison, Texas.

19. The Quorum property was handled according to the tenant in common (TIC) template developed by Swenson. The TIC template was developed by Swenson in order to tap into a burgeoning national real estate market, as follows:

#### The Tenant in Common (TIC) Program

20. Owners of commercial properties, which properties are defined herein as property held for productive use in a trade or business or for investment, usually desire to sell the property at some point, perhaps out of a need for money, or to realize appreciation on the property, or just to quit the business of managing commercial properties. When the property sells, the seller can defer payment of income tax on the appreciation in the property by doing a 1031 like-kind exchange, named after the tax law provision allowing the untaxed transaction. Essentially, the proceeds must be used to buy another commercial property, subject to various constraints imposed by the IRS.

21. Participants in Defendants' TIC program varied in wealth and sophistication. Some of the investors had experience with the business of owning commercial properties, others did not. Some were elderly. A homeowner who has been renting a second home or a duplex can qualify for a 1031 exchange upon sale of the home or duplex, and many such unsophisticated investors participated in Defendants' program. The property owners had differing amounts to invest, and would receive an interest in the TIC property identified by Defendants commensurate with the size of their investment in proportion to the whole.

22. Swenson, through his agents, would locate large commercial properties for sale. He would then aggregate several persons seeking to participate in a 1031 exchange and arrange for them to purchase the property for sale. A typical transaction would occur as follows:

a. Swenson's agents would locate a property for sale and begin negotiations for purchase. Simultaneously, other agents would be locating investors, including people looking to participate in a 1031 exchange. Swenson also allowed people to invest in the TIC program without engaging in a 1031 exchange.

b. Once investors were located, Defendants would buy the property from the selling owner. Defendants would then form a limited liability company and have the investors buy the property, as tenants in common, from Defendants at an inflated value. Purchase of the property occurred by the investor assuming a loan on the property from Defendants, by obtaining a new loan, by paying cash, or by some combination of the foregoing. It was also typical that the TIC investors would invest some cash in the purchase and would assume debt for the remainder. Defendants usually kept a small interest in the TIC, around 1%. The purchase and resale happened over a short period, often within a matter of days.

23. The TIC template also included a property management agreement, called a NNN Plus Lease Agreement, which set up Defendant DBSI as the Master Lessee. This agreement authorized DBSI, Inc. to manage the property in all aspects, including to collect rents, make repairs and improvements, find sub-lessees, make debt payments, and to hire another property manager. The master lease granted all power to the Master Lessee, and placed limits on the TIC investors' ability to exercise control, such that the TIC investors had no practical ability to exercise any control over the property. The TIC investors were expected to do nothing more than cash their monthly return-on-investment check.

24. An unusual provision of the NNN Plus Lease is that DBSI, Inc., DBSI Masterleasco, Inc, a DBSI insider or a combination of the three guaranteed the monthly payment amount to each investor. Even if the property had no sub-tenants, the guarantor(s) was(were)

obligated to make the debt payments and the TIC investor returns. Defendants were able to do this because they kept any extra profits earned when the property performed well, because of the capital obtained by re-pricing the properties upon sale to TIC investors, and because cash flows from the multiple properties and the inflows of cash from new investors in other properties were co-mingled and used to prop up underperforming properties. The TIC program also required the TIC investor to sign an irrevocable power of attorney in favor of Defendants or an agent or affiliate, allowing Defendants almost full authority over the lease, the property, and the tenancy in common, including the authority to commit the investors to new loan agreements. By using the profits from one property to make payments on another, Defendants participated in a common enterprise with investors and the other unnamed affiliated companies. Their fortunes were tied together such as to have both vertical and horizontal commonality of interest.

#### The Quorum Property

25. The Quorum Property transactions are similar to and representative of typical TIC transactions conducted by Defendants, and the violations of law that occurred regarding the Quorum property also occurred in relation to other properties bought and sold pursuant to the TIC program.

26. Around April and May of 2004, Defendants arranged a TIC transaction relating to an office building located at 14801 Quorum Drive, in Addison, Texas. In aid of this transaction, Defendants organized For 1031 Quorum LLC and For 1031 Quorum Offices LLC on May 5, 2004.

27. On May 12, 2004, Defendants, through Quorum, offered the TIC investment to investors. On May 19, 2004, Quorum bought the Quorum building for \$13,300,000. Defendants, through Quorum, were simultaneously signing up 17 TIC investors to purchase the



building from them. One investor, N.W., executed a purchase agreement with Quorum on May 25, 2004 to purchase a 7% interest for \$1,400,000. N.W. paid \$700,000 in cash, and assumed \$700,000 of Defendants' debt in the building. N.W. also executed a TIC Agreement, a Special Durable Power of Attorney, and various other purchase related documents.

28. The Purchase Agreement and loan assumption placed the TIC investors in a non-recourse position with the lender, meaning that upon default the investor was liable only for amounts invested in the property, and the lender did not have recourse to other assets of the investor. On December 13, 2004, Defendants, unbeknownst to the TIC investors and pursuant to the authority of the Special Durable Power of Attorney, executed a new loan agreement that did not contain the non-recourse clause, thereby subjecting the investors to expanded liability. The loan agreement was signed by Quorum as attorney-in-fact for N.W. and other TIC investors. Defendant Swenson signed the agreement as Board Member of For1031, which signed as Manager of Quorum Offices, which signed as Manager of Quorum.

29. Defendants sold the building, after owning it for 14 days, to the TIC investors for \$19,500,000, a markup of \$6,200,000, or around 46%. Quorum retained a 1% interest in the TIC, and other investor interests ranged from .387% to 20.513%. This \$6,200,000 was commingled with profits and income streams from other properties and was used by Defendants to buy more properties and expand the TIC program, and likely other purposes.

30. At the time of the sale to the TIC Investors, the Quorum building was occupied by only one tenant, which occupied the entire building save for the property manager's office. This tenant has since moved out. The building is empty except for a property manager's office, and is generating no cash flow.

31. The TIC investors and Defendants were advised by the lender on December 3,

2008 that the scheduled monthly payment of \$76,497.83 had not been paid and that the \$9,750,000 promissory note is in default.

### Securities Violations

32. The agreements between Defendants and the TIC investors, including the TIC Agreement, the NNN Plus Lease Agreement, and the Irrevocable Power of Attorney, created a common enterprise whereby the TIC investor would earn a profit based on Defendants' efforts. The TIC investor was not expected to expend any effort to obtain the return, other than providing the initial investment funds and cashing the monthly check. The agreements thus constituted investment contracts.

33. Defendant Swenson knew or should have known at the inception of the program that the TIC Agreements were securities. With few exceptions, other promoters offering investments through TIC Agreements offered them as securities. The NASD (of which DBSI Securities, Inc. is a member) issued a Notice to Members advising broker-dealers and their agents that most TIC transactions were securities. Defendants sought changes to the securities laws of the states of Utah, Idaho, Montana and Oregon to exclude TIC transactions from the definition of a security, although these efforts were successful only in Utah. Swenson also offered a similar TIC program as described above, but did so as a security. A chief difference is that the securities laws require the issuer of the securities to provide full disclosure of material information to investors, but the real estate offerings were not subject to the same level of disclosure. Additionally, securities laws require the seller of an investment to ensure the investment is suitable for a particular investor, but no such requirement exists for a real estate transaction.

34. In order to beguile investors into signing the agreements, Defendants made the

misrepresentations set forth below. Defendants also omitted from their sales materials and presentation important information necessary to make an informed investment decision.

35. Defendants DBSI, For1031, Quorum and Quorum Offices, at all times material herein, were not registered as broker/dealers with the State of Idaho or the Securities and Exchange Commission (SEC).

36. The securities issued by Defendants were not registered with the State of Idaho or the SEC.

#### Misrepresentations

37. To induce investors to invest, Defendants made certain material representations. These representations were false. Some of the material misrepresentations are as follows:

a. Defendants or their agents represented that the property would not be leased in its entirety to a single tenant. However, the property was leased to a single tenant.

b. Defendants or their agents represented that the TIC owners' investment would not be affected by "other people's finances." However, written disclosure materials state that a bankruptcy or similar insolvency proceeding of one TIC owner may adversely affect other TIC owners. A loan agreement executed by Defendants and the TIC investors provides that bankruptcy of any TIC member can cause the lender to declare the agreement in default.

c. Defendants or their agents in effect guaranteed the investment by stating that the TIC owners would always get their return and that the payment would not be affected by tenant issues. However, written disclosure materials state that potential TIC investors should not rely on the financial strength of Defendants, but should instead look to the cash flow generated by the property.

d. Defendants or their agents represented that the loan they would assume would

always be non-recourse. However, after the initial transaction was complete, Defendants substituted the non-recourse loan with a recourse loan without informing investors of the change.

#### Material Omissions

38. Defendants did not tell potential investors certain information that would be necessary to make other statements not misleading, and that an investor would likely consider as material to a decision to invest with Defendants. Defendants failed to disclose the following material information, as well as other material information not itemized below:

- a. That TIC programs were widely considered to be a security, not a real estate product, and Defendants' investment carried the risk that it violated the Idaho Securities Act;
- b. That Defendants sold the Quorum property to the TIC investors for \$6,200,000 more than they paid for it after holding it for just a few days;
- c. That the financial information given to investors was not audited, and did not comply with generally accepted accounting principles;
- d. That if Defendants were terminated as Master Lessee, the TIC owners might not be able to find a replacement;
- e. That the TIC owners bore the risk of Defendants not paying the rent;
- f. That the TIC owners bore the risk that Defendants might not be able to find sub-tenants for the property;
- g. The amount and type of compensation paid to Defendants;
- h. That the Quorum investment was suitable only for investors willing to expose their entire net worth to potential liabilities associated with ownership of the Quorum property;
- i. That the Quorum investment was speculative;
- j. That Defendants DBSI, For1031, Quorum and Quorum Offices were not

registered as broker-dealers to sell the securities, as required by the Idaho Securities Act; and

k. That the TIC programs were securities issued by Defendants, but were not registered as required by the Idaho Securities Act.

**COUNT ONE**  
**(Fraud - False and Misleading Statements)**

39. The allegations of paragraphs 1 through 38 above are realleged and incorporated herein as if set forth verbatim.

40. Idaho Code § 30-1403(2) provides that it is unlawful for any person, in connection with the offer, sale or purchase of a security, directly or indirectly, to make any untrue statement of 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.

41. Defendants' misrepresentations to prospective TIC investors as set forth above were made in connection with the offer, sale or purchase of securities. Defendants' misrepresentations were false and misleading, constituting violations of Idaho Code § 30-1403 as to each misrepresentation to each investor.

42. Defendants' omissions of material facts and failures to disclose to prospective investors as set forth above were made in connection with the offer, sale or purchase of securities. Defendants' omissions of material facts and failures to disclose, as specifically set forth above, constitute violations of Idaho Code § 30-1403(2) as to each omission and failure to disclose to each investor.

**COUNT TWO**  
**(Fraudulent Conduct)**

43. The allegations of paragraphs 1 through 38 above are realleged and incorporated herein as if set forth verbatim.

44. Idaho Code § 30-1403(3) provides that it is unlawful for any person, in connection with the offer, sale or purchase of a security, directly or indirectly, to engage in an act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

45. Defendants' acts as set forth in paragraphs 1 through 38 were made in connection with the offer, sale or purchase of securities. Their conduct as described in paragraphs 1 through 38 constitutes engaging in transactions, acts, practices, or courses of business which operate or would operate as a fraud or deceit upon investors or prospective investors, in violation of Idaho Code § 30-1403(3) as to each investor.

**COUNT THREE**  
**(Unregistered Securities)**

46. The allegations of paragraphs 1 through 38 above are realleged and incorporated herein as if set forth verbatim.

47. Defendants issued, sold or offered for sale in Idaho securities in the form of joint venture agreements and investment contracts. Such securities were not registered with the Idaho Department of Finance as required by Idaho Code § 30-1416.

48. The Defendants' failure to register such securities with the Department constitutes a violation of Idaho Code § 30-1416.

**COUNT FOUR**  
**(Failure to Register)**

49. The allegations of paragraphs 1 through 38 above are realleged and incorporated herein as if set forth verbatim.

50. Defendants DBSI, For1031, Quorum and Quorum Offices transacted business in Idaho as broker-dealers. No Defendant was registered as a broker-dealer with the Department as

required by Idaho Code § 30-1406(1).

51. Defendants' failure to register as broker-dealers with the Department constitutes a violation of Idaho Code § 30-1406(1).

**PRAYER FOR RELIEF**

WHEREFORE, the Department prays for judgment in favor of the Department and against Defendants as follows:

1. That Defendants be adjudged to have violated the Idaho Securities Act, Idaho Code § 30-1401 *et seq.*, and rules promulgated thereunder, and other applicable federal laws and regulations as proven at trial, as to Counts One through Four alleged above, as well as any additional counts proven at trial.

2. That Defendants be permanently enjoined from engaging in any act or practice violating any provision of Idaho's Uniform Securities Act (2004), Idaho Code § 30-14-101 *et seq.*, or any rule promulgated thereunder, and in particular that they be permanently enjoined from:

- a. Offering or selling any tenant in common interest in any real property;
- b. Selling or offering for sale nonexempt securities in any form in the state of Idaho without first registering them with the Department in accordance with Title 30, Chapter 14, Idaho Code;
- c. Selling or offering for sale nonexempt securities in any form in the state of Idaho without first becoming registered as a broker-dealer and/or broker-dealer agent with the Department in accordance with Title 30, Chapter 14, Idaho Code;
- d. Relying on any exemption to any securities law without the prior written consent of the Director; and

e. In connection with the offer, sale or purchase of any security, directly or indirectly:

- i. Employing any device, scheme, or artifice to defraud;
- ii. Making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading;
- iii. Engaging in any act, practice or course of business that operates or would operate as a fraud or deceit upon another person.

3. That Defendants be ordered to pay a civil penalty of up to \$10,000 for each violation of the Act as the Court deems appropriate, pursuant to Idaho Code § 30-1442(3)(b), for total penalties of at least \$40,000, and that the Court award a money judgment in favor of the Department in such amount.

4. That Defendants be ordered to make restitution to Quorum investors, pursuant to Idaho Code § 30-1442(3)(a), in the amount of nine million seven hundred fifty thousand dollars (\$9,750,000), or such other amount as may be proven at trial, that Defendants pay the restitution amount to the Department, to be delivered to the investors, and that the Court award a money judgment in favor of the Department in such amount.

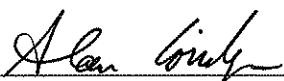
5. That the Department be awarded attorney fees and costs incurred in the preparation and prosecution of this action, pursuant to Idaho Code §§ 12-121 and 30-1442(3)(c), and that the Court award a money judgment in favor of Plaintiff in such amount. Should judgment be taken by default herein, Plaintiff asserts that \$5,000 is a reasonable sum for the same.



6. For such further relief as this Court may deem just and equitable under the circumstances.

DATED this 14 day of January, 2009.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

  
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ALAN CONILOGUE  
Deputy Attorney General