

OPENING INSTRUCTIONS TO THE JURY

FEB 06 2013

SALT LAKE COUNTY

By: _____ Deputy Clerk

1. INTRODUCTION:

Ladies and Gentlemen of the Jury, you have been selected and sworn as the jury in this case. The defendant is accused of committing certain crimes. You will decide if the defendant is guilty or not guilty. I will give you some instructions now and some later. You are required to consider and follow all my instructions. Keep an open mind throughout the trial. At the end of the trial you will discuss the evidence and reach a verdict. You took an oath to “well and truly try the issues pending between the parties” and to “render a true and just verdict.” The oath is your promise to do your duty as a member of the jury. Please be alert, pay attention and follow all my instructions:

2. INFORMATION, PLEA AND BURDEN OF PROOF:

The prosecution has filed a document — called an “Information” — that contains the charges against the defendant. The Information is not evidence of anything. It is only a method of accusing a defendant of the crimes. The Information will now be read.

(Read the Information)

The defendant has entered pleas of not guilty and denies committing the crimes. Every crime has component parts called “elements”. The prosecution must prove each and every element of each crime beyond a reasonable doubt. Until the prosecution has satisfied that burden, you must presume that the defendant is not guilty. The defendant does not have to prove anything. He/she does not have to testify, call witnesses, or present evidence.

3. PRESUMPTION OF INNOCENCE:

Remember, the fact that the defendant is charged with the crimes is not evidence of guilt. The law presumes that the defendant is not guilty of the crimes charged. This presumption persists unless the prosecution’s evidence convinces you beyond a reasonable doubt that the defendant is guilty.

4. ROLE OF THE JUDGE, JURY AND LAWYERS:

All of us, judge, jury and lawyers, are officers of the court and have different roles during the trial:

- * As the judge I will supervise the trial, decide legal issues, and instruct you on the law.
- * As the jury, you must follow the law as you weigh the evidence and decide the factual issues. Factual issues relate to what did, or did not, happen in this case.
- * The lawyers will present evidence and try to persuade you to decide the case one way or the other.

Neither the lawyers nor I decide the case. That is your role. Do not be influenced by what you think our opinions might be. Make your decision based on the law given in my instructions and on the evidence presented in court.

5. NOTE-TAKING:

Feel free to take notes during the trial to help you remember the evidence but let me give you the following caution:

- * Do not let note-taking distract you from the proceedings or cause you to miss testimony presented.
- * You should not view your notes as authoritative record of the evidence presented. Your notes are not evidence and may be incomplete. Your memory should be your greatest asset when it comes time to deliberate.

6. ORDER OF THE TRIAL:

I will now explain to you how the trial will unfold. The prosecution will give its opening statement. An opening statement gives an overview of the case from one point of view, and summarizes what that lawyer thinks the evidence will show. Defense counsel may choose

to make an opening statement right after the prosecutor, or wait until after all the prosecution's evidence has been presented, or not make one at all. Next, you will hear the prosecution's evidence. Evidence is usually presented by calling and questioning witnesses. What the witnesses say is testimony. A witness is questioned first by the lawyer who called that witness. This is called direct examination. After direct examination, the witness will be questioned by the opposing lawyer. This is called cross-examination.

Consider all testimony, whether from direct or cross-examination, regardless of who calls the witness. After the prosecution has presented all its evidence, the defendant may present evidence, although the defendant has no duty to do so. If the defendant does present evidence, the prosecution may then present additional evidence. After both sides have presented all their evidence, I will give you final instructions on the law you must follow in reaching a verdict. You will then hear closing arguments from the lawyers. The prosecutor will speak first followed by defense counsel. Then prosecutor speaks last because the government has the burden of proof. Finally, you will deliberate in the jury room. You may take your notes with you. You will discuss the case and reach a verdict.

7. CONDUCT OF JURORS:

From time to time I will call a recess. It may be for a few minutes or longer. During recesses, do not talk about this case with anyone — not family, not friends, not even each other. Until the trial is over, do not mingle or talk with the lawyers, parties, witnesses or anyone else connected with the case. You are welcome to talk with other members of the jury panel but do not discuss this case, any matters discussed in court, or anyone involved in this case. Our court clerks and bailiffs can answer general questions, such as the length of breaks or location of restrooms. But they cannot comment about the case or anyone involved in the case. The goal is to avoid the impression that anyone is trying to influence you improperly. If people involved in the case seem to ignore you outside of court, they are just following this instruction.

Do not conduct any independent research or investigation of any issue involving this case. This includes but is not limited to the following: Do not visit or view any alleged location, do not do any research on the internet, do not read any articles, law books, dictionaries or other documents other than what is presented to you in court. Do not let anyone else do this for you.

Until the trial is over, do not read or listen to any news reports about this case. If you observe anything that seems to violate this instruction, report it immediately to a clerk or bailiff.

8. FURTHER ADMONITION REGARDING ELECTRONIC DEVICES.

Serious problems have been caused around the country by jurors using computer and electronic communication technology. It's natural that we want to investigate a case, or to share with others our thoughts about the trial, and it's easy to do so with the internet and instant communication devices or services, such as Blackberries, iPhones, Facebook, Twitter, and so on.

However, please understand that the rules of evidence and procedure have developed over hundreds of years in order to ensure the fair resolution of disputes. The fairness of the entire system depends entirely on you, the jurors, reaching your decisions based on evidence presented to you in court, and not on other sources of information. You violate your oath as jurors if you conduct your own investigations or communicate about this trial with others.

Jurors have caused serious consequences for themselves and the courts by "Googling" the parties, issues, or counsel; "Twittering" with friends about the trial; using Blackberries or iPhones to gather or send information on cases; posting trial updates on Facebook pages; using Wikipedia or other internet information sources, and so on. Even using something as seemingly innocent as "Google Maps" can result in a mistrial.

Post-trial investigations are common and can disclose these improper activities. If they are discovered, they will be brought to my attention and the entire case might have to be retried, at substantial cost.

Violations may also result in substantial penalties for the juror.

So I must warn you again - do not use your cellphone or computer to investigate or discuss anything connected with this trial until it is completely finished. Do no internet research of any kind, and advise me if you learn of any juror who has done so.

9. CONFERENCES W/ COUNSEL:

During the course of this trial, the attorneys and I will often meet before court starts or

during the recesses. Sometimes, these meetings will go beyond the time we are scheduled to start. I want to assure you, when that happens; we are not being inconsiderate of the importance of your time. To the contrary, every conference I have w/ counsel is necessary to simplify the issues of the trial, to expedite this case so it may be brought to a timely conclusion and most importantly to ensure matters are handled in a fair and just manner. Please accept my apologies in advance for any delay that may occur in our starting time.

INSTRUCTION NO. 10

CLOSING ROADMAP:

Members of the jury, you now have all the evidence. Three things remain to be done:

First, I will give you additional instructions that you will follow in deciding this case.

Second, the lawyers will give their closing arguments. The prosecutor will go first, then the defense. Because the prosecution has the burden of proof, the prosecutor may give a rebuttal argument.

Finally, you will go to the jury room to discuss and decide the case.

INSTRUCTION NO. 11

JUROR DUTIES:

You have two main duties as jurors.

The first is to decide from the evidence what the facts are. Deciding what the facts are is your job, not mine.

The second duty is to take the law I have given you and will now give you in the instructions, apply it to the facts, and decide if the prosecution has proved the defendant guilty beyond a reasonable doubt.

You are bound by your oath to follow the instructions that I give you, even if you personally disagree with them. This includes the instructions I gave you before the trial, any instructions I may have given to you during the trial, and these instructions I give to you now. All instructions are important, and you should consider them as a whole. The order in which the instructions are given does not mean that some instructions are more important than others. Whether any particular instruction applies may depend upon what you decide are the true facts of the case. If an instruction applies only to facts or circumstances you find do not exist, you may disregard that instruction.

Perform your duties fairly. Do not let any bias, sympathy or prejudice that you may feel toward one side or the other influence your decision in any way. You must also not let yourself be influenced by public opinion or what you may perceive as public opinion regarding any decision you make.

INSTRUCTION NO. 12

EVIDENCE:

You must base your decision only on the evidence that you saw and heard here in court.

Evidence includes:

- * what the witnesses said while they were testifying under oath;
- * any exhibits admitted into evidence;
- * any facts to which the parties stipulated, that is to say, facts to which they agreed;
- * any facts of which I took as judicial notice and told you to accept as true.

Nothing else is evidence. The lawyers' statements and arguments are not evidence. Their objections are not evidence. My legal rulings and comments, if any, are not evidence.

In reaching a verdict, consider all the evidence as I have defined it here, and nothing else. You may also draw all reasonable inferences from that evidence.

INSTRUCTION NO. 13

DIRECT AND/OR CIRCUMSTANTIAL EVIDENCE:

Facts may be proved by direct or circumstantial evidence. The law does not treat one type of evidence as better than the other.

Direct evidence can prove a fact by itself. It usually comes from a witness who perceived firsthand the fact in question. For example, if a witness testified he looked outside and saw it raining, that would be direct evidence that it had rained.

Circumstantial evidence is indirect evidence. It usually comes from a witness who perceived a set of related events, but not the fact in question. For example, if a witness testified she looked outside and saw the ground was wet and people were closing their umbrellas, that would be circumstantial evidence that it had rained.

Before you can find the defendant guilty of any charge, there must be enough evidence — direct, circumstantial, or both — to convince you of the defendant's guilt beyond a reasonable doubt. It is up to you to decide.

INSTRUCTION NO. 14

LEGAL RULINGS:

During the trial I have made certain rulings. I made these rulings based on the law, and not because I favor one side or the other.

However,

- * if I sustained the objection,
- * if I did not accept evidence offered by one side or the other, or
- * if I ordered that certain testimony be stricken,

then you must not consider those things in reaching your verdict.

INSTRUCTION NO. 15

CLOSING ARGUMENTS:

When the lawyers give their closing arguments, keep in mind that they are advocating their views of the case. What they say during their closing arguments is not evidence. If the lawyers say something about the evidence that conflicts with what you remember, you are to rely on your memory of the evidence. If they say anything about the law that conflicts with these instructions, you are to rely on these instructions.

INSTRUCTION NO. 16

DO NOT CONSIDER PUNISHMENT:

In making your decision, do not consider what punishment could result from a verdict of guilt. Your duty is to decide if the defendant is guilty beyond a reasonable doubt. Punishment is not relevant to whether the defendant is guilty or not guilty.

INSTRUCTION NO. 17

WITNESS CREDIBILITY:

In deciding this case, you will need to decide how believable each witness is. Use your judgment and common sense. Let me suggest a few things to think about as you weigh each witness's testimony:

- * How good was the witness's opportunity to see, hear, or otherwise observe what the witness testified about?
- * Does the witness have something to gain or lose from this case?
- * Does the witness have any connection to the people involved in this case?
- * Does the witness have any reason to lie or slant the testimony?
- * Was the witness's testimony consistent over time? If not, is there a good reason for the inconsistency? If the witness was inconsistent, was it about something important or unimportant?
- * How believable was the witness's testimony in light of other evidence presented at trial?
- * How believable was the witness's testimony in light of human experience?
- * Was there anything about the way the witness testified that made the testimony more or less believable?

In deciding whether or not to believe a witness, you may also consider anything else you think is important.

You do not have to believe everything that a witness said. You may believe part and disbelieve the rest. On the other hand, if you are convinced that a witness has lied, you may disbelieve anything the witness said. In other words, you may believe all, or part, or none of a witness's testimony. You may believe many witnesses against one or one witness against many.

In deciding whether a witness testified truthfully, remember that no one's memory is perfect. Anyone can make an honest mistake. Honest people may remember the same event differently.

INSTRUCTION NO. 18

DEFENDANT TESTIFYING:

The defendant testified at trial. Another instruction mentions things for you to think about in weighing testimony. Consider those same things and any others that you think are important in weighing the defendant's testimony. Don't reject the defendant's testimony merely because he/she is accused of a crime.

INSTRUCTION NO. 19

SEPARATE CONSIDERATION OF MULTIPLE CRIMES:

The defendant has been charged with more than one crime. It is your duty to consider each charge separately. For each crime charged, consider all of the evidence related to that charge. Decide whether the prosecution has presented proof beyond a reasonable doubt that the defendant is guilty of that crime. Your verdict on one charge does not determine your verdict on any other charge.

INSTRUCTION NO. 20

PRESUMPTION OF INNOCENCE:

Remember, the fact that the defendant is charged with a crime is not evidence of guilt. The law presumes that the defendant is not guilty of the crimes charged. This presumption persists unless the prosecution's evidence convinces you beyond a reasonable doubt that the defendant is guilty.

INSTRUCTION NO. 21

REASONABLE DOUBT:

As I instructed you before, the prosecution has the burden of proving the defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases, where you were told that it is only necessary to prove that a fact is more likely true than not true. In criminal cases, the State's proof must be more powerful than that. It must be beyond a reasonable doubt.

Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases the law does not require proof that overcomes every possible doubt. If, based on your consideration of the evidence, you are firmly convinced that the defendant is guilty of the crime charged, you must find him/her guilty. If on the other hand, you think there is a real possibility that the defendant is not guilty, you must give the defendant the benefit of the doubt and find him/her not guilty.

INSTRUCTION NO. 22

OFFENSE REQUIRES CONDUCT AND MENTAL STATE:

A person cannot be found guilty of a criminal offense unless that person's conduct is prohibited by law, AND at the time the conduct occurred, the defendant demonstrated a particular mental state specified by law.

"Conduct" can mean both an "act" or a failure to act when the law requires a person to act. An "act" is a voluntary movement of the body and it can include speech.

As to the "mental state" requirement, the prosecution must prove that at the time the defendant acted (or failed to act), he/she did so with a particular mental state. For each offense, the law defines what kind of mental state the defendant had to have, if any. For some crimes the defendant must have acted "intentionally" or "knowingly". For other crimes it is enough that the defendant acted "recklessly", "with criminal negligence" or with some other specified mental state.

Later, I will instruct you on the specific conduct and mental state that the prosecution must prove before the defendant can be found guilty of the crime(s) charged.

INSTRUCTION NO. 23

INTENTIONAL, KNOWING AND RECKLESS MENTAL STATES:

As I stated in another instruction, the prosecution must prove that at the time the defendant acted, he/she did so with a particular mental state. For each offense, the law defines what kind of mental state the defendant had to have, if any.

For the crime(s) charged in this case, the defendant must have acted "intentionally" or "knowingly" or recklessly. The prosecution must prove beyond a reasonable doubt that the defendant acted intentionally or knowingly or recklessly before the defendant can be found guilty of the crime charged.

A person engages in conduct intentionally or with intent or willfully with respect to the nature of his conduct or to a result of his conduct, when it is his conscious objective or desire to engage in the conduct or cause the result.

A person engages in conduct knowingly, or with knowledge, with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

A person engages in conduct recklessly with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

INSTRUCTION NO. 24

INFERRING THE REQUIRED MENTAL STATE:

The law requires that the prosecutor prove beyond a reasonable doubt that the defendant acted with a particular mental state.

Ordinarily, there is no way that a defendant's mental state can be proven directly, because no one can tell what another person is thinking.

A defendant's mental state can be proved indirectly from the surrounding facts and circumstances. This includes things like what the defendant said, what the defendant did, and any other evidence that shows what was in the defendant's mind.

INSTRUCTION NO. 25

MOTIVE:

A defendant's mental state is not the same as "motive". Motive is why a person does something. Motive is not an element of the crime(s) charged in this case. As a result, the prosecutor does not have to prove why the defendant acted (or failed to act).

However, motive or lack of motive may help you determine if the defendant did what he/she is charged with doing. It may also help you determine what his/her mental state was at the time.

INSTRUCTION NO. 26

FACT VS. EXPERT WITNESS:

There are two types of witnesses: fact witnesses and expert witnesses. Usually a fact witness can testify only about facts that he/she can see, hear, touch, taste or smell. An expert witness has scientific, technical or other special knowledge that allows the witness to give an opinion. An expert's knowledge can come from training, education, experience or skill. An expert can testify about facts, and they can give their opinions in their area of expertise.

In weighing the opinion of an expert, you may look at their qualifications, the reasoning process the expert used, and the overall credibility of their testimony. You may also look at things like bias, consistency, and reputation.

Use your common sense in evaluating all witnesses including any expert witness. You do not have to accept an expert's opinion. You may accept it all, reject it all, or accept part and reject part. Give it whatever weight you think it deserves.

INSTRUCTION NO. 27

You are instructed that the mere fact that Mr. Moore has been charged with the described offenses is not any evidence of guilt and is not even a circumstance which should be considered by you in determining guilt or innocence.

INSTRUCTION NO. 28

In order for you to find the defendant, SHAWN MOORE, guilty of the crime of SECURITIES FRAUD as alleged in Count One of the First Amended Criminal Information, you must find from the evidence all of the following elements of the crime:

1. On or about April 2004, in the State of Utah, Shawn Moore, directly or indirectly;
2. To Allan Christmas;
3. In connection with the offer or sale of a security;
4. A. Willfully made an untrue statement of a material fact or willfully omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; OR
B. Willfully engaged in an act, practice or course of business which operated or would operate as a fraud or deceit upon any person;
5. At the time, the property, money, or thing unlawfully obtained or sought to be obtained was worth \$10,000.00 or more.

If you believe that the evidence establishes each and every one of the above elements of the crime of securities fraud, beyond a reasonable doubt, it shall be your duty to find the defendant, SHAWN MOORE, guilty as to Count One of the First Amended Criminal Information. On the other hand, if the evidence has failed to establish one or more of the above elements of the offense charged, beyond a reasonable doubt, it shall be your duty to find the defendant not guilty of the crime charged in Count One.

INSTRUCTION NO. 29

In order for you to find the defendant, SHAWN MOORE, guilty of the crime of SECURITIES FRAUD as alleged in Count Two of the First Amended Criminal Information, you must find from the evidence all of the following elements of the crime:

1. On or about January 2006, in the State of Utah, Shawn Moore, directly or indirectly;
2. To John and LaRae Huber;
3. In connection with the offer or sale of a security;
4. A. Willfully made an untrue statement of a material fact or willfully omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; OR
B. Willfully engaged in an act, practice or course of business which operated or would operate as a fraud or deceit upon any person;
5. At the time, the property, money, or thing unlawfully obtained or sought to be obtained was worth \$10,000.00 or more.

If you believe that the evidence establishes each and every one of the above elements of the crime of securities fraud, beyond a reasonable doubt, it shall be your duty to find the defendant, SHAWN MOORE, guilty as to Count Two of the First Amended Criminal Information. On the other hand, if the evidence has failed to establish one or more of the above elements of the offense charged, beyond a reasonable doubt, it shall be your duty to find the defendant not guilty of the crime charged in Count Two.

INSTRUCTION NO. 30

In order for you to find the defendant, SHAWN MOORE, guilty of the crime of SECURITIES FRAUD as alleged in Count Three of the First Amended Criminal Information, you must find from the evidence all of the following elements of the crime:

1. On or about February 2004, in the State of Utah, Shawn Moore, directly or indirectly;
2. To Michael LeDuc;
3. In connection with the offer or sale of a security;
4. A. Willfully made an untrue statement of a material fact or willfully omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; OR
B. Willfully engaged in an act, practice or course of business which operated or would operate as a fraud or deceit upon any person;
5. At the time, the property, money, or thing unlawfully obtained or sought to be obtained was worth \$10,000.00 or more.

If you believe that the evidence establishes each and every one of the above elements of the crime of securities fraud, beyond a reasonable doubt, it shall be your duty to find the defendant, SHAWN MOORE, guilty as to Count Three of the First Amended Criminal Information. On the other hand, if the evidence has failed to establish one or more of the above elements of the offense charged, beyond a reasonable doubt, it shall be your duty to find the defendant not guilty of the crime charged in Count Three.

INSTRUCTION NO. 31

In order for you to find the defendant, SHAWN MOORE, guilty of the crime of SECURITIES FRAUD as alleged in Count Four of the First Amended Criminal Information, you must find from the evidence all of the following elements of the crime:

1. On or about December 2003, in the State of Utah, Shawn Moore, directly or indirectly;
2. To Kay and Linda Shumway;
3. In connection with the offer or sale of a security;
4. A. Willfully made an untrue statement of a material fact or willfully omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; OR
B. Willfully engaged in an act, practice or course of business which operated or would operate as a fraud or deceit upon any person;
5. At the time, the property, money, or thing unlawfully obtained or sought to be obtained was worth \$10,000.00 or more.

If you believe that the evidence establishes each and every one of the above elements of the crime of securities fraud, beyond a reasonable doubt, it shall be your duty to find the defendant, SHAWN MOORE, guilty as to Count Four of the First Amended Criminal Information. On the other hand, if the evidence has failed to establish one or more of the above elements of the offense charged, beyond a reasonable doubt, it shall be your duty to find the defendant not guilty of the crime charged in Count Four.

INSTRUCTION NO. 32

In order for you to find the defendant, SHAWN MOORE, guilty of the crime SALE BY AN UNLICENSED AGENT, as alleged in Count Five of the First Amended Criminal Information, you must find from the evidence all of the following elements of the crime:

1. On or about April 2004, in the State of Utah, Shawn Moore;
2. To Allan Christmas;
3. Willfully engaged in the offer or sale of a security without being licensed to transact business in this state as an agent.

If you believe that the evidence establishes each and every one of the above elements beyond a reasonable doubt, it shall be your duty to find the defendant, SHAWN MOORE, guilty as to Count Five of the First Amended Criminal Information. If you believe that the evidence has failed to establish one or more of the above elements beyond a reasonable doubt, it shall be your duty to find the defendant not guilty of the crime charged in Count Five.

INSTRUCTION NO. 33

In order for you to find the defendant, SHAWN MOORE, guilty of the crime SALE BY AN UNLICENSED AGENT, as alleged in Count Six of the First Amended Criminal Information, you must find from the evidence all of the following elements of the crime:

1. On or about January 2006, in the State of Utah, Shawn Moore;
2. To John and LaRae Huber;
3. Willfully engaged in the offer or sale of a security without being licensed to transact business in this state as an agent.

If you believe that the evidence establishes each and every one of the above elements beyond a reasonable doubt, it shall be your duty to find the defendant, SHAWN MOORE, guilty as to Count Six of the First Amended Criminal Information. If you believe that the evidence has failed to establish one or more of the above elements beyond a reasonable doubt, it shall be your duty to find the defendant not guilty of the crime charged in Count Six.

INSTRUCTION NO. 34

In order for you to find the defendant, SHAWN MOORE, guilty of the crime SALE BY AN UNLICENSED AGENT, as alleged in Count Seven of the First Amended Criminal Information, you must find from the evidence all of the following elements of the crime:

1. On or about February 2004, in the State of Utah, Shawn Moore;
2. To Michael LeDuc;
3. Willfully engaged in the offer or sale of a security without being licensed to transact business in this state as an agent.

If you believe that the evidence establishes each and every one of the above elements beyond a reasonable doubt, it shall be your duty to find the defendant, SHAWN MOORE, guilty as to Count Seven of the First Amended Criminal Information. If you believe that the evidence has failed to establish one or more of the above elements beyond a reasonable doubt, it shall be your duty to find the defendant not guilty of the crime charged in Count Seven.

INSTRUCTION NO. 35

In order for you to find the Defendant, SHAWN MOORE, guilty of the crime SALE BY AN UNLICENSED AGENT, as alleged in Count Eight of the First Amended Criminal Information, you must find from the evidence all of the following elements of the crime:

1. On or about December 2003, in the State of Utah, Shawn Moore;
2. To Kay and Linda Shumway;
3. Willfully engaged in the offer or sale of a security without being licensed to transact business in this state as an agent.

If you believe that the evidence establishes each and every one of the above elements beyond a reasonable doubt, it shall be your duty to find the defendant, SHAWN MOORE, guilty as to Count Eight of the First Amended Criminal Information. If you believe that the evidence has failed to establish one or more of the above elements beyond a reasonable doubt, it shall be your duty to find the defendant not guilty of the crime charged in Count Eight.

INSTRUCTION NO. 36

In order for you to find the defendant, SHAWN MOORE, guilty of the crime of PATTERN OF UNLAWFUL ACTIVITY as alleged in Count Nine of the First Amended Criminal Information, you must find from the evidence all of the following elements of the crime:

1. Commencing on or about August 2001, in the State of Utah;
2. Shawn Moore;
3. Intentionally, knowingly or recklessly;
4. Through a pattern of unlawful activity;
 - a. in which Shawn Moore participated as a principal;
 - i. received any proceeds directly or indirectly; AND
 - ii. used or invested, directly or indirectly, any part of the income or proceeds of the income, which he received from the specified unlawful activity to acquire, establish or operate an enterprise;
 - b. acquired or maintained, directly or indirectly, any interest in or control of an enterprise; OR,
 - c. was employed by or associated with any enterprise and conducted or participated, directly or indirectly, in the conducting of that enterprise's affairs; OR
 - d. conspired to violate any provision of subsections 4(a), 4(b), or 4(c).

If you believe that the evidence establishes each and every one of the above elements of the crime, beyond a reasonable doubt, it shall be your duty to find the defendant, SHAWN MOORE, guilty as to Count Nine of the First Amended Criminal Information. On the other hand, if the evidence has failed to establish one or more of the above elements of the offense charged, beyond a reasonable doubt, it shall be your duty to find the defendant not guilty of the crime charged in Count Nine.

INSTRUCTION NO. 37

In Count Nine of the First Amended Criminal Information, the State has alleged the defendant, SHAWN MOORE, engaged in a pattern of unlawful activity. The unlawful activity which constitutes the pattern includes the activity alleged in counts one through eight. In addition to the activity alleged in counts one through eight, the State further alleges the activity associated with the 2001 investments of Brant and Elizabeth Seamons and the 2003 investments of John and LaRae Huber are also part of the pattern of unlawful activity. "Unlawful Activity" and "Pattern of Unlawful Activity" are defined in Instructions 38, 39 and 36. However, before you can consider the 2001 investments of Brant and Elizabeth Seamons or the 2003 investments of John and LaRae Huber as part of the pattern of unlawful activity, you must first find from the evidence that the investments constituted an act of SECURITIES FRAUD and/or SALE BY AN UNLICENSED AGENT. Therefore, before you can consider the 2001 investments of Brant and Elizabeth Seamons or the 2003 investments of John and LaRae Huber as part of the pattern of unlawful activity, you must first find from the evidence all of the following elements:

As to Brant and Elizabeth Seamons:

1. On or about August of 2001, in the State of Utah, Shawn Moore, directly or indirectly;
2. To Brant and Elizabeth Seamons;
3. In connection with the offer or sale of a security;
4. A. Willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; OR
B. Willfully engaged in an act, practice or course of business which operated or would operate as a fraud or deceit upon any person;

AND/OR

1. On or about August 2001, in the State of Utah, Shawn Moore;
2. To Brant and Elizabeth Seamons;
3. Willfully engaged in the offer or sale of a security without being licensed to transact business in this state as an agent.

As to John and LaRae Huber:

1. Between on or about March and June 2003, in the State of Utah, Shawn Moore, directly or indirectly;
2. To John and LaRae Huber;
3. In connection with the offer or sale of a security;
4. A. Willfully made an untrue statement of a material fact or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; OR
B. Willfully engaged in an act, practice or course of business which operated or would operate as a fraud or deceit upon any person;

AND/OR

1. Between on or about March and June 2003, in the State of Utah, Shawn Moore;
2. To John and LaRae Huber;
3. Willfully engaged in the offer or sale of a security without being licensed to transact business in this state as an agent.

If you believe that the evidence establishes each and every element of SECURITIES FRAUD and/or SALE BY AN UNLICENSED AGENT, then you may consider whether the 2001 investment of Brant and Elizabeth Seamons or the 2003 investments of John and LaRae Huber constitute part of the alleged pattern of unlawful activity.

INSTRUCTION NO. 38

You are instructed that under the laws of the State of Utah, the following words have the following meanings:

1. "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity, and includes illegal as well as legal entities.

2 "Pattern of Unlawful Activity" means engaging in conduct which constitutes the commission of at least three episodes of unlawful activity, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics. At least one of the unlawful acts must ^{have} occurred after November 18, 2004. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise. The most recent act constituting part of a pattern of unlawful activity as defined shall have occurred within 5 years of the commission of the next preceding act alleged as part of the pattern.

3. "Person" includes any individual or entity capable of holding a legal or beneficial interest in property, including state, county, and local governmental entities.

4. "Entity" includes a domestic and foreign corporation, a nonprofit corporation, a limited liability company, a profit or non-profit unincorporated association, a business trust, an estate, a partnership, a trust, two or more persons having a joint or common economic interest.

5. "Unlawful Activity" means to directly engage in conduct or to solicit, request, command, encourage or intentionally aid another person to engage in conduct which would constitute an act prohibited by the Utah Uniform Securities Act, including SECURITIES FRAUD and SALE BY AN UNLICENSED AGENT, or to attempt or conspire to engage in an act which would constitute such an offense, regardless of whether the act is in fact charged or indicted by any authority.

INSTRUCTION NO. 39

You are instructed that the following words have the following meanings:

Count 9, Pattern of Unlawful Activity, includes the terms "intentionally", "knowingly" and "recklessly". Each of these terms has a specific definition under the law, as follows:

A person engages in conduct "Intentionally" or with intent or willfully with respect to the nature of his conduct or to a result of his conduct, when it is his conscious objective or desire to engage in the conduct or cause the result.

A person engages in conduct "Knowingly" or with knowledge, with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

A person engages in conduct "Recklessly" with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

INSTRUCTION NO. 40

You are instructed that the following words have the following meaning:

1. "Agent" is any individual who represents an issuer in effecting or attempting to effect purchases or sales of securities.

2. "Issuer" is any person or entity who issues or proposes to issue any security or has outstanding a security that it has issued.

INSTRUCTION NO. 41

As to the allegations of Sale by an Unlicensed Agent, the defendant argues that he is not an "Agent". As previously instructed, an "Agent" is any individual who represents an issuer in effecting or attempting to effect purchases or sales of securities.

"Agent" does not include an individual who represents:

1. an issuer, who receives no commission or other remuneration, directly or indirectly, for effecting or attempting to effect purchases or sales of securities in this state, and
2. who effects transactions with existing employees, partners, officers, or directors of the issuer.

Before you can find the defendant guilty of Sale by an Unlicensed Agent, the State must prove beyond a reasonable doubt that the defendant was an "Agent".

INSTRUCTION NO. 42

Mental State, being a state of mind, is seldom susceptible of proof by direct and positive evidence and must ordinarily be inferred from acts, conduct, statements and circumstances.

INSTRUCTION NO. 43

The State of Utah must prove that the defendant, SHAWN MOORE, acted willfully in committing the offenses set forth in Counts 1 through 8.

A defendant acts willfully if it was his conscious objective or desire to engage in the conduct or cause the result--not that it was the defendant's conscious desire or objective to violate the law, nor that the defendant knew that he was committing fraud in the sale of the security.

INSTRUCTION NO. 44

It is not a defense to Counts 1 through 8, that the defendant, SHAWN MOORE, did not know that the items sold were securities.

INSTRUCTION NO. 45

You are instructed that under the laws of the State of Utah, the following words have the following meanings:

1. "Sell" or "sale" includes every contract for sale of, contract to sell, or disposition of, a security or interest in a security for value.

2. "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

3. A "Material fact" is something which a buyer of ordinary intelligence and prudence would think to be of importance in determining whether to buy a security.

4. "Buy" or "purchase" means every contract for purchase of, contract to buy, or acquisition of a security or interest in a security for value.

5. "Fraud" is defined as any untrue statement of a material fact or to 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; or, engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

6. You are instructed that "course of business" means to engage in business activity.

INSTRUCTION NO. 46

One of the allegations against defendant, SHAWN MOORE, in each of the charges addressed in Counts 1, 2, 3 and 4, is that he, directly or indirectly, made an untrue statement of a material fact, or omitted to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

Under this allegation, it is not necessary for the State to prove that the individual investors believed the statements to be true, nor that they relied upon the statements in their decision making process, so long as the statements made were such that a reasonable person in similar circumstances would have relied upon the statements in making an investment decision.

INSTRUCTION NO. 47

You are instructed that while a number of material misrepresentations and omissions are alleged as the basis for the charges of securities fraud, the State is not required to prove each and every one of them. It is enough that the State prove to your satisfaction and beyond a reasonable doubt with regard to each individual count of securities fraud, that one material false statement or material omission was made in connection with that count.

Instruction No. 48

You have heard evidence that complaints may have been lodged against the defendant regarding investors in VesCor(p) other than those individuals named in the charges before the court in this case. You may consider this evidence, if at all, for the limited purpose of determining defendant's knowledge, intent and/or motive with regard to the allegations charged. This evidence was not admitted to show that he acted in a manner consistent with these other acts. Keep in mind that the defendant is on trial for the crime(s) charged in this case, and for those crimes only. You may not convict a person simply because you believe he may have committed some other acts at another time.

INSTRUCTION NO. 49

You are instructed that under the laws of the State of Utah a person is criminally liable for conduct constituting an offense which he performs or causes to be performed in the name of or on behalf of a corporation or association to the same extent as if such conduct were performed in his own name or behalf.

INSTRUCTION NO. 50

In securities law, salespeople are under a duty to investigate.

A salesperson cannot deliberately ignore that which he has a duty to know and recklessly state facts about matters of which he is ignorant. A salesperson cannot recommend a security unless there is an adequate and reasonable basis for such recommendation. By his recommendation he implies that a reasonable investigation has been made and that his recommendation rests on the conclusions based on such investigation.

Where the salesperson lacks essential information about a security, he should disclose this as well as the risks which arise from his lack of information. A salesperson may not rely blindly upon the issuer of the security for information concerning a company.

INSTRUCTION NO. 51

The State must prove beyond a reasonable doubt that the instruments offered or sold in Counts 1 through 8 were Securities. A "Security" includes, but is not limited to, a note or investment contract.

The following instructions number 52 and number 53 will define note and investment contract. These definitions will provide rules and guidelines which you will use in deciding whether there is a note or investment contract which meets the definition of a security. It will be the responsibility of the jury to decide if there were securities in this case.

INSTRUCTION NO. 52

You are instructed that an "investment contract" security is defined as:

- (1) a contract, transaction or scheme;
- (2) whereby a person invests his money in a common enterprise; and
- (3) is led to expect profits from the significant efforts of the promoter or a third party which affect the failure or success of the enterprise;

OR, any investment by which:

- (1) an offeree furnishes initial value to an offerer;
- (2) a portion of this initial value is subjected to the risks of the enterprise;
- (3) the furnishing of the initial value is induced by the offerer's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operations of the enterprise; and,
- (4) the offeree does not receive the right to exercise practical or actual control over the managerial decisions of the enterprise.

The State need only prove that the transactions fit one of the above tests, not both.

INSTRUCTION NO. 53

"Notes" are listed as securities under Utah law. However, not all notes are securities. The following are some examples of notes which are not securities.

1. the note delivered in consumer financing,
2. the note secured by a mortgage on a home,
3. the short-term note secured by a lien on a small business or some of its assets,
4. the note evidencing a 'character' loan to a bank customer, and
5. short-term notes secured by an assignment of accounts receivable.

The State must prove beyond a reasonable doubt that the notes in question are securities. In determining whether a "note" is a security, you must:

1. examine the transaction to assess the motivations that would prompt a reasonable seller and buyer to enter into it. If the seller's purpose is to raise money for the general use of a business enterprise or to finance substantial investments and the buyer is interested primarily in the profit the note is expected to generate, the instrument is likely to be a "security,"
2. examine the "plan of distribution" of the instrument to determine whether it is an instrument in which there is common trading for speculation or investment. If the note were offered and/or sold to a broad segment of the public, the instrument is more likely to be a security.
3. examine the reasonable expectations of the investing public. If a reasonable person in the investing public would characterize the note as an "investment" the instrument is more likely to be a security.

4. examine whether some factor such as the existence of another regulatory scheme significantly reduces the risk of the instrument, thereby rendering application of the Securities Acts unnecessary. If there are no risk-reducing factors, the note is more likely to be a security.

INSTRUCTION NO. 54

Contracts may be oral or written; consequently, an investment contract as defined in these instructions does not need to be in writing. Securities laws apply regardless of whether the security is represented by any document.

INSTRUCTION NO. 55

JURY DELIBERATIONS:

When you go into the jury room to deliberate, discuss the evidence and speak your minds to each other. Open discussion should help you reach a unanimous agreement on a verdict. Listen carefully and respectfully to each other's views and keep an open mind about what others have to say. I recommend that you not commit yourselves to a particular verdict before discussing all the evidence.

Try to reach unanimous agreement, but only if you can do so honestly and in good conscience. If there is a difference of opinion about the evidence or the verdict, do not hesitate to change your mind if you become convinced that your position is wrong. On the other hand, do not give up your honestly held views about the evidence simply to agree on a verdict, to give in to pressure from other jurors, or just to get the case over with. In the end your vote must be your own.

Because this is a criminal case, every single juror must agree with the verdict before the defendant can be found "guilty" or "not guilty". In reaching your verdict you may not use methods of chance, such as drawing straws or flipping a coin. Rather, the verdict must reflect your individual, careful, and conscientious judgment as to whether the evidence presented by the prosecutor proved each charge beyond a reasonable doubt.

INSTRUCTION NO. 56

FOREPERSON SELECTION AND DUTIES:

Among the first things you should do when you go to the jury room to deliberate is to appoint someone to serve as the jury foreperson. The foreperson should not dominate the jury discussion, but rather should facilitate the discussion of the evidence and make sure that all members of the jury get a chance to speak. The foreperson's opinions should be given the same weight as those of other members of the jury. Once the jury has reached a unanimous verdict, the foreperson is responsible for filling out and signing the verdict form(s) on behalf of the entire jury.

For each charge the verdict form will have two blanks — one for "guilty" and the other for "not guilty". The foreperson will fill in the appropriate blank to reflect the jury's unanimous decision. In filling out the form, the foreperson needs to make sure that only one blank is marked for each charge. When your verdict(s) has/have been found, please notify the bailiff.

R. M. ...
K3G

