



1 45-2-101(8); **COUNT III: FAILURE TO REGISTER SECURITIES**, common  
2 scheme, a felony, as specified in Mont. Code Ann. §§ 30-10-202, 30-10-306, 45-2-  
3 101(8); **COUNT IV: OPERATING A PYRAMID PROMOTIONAL SCHEME**  
4 **(PONZI SCHEME)**, a felony, as specified in Mont. Code Ann. § 30-10-325; **COUNTS**  
5 **V and VI: FRAUDULENT SECURITIES PRACTICES**, a felony, as specified in  
6 Mont. Code Ann. §§ 30-10-301(1)(b), 30-10-306, 45-2-101(8).

7 Jesse Laslovich, after first being sworn upon oath, deposes and says, based on  
8 information and belief, that investigative information compiled and provided to him by  
9 Lynne Egan (Egan), Deputy Securities Commissioner and security analyst for the  
10 Office of the Montana State Auditor, Commissioner of Securities and Insurance (CSI),  
11 demonstrates probable cause to believe that the Defendant has committed the offenses  
12 charged. The investigative information relied upon by affiant to support probable  
13 cause is as follows:

14 1. The CSI has a duty to investigate alleged violations of the Securities Act  
15 of Montana found in Title 30, chapter 10 of the Montana Code Annotated. The Act is  
16 to be construed to protect the investor, persons engaged in securities transactions, and  
17 the public interest. Mont. Code Ann. § 30-10-102(1). Any person who willfully  
18 violates any provision of parts one through three of Montana Code Annotated Title 30,  
19 chapter 10, is criminally liable for the violations. The same is true if a person violates  
20 any rule promulgated pursuant to Title 30, chapter 10, parts 1 through 3 of the  
21 Montana Code Annotated. Mont. Code Ann. § 30-10-306.

22 2. Egan is a forensics accountant who has worked for the CSI for over 22  
23 years as a Securities Examiner and Deputy Securities Commissioner. Prior to her  
24 work at the CSI, she was an income tax compliance officer for the Montana  
25 Department of Revenue for two years and worked for D.A. Davidson for ten years as  
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1 an operations manager. She has served as an expert witness in many securities-related  
2 cases and has extensive training and experience relating to securities regulation.

3 3. Egan's investigation of this matter started in February 2016 with a call  
4 from Federal Bureau of Investigation Agent Shawn Hall. Hall had begun an  
5 investigation related to Defendant's actions related to a disabled adult (J.K.) and  
6 Defendant's actions in soliciting, obtaining, and using money procured from a number  
7 of people.

8 4. J.K. has lived with physical and mental disabilities since birth, including  
9 cerebral palsy. According to a longtime friend of his grandmother, Traci Erickson,  
10 J.K. was cared for as a child by his grandparents and until their deaths. He is now an  
11 adult and has been during the times relevant to this case. Erickson and Defendant were  
12 both friends of J.K.'s grandmother, although not well known to each other.

13 5. J.K.'s grandmother passed away March 11, 2009. Thereafter, J.K.'s  
14 grandfather signed numerous documents expressing his desire to care for J.K. On May  
15 1, 2009, J.K.'s grandfather listed J.K. as the beneficiary of an Individual Retirement  
16 Account (IRA) originally owned by J.K.'s grandmother. The IRA is held with  
17 Vanguard, a broker-dealer registered to do business in Montana. A second IRA held  
18 with Vanguard originally owned by J.K.'s grandfather also listed J.K. as the  
19 beneficiary. On September 17, 2009, J.K.'s grandfather signed a trust agreement that  
20 made J.K. the recipient of 100 percent of the trust property upon J.K.'s grandfather's  
21 death. On March 11, 2010, J.K.'s grandfather signed a will which required any  
22 distributions from his estate be held in trust for J.K. Defendant and Erickson were  
23 named in the will as co-personal representatives and co-trustees of any necessary trust  
24 for J.K. The will provided as follows regarding the care of J.K.:

25 Whenever the Co-Trustees determine that the income of [J.K.] from all  
26 sources is insufficient for his reasonable support, comfort, education, or

1 general welfare, the Co-Trustees may pay to [J.K.] so much of the  
2 income of [J.K.'s] separate trust as the Co-Trustees determine to be  
3 required for those purposes. The Co-Trustees may also advance  
4 portions of the principal of the trust estate to [J.K.] for educational  
5 expenses, the purchase of a home, investment in a business,  
6 establishment of a business or professional practice, or any other  
7 purpose directly related to the general welfare of such beneficiary if, in  
8 the Co-Trustees' sole discretion, such advancement should be made.

9 6. By contrast, Defendant completed documents and transactions that  
10 transferred the monetary assets of J.K. to herself. On March 5, 2010, pursuant to an  
11 "Agent Authorization" signed by J.K.'s grandfather and Defendant, Vanguard  
12 recognized Defendant as having full agent authority regarding both IRAs. Defendant's  
13 signature appears below the following acknowledgment:

14 I hereby acknowledge that in the absence of a specific provision to the  
15 contrary . . . when I act as agent:

- 16 • I shall exercise the powers for the benefit of the principal.
- 17 • I shall keep the assets of the principal separate from my  
18 assets.
- 19 • I shall exercise reasonable caution and prudence.
- 20 • I shall keep a full and accurate record of all actions, receipts,  
21 and disbursements on behalf of the principal.

22 Exercising this agent authority, Defendant designated herself as beneficiary on April  
23 10, 2010, replacing J.K. On June 4, 2010, she changed the address for communications  
24 from Vanguard to her address. On July 14, 2010, moreover, Defendant changed the  
25 destination of the monthly automatic withdrawal from one of the Vanguard IRA's to a  
26 Glacier Bank checking account she held with J.K.<sup>1</sup>

7. Analysis of Glacier Bank records received pursuant to an investigative  
subpoena issued April 1, 2016, by a state district court include virtual copies of checks,  
deposit slips, and bank statements. The investigation regarding the Glacier Bank joint  
checking account (J.K./Defendant) show that amounts were deposited by Vanguard  
relating to both IRAs (some from an escrow service). There was money sent for cable

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<sup>1</sup> This Vanguard IRA was originally J.K.'s grandmother's and the distributions were being deposited into a Whitefish credit union account held by J.K.'s grandfather until the Defendant changed it.

1 payments, legal expenses, and some other expenses personal to J.K., but from July 2010  
2 to September 2015, over 40 percent of the withdrawals were for Defendant's personal  
3 use, including for her credit card payments. There were also withdrawals from the  
4 account that matched deposits in the account held only by her. Because there was no  
5 clear distinction between funds held strictly for J.K., the money source and the  
6 destination of the money were analyzed according to Defendant's actions, as opposed to  
7 J.K.'s actions.

8 8. J.K.'s grandfather passed away on February 28, 2011. As of October  
9 2011, the IRA originally owned by J.K.'s grandmother was valued at over \$140,000.  
10 The required minimum distributions from the IRA were issued to the Defendant on  
11 December 12, 2012, in the amount of \$4,610.21; July 17, 2013, in the amount of  
12 \$4,610.98; July 17, 2014, in the amount of \$4,611.55; and July 17, 2015, in the amount  
13 of \$4,612.02, totally \$18,444.76. Two of the payments (after income tax withholding  
14 deductions) were deposited by Defendant into her personal checking account at  
15 Glacier Bank.

16 9. Immediately following J.K.'s taking possession of the second IRA  
17 pursuant to his grandfather's designation of J.K. as beneficiary after his death,  
18 Defendant had J.K. sign an Agent Authorization on October 18, 2011, giving her broad  
19 authority to the second IRA. This authority was revoked in April 2013 after Erickson  
20 found that the designated beneficiaries included Defendant and a relative of  
21 Defendant's, rather than J.K.

22 10. Defendant's change in the beneficiary on the IRAs, redirecting of the  
23 monthly and yearly money generated by the IRAs, and/or the withdrawal of money  
24 from J.K.'s account constituted her taking control of the money therein. Her use of the  
25 money for herself (including for her Ponzi scheme as described below) constituted  
26

1 unauthorized control. She did not keep the money for J.K. separate from her own  
2 funds, as required by her fiduciary duties. Contrary to the wishes of J.K.'s  
3 grandparents, contrary to her fiduciary obligations as stated on the Vanguard agent  
4 authorization, and without regard to the benefit of J.K., Defendant spent the money  
5 with the purpose of depriving J.K. of the money with which she had been entrusted.

6 11. In addition to deposits matching amounts from J.K.'s grandfather's and  
7 J.K.'s accounts, records of the Glacier Bank checking account in Defendant's name  
8 only show numerous checks deposited with handwritten notations in the memo line of  
9 the check including "investment," "day trading investment," and "day trading." The  
10 account records also show deposits matching the amounts from J.K.'s account and  
11 from the Vanguard IRAs. Defendant was paid over \$11,000 from January 2008  
12 through March 2016 as wages from the Columbia Falls School District, but received  
13 no other wages. All deposits were to one account in Defendant's name. Investigation  
14 revealed that, from January 2008 through April 1, 2016, Defendant obtained money  
15 from twenty-eight individuals<sup>2</sup> with the stated purpose of investment. The aggregate  
16 amount of money received by the Defendant exceeded \$1,500,000.

17 12. Interviews of investors revealed that in return for money, Defendant gave  
18 some people a "Demand Promissory Note" which identified the lender(s), the borrower  
19 as "Cathy Finberg," and the principal amount of money. The note states no interest  
20 rate and provides that "The entire principal shall be fully and immediately payable  
21 UPON DEMAND of any holder thereof (takes 4-8 business days to receive the  
22 funds)." Some investors received monthly payments, but analysis of the amounts paid  
23 revealed no discernible or consistent amount to investors. Defendant returned the  
24 principal to ten of the persons identified.

25 \_\_\_\_\_  
26 <sup>2</sup>The twenty-eight individuals are known to Defendant and are listed as witnesses at the end of  
the Information filed with this Motion.

1           13. Defendant told the people from whom she took money she had a  
2 calculation that resulted in her turning a profit for her day-trading. None of the people  
3 received statements, tax documents, or a prospectus or disclosure document regarding  
4 Defendant or the money they gave her. They did not receive any documents or  
5 information showing her financial condition or risk factors associated with her actions  
6 or practices. Defendant did not consider factors necessary to determine suitability of a  
7 particular security or investment by a particular person investing money. Defendant  
8 told many investors she was paying taxes owed on the profit for the investors.

9           14. A review of the records shows Defendant typically wired a portion of the  
10 proceeds from her Glacier Bank Account to her personal account at Interactive  
11 Brokers, LLC, a brokerage firm located in Greenwich, Connecticut, that allows  
12 individual investors access to securities trading technology and comprehensive  
13 reporting. It facilitates "day trading" for individual investors.

14           15. A review of Interactive Brokers' account brokerage records, including  
15 new account information, documentation of wired funds, and account statements  
16 revealed that Defendant has had an account with them since 2002. Defendant  
17 deposited approximately \$1,297,600 into her Interactive Brokers personal account  
18 during the period January 2008 through March 2016. She executed dozens of stock  
19 trades each day. During the same time period, Defendant incurred a market loss of  
20 over \$449,169.07 on her trading activities in her Interactive Brokers account, which  
21 constituted a loss of 83 percent of the money she used at Interactive Brokers from  
22 investors.

23           16. Defendant did not treat J.K. as she did other investors. But on  
24 September 2, 2010, using her position as a co-owner of J.K. savings account at the  
25 Whitefish credit union, Defendant withdrew \$50,000. She deposited the money in her  
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1 personal checking account at Glacier Bank and then sent \$44,000 of it to Interactive  
2 Brokers. J.K. received no Demand Promissory Note and no monthly payments from  
3 Defendant.

4 17. During this same time period, Defendant withdrew \$792,800 from the  
5 Interactive Brokers account and placed the funds in her personal account at Glacier  
6 Bank in Montana. Defendant's monthly payments from the Glacier Bank account  
7 included the following:

- 8 (1) checks of an average amount of \$3,805.00 aggregate to investors;
- 9 (2) wired funds to pay her personal credit card at Bank of America  
(monthly average payments of \$1,950);
- 10 (3) wired funds to pay her personal credit card at Chase (monthly  
11 average payment of \$500); and
- 12 (4) paid her mortgage with Bank of America (monthly average  
13 payment of \$1,730).

14 18. The payments to investors were paid primarily with money from other  
15 individual investors and there was no underlying business venture. A comparison of  
16 money from investors with money repaid to other investors revealed that Defendant  
17 currently owes the 18 individual investors over \$1,000,000.

18 19. The money from Defendant's Glacier Bank account for her purposes (e.g.,  
19 mortgage, personal credit card charges, and various expenditures (including for a cruise  
20 in April 2016)) from January 2008 through March 2016 totaled over \$240,000.

21 20. Any person acting as a broker-dealer of securities in Montana must be  
22 registered as such. Mont. Code Ann. §§ 30-10-103(1), -103(22), -103(24), 30-10-201.  
23 Defendants' actions of effecting transactions in securities (taking money, giving  
24 Demand Promissory Notes, and/or day-trading securities) constitute acting as a broker-  
25 dealer. Egan's review of the Financial Industry Regulatory Authority's (FINRA)  
26 Central Registration Depository (CRD), which maintains registration filings for all  
broker-dealer firms and individuals associated with the firms, showed Defendant is not

1 now, nor was she during the dates at issue, registered in any capacity with the CSI or  
2 FINRA. Her review of the Securities and Exchange Commission's Electronic Data  
3 Gathering, Analysis, and Retrieval (EDGAR) database showed Defendant is not now,  
4 nor was she during the dates at issue, registered with the Securities and Exchange  
5 Commission. None of the exemptions from the registration requirement apply to  
6 Defendant. Mont. Code Ann. § 30-10-105.

7 21. It is unlawful for a person to offer or sell any security in this state that is  
8 not registered with the CSI or subject to one of the exemptions stated in law. Mont.  
9 Code Ann. § 30-10-202. In this case, the Demand Promissory Notes issued and  
10 delivered by Defendant constitute a security as specified in Montana Code Annotated  
11 Section 30-10-103(22) and were not registered with the CSI or subject to any  
12 exemption from registration.

13 22. A person may not willfully conduct a pyramid promotional scheme in  
14 Montana (Montana Code Annotated Section 30-10-325), and the legal definition of  
15 "pyramid promotional scheme" includes a "Ponzi scheme, in which a person makes  
16 payments to investors from money obtained from later investors, rather than from any  
17 profits or other income of an underlying or purported underlying business venture."  
18 Mont. Code Ann. § 30-10-324(7)(b).

19 23. Montana Code Annotated Section 30-10-301 states:

20 (1) It is unlawful for any person, in connection with the offer,  
21 sale, or purchase of any security, directly or indirectly, in, into, or from  
22 this state, to: . . . (b) make any untrue statement of a material fact or  
23 omit to state a material fact necessary in order to make the statements  
made, in the light of the circumstances under which they are made, not  
misleading.

24 To implement this statute, Administrative Rule of Montana 6.10.401 was promulgated.

25 It provides in relevant part:  
26

1 (1) For purposes of 30-10-201 and 30-10-301, MCA, fraudulent and  
2 unethical practices means, but is not limited to: . . . (j) failing to  
3 furnish to a customer purchasing securities in an offering, no later than  
4 the date of confirmation of the transaction, either a final prospectus or a  
5 preliminary prospectus and any additional documents, which together  
6 include all information set forth in the final prospectus; . . .

7 24. On February 18, 2015, a new subsection of Mont. Code Ann. § 30-10-  
8 306 (the penalty section for fraudulent securities practices) took effect. That  
9 subsection provides: "(2) A person who willfully violates 30-10-301 with knowledge  
10 that the violation would affect a vulnerable person shall upon conviction be fined not  
11 more than \$20,000 or imprisoned not more than 20 years, or both." "Vulnerable  
12 person" means:

- 13 (a) a person who is at least 60 years of age;
- 14 (b) a person who suffers from mental impairment because of  
15 frailties or dependencies typically related to advanced age, such as  
16 dementia or memory loss; or
- 17 (c) a person who has a developmental disability as defined in  
18 53-20-102.

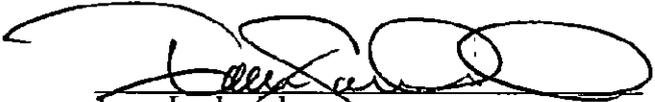
19 Mont. Code Ann. § 30-10-103(25).

20 25. Of the twenty-eight investors, three investors (Guy Heldstab, Shirley  
21 Heldstab, and Phyllis Ausk) were over 60 years of age and gave money to Defendant  
22 after February 18, 2015. Guy and Shirley Heldstab are both over 80 years of age.  
23 Shirley was a close friend of Defendant's mother, and the Heldstabs trusted Defendant  
24 based on that relationship. Defendant falsely told Shirley Heldstab that she made a  
25 profit on the money they gave her. She also falsely claimed that she paid them one-  
26 third of the profit, kept one-third of the profit as her fee, and paid one-third of the  
profit as taxes owed on the profit. They received more than one Demand Promissory  
Note from Defendant. From October 2009 through April 2016; they gave Defendant  
\$270,000. They received monthly payments deposited in their bank account by  
Defendant and received two lump sums as requested from Defendant. They are  
currently owed \$175,000.

1           26. Phyllis Ausk is over 75 years of age. She gave Defendant money based  
2 on the recommendation of Shirley Heldstab. She was given a Demand Promissory  
3 Note, but did not know any percentages earned and thought the profit was tax-free.  
4 She would receive monthly payments in the form of mailed checks from Defendant.  
5 From December 2011 through March 2016, Ausk gave Defendant \$120,000 and  
6 currently has an outstanding principal balance of \$120,000.

7           Based on these facts, the affiant believes probable cause exists that the Defendant,  
8 CATHERINE ANN FINBERG, A/K/A CATHY FINBERG, has committed the alleged  
9 offenses. Accordingly, the affiant moves this Court for leave to file the requested  
10 Information.

11           DATED this 31<sup>st</sup> day of August, 2016.

12  
13   
14 Jesse Laslovich  
15 Special Assistant Montana Attorney General  
16 Special Deputy Flathead County Attorney

17           SUBSCRIBED AND SWORN TO before me this 31<sup>st</sup> day of August,  
18 2016 by Jesse Laslovich.

