Brian Horne
Kevin Kunz
PO Box 1215
Centerville, UT 84014

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Utah Department of Commerce
Division of Securities

April 1, 2011

Utah Division of Securities
Keith Woodwell and D. Scott Davis
160 E 300 S
PO Box 146760
Salt Lake City, UT 84114-6760

Enclosed is the response of the Respondents in the matters of SD-11-0017 to SD-11-0022. We are not exactly sure what the Division is proposing or attempting to accomplish with this action.

The letter asks, "Why Respondents should not be ordered to cease and desist..." and "Why Respondent should not be barred..." The Division should already be aware that Respondents have already been sanction by FINRA for these same specific actions and are already barred from any securities business in the state and the nation. It is not legal or possible to bar Respondents twice, particularly for the same actions. In addition, any attempt to do so would be a violation of the Fifth Amendment double jeopardy laws.

The Division also asks, "Why Respondents should not be ordered to pay fines" amounting to over $2.3 million. The respondents have already been fined and have judgments or settlements against them for the same actions totaling over $4 million from the Vescor Receiver. In addition, Respondents have an arbitration award against them for the same actions totaling $500,000. Further, Respondents have returned over $800,000 to investors, Vescor, or the Receiver and have no remaining assets. Not only are additional fines barred due to double jeopardy laws, but there is no way the Respondents could possibly pay the current outstanding judgments or fines during their lifetime. Thus, the division has a 0% chance of recovering any money from Defendants.

Kevin Kunz has stage 4 cancers in his colon and liver and a short life expectancy. He does not own any life insurance on himself, has spent all his assets including his IRA, and is not currently employed. Giving him an order to Cease and Desist, adding a second bar to the first, and imposing a non-collectible fine is entirely a waste of the Division's resources.

The Division is engaging in false allegations, the use of intimidation and coercion to obtain false or illegal confessions or settlements, engaging in known conflicts of interest in administrative proceedings, failing to adhere to or respect other court or administrative actions or authority, and improper handling of funds and the use of fines to enrich themselves or solely benefit the

Division. It appears the Division has not changed their behavior following the 2008 Legislative Audit and that a follow up audit is in order.

Kevin Kunz will not be able to attend a hearing on April 19, 2011 as he is expected to have liver and colon surgery just prior to that date, to remove parts of those organs, and will be in the hospital for 10 day following. After recovery he will begin chemotherapy. We therefore, request a continuance of the hearing until the time Mr. Kunz would be able to attend.

Sincerely,

Brian Horne

Kevin Kunz

Brian Y. Horne,
Kevin D Kunz,
Investment Management Corp,
Twin K Investments,
Modena Hills, Inc.
Deseret Financial Services, Inc,
Horne Financial, Inc.

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

IN THE MATTER OF BRIAN Y HORNE, CRD #1830136 DESERET FINANCIAL SERVICES, INC HORNE FINANCIAL, INC Respondents	Docket No. SC-11-0017 to Docket No. SD-11-0022

ANSWER

Respondents Brian Y. Horne, Deseret Financial Services, and Horne Financial Inc. (collectively "Respondents") answer Divisions complaint as follows:

First Defense: Statute of Limitations

1. Consumer Fraud statute of limitation is 2 years, or 1 year after termination of proceedings by enforcing authority, whichever is later, Section 13-11-19(8). The allegations state the violations occurred prior to 2006. Thus, the Division is barred from bringing allegations of fraud against the Respondents.

2. Securities Registration Violations statute of limitation is 4 years after the violation or 2 years after the discovery of facts constituting the violation, whichever expires first, Section 61-1-22(7)(a). The Division's allegations state the violations occurred prior to 2006. Thus, the Division is barred from bringing allegations of securities registration violations against the Respondents making the accusations in paragraphs 54, 56 and 60 void.
3. Securities Fraud violations have a statute of limitation of 4 years after the violation or 2 years after the discovery of facts constituting the violation, whichever expires first, Section 61-1-22(7)(a). The Division's allegations state the violations occurred prior to 2006. Thus, the Division is barred from bringing allegations of securities fraud against the Respondents. Making the allegations in paragraphs 55 a – i, 56, 58, and 59 void.
4. Securities Acts of 1933 and 1934 have a statute of limitation of 5 years from the date of the violation. The allegations state the violations occurred prior to 2006. Thus, the Division is barred from bringing allegations of securities violations against the Respondents rendering all allegations void.
5. In Johnson vs the Securities and Exchange Commission, 87 F.3d 484 (D.C. Cir. 1996), the court of appeals for the District of Columbia held the statute of limitation as outlined in the securities acts applies to administrative proceedings. The ruling of Johnson is unambiguous and has been upheld in every court action since the ruling. The Division cannot impose a penalty for activities that occurred prior to the statute of limitations.
6. Corporations are beyond the three year wind down period. After a corporation has closed its doors it has a 3-year period, known as a wind down period, to settle its affairs. All

entities mentioned in the complaint terminated their business and filed their closing documents with the state more than three years ago. Therefore, all entities are beyond the three year window in which claims can be brought against them rendering the potential actions void.

Second Defense: Double Jeopardy

1. The Division asked, "Why Respondents should not be ordered permanently to cease and desist..." and "Why Respondents should not be barred..."
    a. The DOUBLE JEOPARDY clause in the Fifth Amendment to the U. S. Constitution prohibits the government from prosecuting individuals more than one time for a single offense and from imposing more than one punishment for a single offense.
2. As indicated in the "Statement of Fact" paragraph 4, the Division admits that IMC, Horne, and Kunz were expelled from membership and have already been barred. The footnotes on pages 6-7 of the complaint for paragraphs 25, 26, 27, 28, and 29 all refer to the prior proceedings for which certain respondents have already been tried. In fact, the vast majority of the allegations in the Division complaint come directly from the NASD (now FINRA) complaints against Respondents which resulted in the said sanctions, including the fines. Thus, the Division is attempting to try Respondents again for the same "crime" and impose a duplicate punishment of a bar. This constitutes a violation of the double jeopardy laws.
3. Paragraph 33 states that the State of Connecticut filed an administrative Order to Cease and Desist for which IMC was sanctioned and fined. The Division is now saying they

want to issue an identical Cease and Desist Order against the Respondents in violation of the Double Jeopardy laws. The Division is barred from such action.

4. Paragraphs 34, 35, 36, 37, 38, 44, and 47 all refer to actions that respondents have previously been accused of and been tried on. The NASD complaint against the respondents stated that:

    a. Respondents failed to comply with the NASD Order (identical to the allegations as stated in paragraph 55 a).

    b. Offered securities despite the NASD Order (identical to the FINRA charges as stated in paragraph 55 b).

    c. Respondents did not record Vescor securities transactions on the books and records of IMC and instead sold away from IMC running commissions through Deseret Financial Services, Inc. and Horne Financial, Inc. (identical to the FINRA charges as stated in paragraphs 55 c, 56, 58, and 59).

    d. Failing to supervise IMC agents who were not NASD Qualified to act in certain capacities (identical to the FINRA charges as stated in paragraphs 55 d and 57).

    e. In the "Claim for Relief" paragraph 3 the Division asks, "Why Respondents should not be ordered to pay fines to the Division." The amount listed in paragraph 3 a.-f. are a direct result of the amounts the Respondents are said to have received from Vescor as commissions for the sale of the securities as listed in paragraphs 38-41.

        i. The Division is not attempting to impose a fine, but a discouragement of commission.

ii. Respondents have already been tried on this matter by the Receiver of the Vescor bankruptcy proceedings.

1. Deseret Financial Services, Inc US District Court 2:08CV780 had a Judgment entered against it in September 2010 for $1,825,890.51.
2. Horne Financial Services, Inc. US District Court 2:08CV780 had a Judgment entered against it in September 2010 for $116,964.80.
3. Investment Management Corporation US District Court 2:08CV780 had a Judgment entered against it in September 2010 for $1,091,926.88.
4. Respondent Kevin Kunz US District Court 2:08CV780 had a Judgment entered against him in September 2010 for $798,901.62.
5. Respondent Twin K US District Court 2:08CV780 had a Judgment entered against it in September 2010 for $145,500.
6. Respondent Brian Horne US District Court 2:08CV780 had a settlement entered against him in September 2010 for $30,000.

iii. The Division is attempting to fine respondents (impose an additional punishment for the same offence) for identical charges that were used to obtain the above settlements in violation of the double jeopardy laws. The Respondents have already been tried once as noted in the above civil matters and cannot be tried again. Division is making a blatant attempt to enrich them rather than return funds to investors.

Third Defense: Legislative Audit

1. The Division is reverting to their old tactics as found in the 2008 Legislative Audit including but not limited to:
    a. Making false accusations against Utah businesses and individuals (a number of the items listed in the complaint are not true or have been twisted to suit the Division's purpose.
    b. Use of intimidation and force by the enforcement division to obtain false confessions and false statements by respondents.
    c. The Division's failure to adhere to or respect court authority or the state's laws and statutes as indicated by their blatant attempt or ignore and circumvent the statute of limitations and double jeopardy laws.
    d. The Division's financial impropriety and mishandling of funds paid to the Division as fines from defendants in administrative cases in an apparent effort to benefit the division. In this case specifically there has been a receiver appointed in the VesCor bankruptcy that already has actions against Respondents to return all commissions that were received from Vescor. The Division is indicating they want a multi-million dollar combined fines from Respondents. The listed figures are completely arbitrary, excessive, and are intended solely to enrich the Division.

Fourth Defense: Harassment and Discrimination

1. The Division is well aware that they are discriminating against the Respondents because the Division was embarrassed by the handling of the Vescor case. In an attempt to "save

face" the Division is hoping to regain some credibility by publicizing additional actions in the Vescor matter.

2. The average fine issued for a Cease and Desist Order is in the $5,000 for an active broker dealer. Defunct broker dealers and barred agents that have been out of business for over three years have already ceased all business rendering an Order completely useless. Suggesting a $50,000 + fine is discriminatory. The only reason the Division is suggesting this potential action is to harass the Respondents. The same tactics that were noted in the Legislative Audit mentioned above.

3. In 2004 and 2006 the Division turned over all their "evidence" to FINRA and the SEC who in turn conducted their own investigations. As a result, the Respondents have been barred from any association with any broker dealer, FINRA member, and from transacting securities business in the State of Utah. For the Division threaten to bar the Respondents is like a church threatening to excommunicate a member who is already excommunicated. It is not possible to bar someone who had already been barred. The only reason the Division is making this threat is for harassment purposes. The Division is wishing they had taken action prior to FINRA's action, and are upset they did not get the credit of making the announcement that they had barred the Respondents. These discriminatory practices are solely for the purpose of showmanship and bragging rights with the intent to justify their existence and have no other purpose as it is not possible to bar one who is already barred.

4. Respondents have returned all commissions received from Vescor entities to Vescor, the investors directly, or have agreements with the Vescor bankruptcy receiver to return funds. The Division's suggestion that Respondents pay an additional $2,350,000 fine is

discriminatory. The average fine for a currently licensed representative would be in the $5,000 to $15,000 range or an agreement to disgorge all commissions earned. Other Investment Management Corporation representatives, such as Scott Steorts, were not fined. They made agreements to return all commission earned from Vescor or they would not be allowed to renew their licenses. They were not barred or fined. The fact that Respondents have already been barred in addition to returning all commissions earned should be sufficient punishment and is more severe that the actions taken against other individuals or entities in similar circumstances. Nevertheless, the Division is harassing and discriminating against the Respondents by attempting to heap upon them additional fines and sanctions only to enrich themselves and attempting to make the Division looks important to the general public.

Fifth Defense: Admissions and Denials

1. Respondents admit the allegations in paragraph 1

2. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 2.

3. Respondents admit the allegations in paragraph 3, with the exception that Horne was not "most recently president and chief executive officer." At the time IMC closed its doors Horne was neither an officer nor director of the firm. In addition, he was not and is not the registered agent.

4. Respondents Kunz and Horne admit that they have been barred from FINRA membership. However, the Division clearly states in the paragraph that Respondents have already been tried and received sanctions pertaining to these allegations and therefore the Division is attempting to try and sanction Respondents twice for the same allegations violating

double jeopardy laws by threatening to bar someone, for the same actions, who has already been barred.

5. Affirm

6. Paragraph 6 appears generally correct, however Deseret Financial didn't just change its name, Horne Financial received a new tax id number among other things.

7. Respondents admit the allegations in paragraph 7, for which they have already been tried and received a punishment.

8. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 and, therefore, deny the allegations.

9. Corporate records speak for themselves.

10. Respondents believe paragraph 10 to be correct.

11. Respondents are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 11 and, therefore, deny the allegations. The Division is referring to, and specifically identifies, security sales that took place in 2002-2004, seven to nine years ago and well past the 4 year statute of limitations. This allegation is therefore barred.

12. Investors that were clients of Respondents received a private placement memorandum that detailed the risks, the nature of the investments, commissions to be paid, and so forth. Respondents are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 12 and, therefore, deny the allegations. The Division is referring to, and specifically identifies, security sales that took place in 2002-2004,

seven to nine years ago and well past the 4 year statute of limitations. This allegation is therefore barred.

13. Paragraph 13 is not true as pertaining to Respondents Horne and Kunz. Respondents are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 13 and, therefore, deny the allegations. The Division is referring to, and specifically identifies, security sales that took place in 2002-2004, seven to nine years ago and well past the 4 year statute of limitations. This allegation is therefore barred.

14. Respondent deny the allegations in paragraph 14. Perhaps some securities were issued as promissory notes, but not all. To Respondent Horne and Kunz' knowledge interest rates on notes ranged from 8% to 12%, not 24% at alleged. The Division is referring to, and specifically identifies, security sales that took place in 2002-2006, five to nine years ago and well past the 4 year statute of limitations. This allegation is therefore barred.

15. Respondents deny the allegations in paragraph 15. The Division is referring to, and specifically identifies, security issues that took place in 2002-2006, five to nine years ago and well past the 4 year statute of limitations. This allegation is therefore barred.

16. The Division has alleged Vescor was a Ponsi scheme but to the Respondent's knowledge this has not been proven. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 and, therefore, deny the allegations. Paragraph 16 clearly states this took place in May 2006, five years ago, and well past the 4 year statute of limitations. This allegation is therefore barred.

17. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 and, therefore, deny the allegations. The Division

is referring to security sales that took place in 2002-2004, seven to nine years ago and well past the 4 year statute of limitations. This allegation is therefore barred.

18. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 and, therefore, deny the allegations. It is the Respondent's understanding that all broker dealers in the United States exists because they make an override on their agents and this is how they get paid. The Division is referring to security sales that took place in 2002-2004, seven to nine years ago and well past the 4 year statute of limitations. This allegation is therefore barred.

19. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 and, therefore, deny the allegations.

20. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 and, therefore, deny the allegations. The Division is referring to events that took place decades ago and specifically mention the dates of 1990 and 1992, which are well past the 4 year statute of limitations. This allegation is therefore barred.

21. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 21 and, therefore, deny the allegations. The Division is referring to events that took place over two decades ago and specifically mention the date of 1987, well past the 4 year statute of limitations. This allegation is therefore barred.

22. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 and. therefore. deny the allegations. The Division is referring to events that took place decades ago and specifically mention the date of 1994 which is well past the 4 year statute of limitations. This allegation is therefore barred.

23. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 23 and, therefore, deny the allegations. The Division is referring to events that took place decades ago and specifically mention the date of 1994, which is well past the 4 year statute of limitations. This allegation is therefore barred.

24. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 24 and, therefore, deny the allegations. The Division is referring to events that took place decades ago and specifically refer to the date of 1994, which is well past the 4 year statute of limitations. This allegation is therefore barred.

25. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 25 and, therefore, deny the allegations. However, the Division's own foot notes state that Respondents have already been tried and received sanctions pertaining to these allegations and therefore the Division is attempting to try and sanction Respondents twice for the same allegations violating double jeopardy laws. This allegation is therefore barred.

26. The firm was not suspended, but was given an NASD order to not sell any offering (including municipal bonds, stocks, mutual funds, etc.) in a primary placement or sales capacity for two years without first complying with certain requirements. It was not "in securities offerings such as Vescor" as alleged, but in any offering of any security in the above stated capacity. Respondents are without knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in paragraph 26 and, therefore, deny the allegations. However, the Division's own foot notes state that Respondents have already been tried and received sanctions pertaining to these allegations and therefore the Division is attempting to try

and sanction Respondents twice for the same allegations violating double jeopardy laws. This allegation is therefore barred.

27. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 and, therefore, deny the allegations. However, the Division's own foot notes state that Respondents have already been tried and received sanctions pertaining to these allegations and therefore the Division is attempting to try and sanction Respondents twice for the same allegations violating double jeopardy laws. This allegation is therefore barred.

28. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 and, therefore, deny the allegations. However, the Division clearly states in the paragraph that Respondents have already been tried and received sanctions pertaining to these allegations and therefore the Division is attempting to try and sanction Respondents twice for the same allegations violating double jeopardy laws. The Division is referring to events that took place a decade ago and specifically mention the date of 2001 which is well past the 4 year statute of limitations. This allegation is therefore barred.

29. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29 and, therefore, deny the allegations. However, the Division clearly states in the paragraph that Respondents have already been tried and received sanctions pertaining to these allegations and therefore the Division is attempting to try and sanction Respondents twice for the same allegations violating double jeopardy laws. This allegation is therefore barred.

30. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 30 and, therefore, deny the allegations. The Division is referring to events that took place years ago and specifically mention the date of 2002 which is well past the 4 year statute of limitations. In addition, the Division clearly states in the paragraph that Respondents have already been tried and received sanctions pertaining to these allegations and therefore the Division is attempting to try and sanction Respondents twice for the same allegations violating double jeopardy laws. This allegation is therefore barred.

31. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 31 and, therefore, deny the allegations. The Division is referring to events that took place years ago and specifically mention the date of 2004 which is well past the 4 year statute of limitations. This allegation is therefore barred.

32. Respondents deny paragraph 32. The Division is referring to events that took place years ago and specifically mention the date of 2004 (paragraph above) which is well past the 4 year statute of limitations. This allegation is therefore barred.

33. Respondent's recall the State of Connecticut's Order was for a 2003 alleged violation and not for 2005 violations. However, the Division clearly states in the paragraph that Respondents have already been tried and received sanctions pertaining to these allegations and therefore the Division is attempting to try and sanction Respondents twice for the same allegations violating double jeopardy laws. The Division is referring to events that took place years ago and specifically mention the date of 2005 which is well past the 4 year statute of limitations. This allegation is therefore barred.

34. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 34 and, therefore, deny the allegations. However, the Division clearly states in the paragraph state that Respondents have already been tried and received sanctions pertaining to these allegations and therefore the Division is attempting to try and sanction Respondents twice for the same allegations violating double jeopardy laws. This allegation is therefore barred.

35. Deny. IMC did comply with the requirements in 2005 once it was brought to their attention that the Order existed. Respondents were unaware of the Order prior to that time. The Division is referring to events that took place years ago and specifically mention the dates of 2003 and 2004 which is well past the 4 year statute of limitations. This allegation is therefore barred. In addition, the Division clearly states in the paragraph that Respondents have already been tried and received sanctions pertaining to these allegations and therefore the Division is attempting to try and sanction Respondents twice for the same allegations also violating double jeopardy laws. This allegation is therefore barred.

36. Respondents Deny paragraph 36. The Division is referring to events that took place years ago and specifically mention the dates of 2003 and 2004 which is well past the 4 year statute of limitations. This allegation is therefore barred.

37. Respondents Deny the allegations in paragraph 37. However, the Division clearly states in the allegations that Respondents have already been tried and received sanctions pertaining to these allegations (specifically noting a FINRA Bar) and therefore the Division is attempting to try and sanction Respondents twice for the same allegations violating double

jeopardy laws as Kunz, Horne, and IMC have already been barred for this specific violation. This allegation is therefore barred.

38. Respondents admit the allegations in paragraph 38. However, Respondents have already been tried and received sanctions from FINRA and the Vescor Receiver pertaining to these allegations and therefore the Division is attempting to try and sanction Respondents twice for the same allegations violating double jeopardy laws as Kunz, Horne, and IMC have already been barred for this specific violation. This allegation is therefore barred.

39. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 39 and, therefore, deny the allegations. However, the Receiver in the Vescor bankruptcy has already brought action against Respondents for this specific allegation. Respondents have already been received sanctions pertaining to these specific allegations and therefore the Division is attempting to try and sanction Respondents twice for the same allegations violating double jeopardy laws. This allegation is therefore barred.

40. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 40 and, therefore, deny the allegations. However, the Receiver in the Vescor bankruptcy has already brought action against Respondents for this specific allegation. Respondents have already been received sanctions pertaining to these specific allegations and therefore the Division is attempting to try and sanction Respondents twice for the same allegations violating double jeopardy laws. This allegation is therefore barred.

41. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 41 and, therefore, deny the allegations. However, the Receiver in the Vescor bankruptcy has already brought action against Respondents for this

specific allegation. Respondents have already been received sanctions pertaining to these specific allegations and therefore the Division is attempting to try and sanction Respondents twice for the same allegations violating double jeopardy laws. The Division is referring to events that took place years ago and specifically mention the date of 2003 which is well past the 4 year statute of limitations. This allegation is therefore barred.

42. Respondents Deny paragraph 42. The Private Placement Memorandums speak for themselves and numerate all the risks. The Division is referring to events that took place years ago and specifically refer to the sale of Vescor securities which took place in 2004 and prior. This allegation is well past the 4 year statute of limitations. This allegation is therefore barred.

43. Respondents Deny paragraph 43, all points a. through o. The Private Placement Memorandums speak for themselves and no material facts were omitted. The PPMs were filed with the Division and the SEC by Vescor, Vescorp IV-A and IV-M, or other entities prior to use. All potential investors were given copies of the PPMs prior to investing. Further, the Division is referring to events that took place years ago and specifically refer to the sale of Vescor securities which took place in 2004 and prior. This allegation is well past the 4 year statute of limitations. This allegation is therefore barred.

44. Respondents Deny paragraph 44. The Division is referring to events that took place years ago and specifically refer to the sale of Vescor securities which took place in 2004 and prior. This allegation is well past the 4 year statute of limitations. This allegation is therefore barred.

45. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 45 and, therefore, deny the allegations. The Division

is referring to events that took place years ago and specifically refer to emails that took place in 2004 and 2005. This allegation is well past the 4 year statute of limitations. This allegation is therefore barred.

46. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 46 and, therefore, deny the allegations. The Division is referring to events that took place years ago and specifically refer to "a handwritten contract" that took place in 2003. This allegation is well past the 4 year statute of limitations. This allegation is therefore barred.

47. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47 and, therefore, deny the allegations. The Division is referring to events that took place years ago and specifically refer to "a bonus payment" that allegedly took place in 2003. This allegation is well past the 4 year statute of limitations. This allegation is therefore barred. In addition, the Receiver in the Vescor bankruptcy has already brought action against Respondents for this specific allegation. Respondents have already been received sanctions pertaining to these specific allegations and therefore the Division is attempting to try and sanction Respondents twice for the same allegations violating double jeopardy laws.

48. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 48 and, therefore, deny the allegations. The Division is referring to events that took place years ago and specifically refer to "additional undisclosed incentive compensation" that took place in 2005 or prior. This allegation is past the 4 year statute of limitations. This allegation is therefore barred. In addition, the Receiver in the Vescor

bankruptcy has already brought action against Respondents for this specific allegation. Respondents have already been received sanctions pertaining to these specific allegations and therefore the Division is attempting to try and sanction Respondents twice for the same allegations violating double jeopardy laws.

49. Respondents Deny paragraph 49. However, the Receiver in the Vescor bankruptcy has already brought action against Respondents for this specific allegation. Respondents have already been received sanctions pertaining to these specific allegations and therefore the Division is attempting to try and sanction Respondents twice for the same allegations violating double jeopardy laws. The Division is referring to events that took place years ago and refer to dates of 2005 and prior which is past the 4 year statute of limitations. This allegation is therefore barred.

50. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 50 and, therefore, deny the allegations. However, the Division clearly states in the paragraph that Respondents have already been tried and received sanctions pertaining to these allegations including being barred and therefore the Division is attempting to try and sanction Respondents twice for the same allegations violating double jeopardy laws. The Division is referring to events that took place years ago and specifically mention the date of 2004 which is well past the 4 year statute of limitations. This allegation is therefore barred.

51. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 51 and, therefore, deny the allegations. However,

asking people not to communicate through email during an audit is not a violation of any FINRA, SEC or regulatory rules.

52. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 52 and, therefore, deny the allegations. Nevertheless, Respondents had no control or influence over Southwick or Vescor. Respondents had no say whatsoever in how Vescor used its funds or who Vescor paid.

53. Respondents Deny paragraph 53.

54. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 54 and, therefore, deny the allegations. The Division is referring to events that took place years ago and specifically refer to security sales of 2004 and prior which is well past the 4 year statute of limitations. This allegation is therefore barred.

55. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 55 and, therefore, deny the allegations. In addition, the Division clearly states in earlier paragraphs that Respondents have already been tried and received sanctions pertaining to these allegations including fines and having already been barred. Therefore, the Division is attempting to try and sanction Respondents twice for the same allegations violating double jeopardy laws. Further, the Division is referring to, and specifically identifies, security sales that took place in 2002-2004, seven to nine years ago and well past the 4 year statute of limitations. These allegations are therefore barred.

56. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 56 and, therefore, deny the allegations.

57. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 57 and, therefore, deny the allegations. However, the Division clearly states in the allegations that Respondents have already been tried and received sanctions including fines, a Cease and Desist Order, and/or a securities bar pertaining to these allegations and therefore the Division is attempting to try and sanction Respondents twice for the same allegations violating double jeopardy laws. This allegation is therefore barred.

58. Answering paragraph 58, Respondents admit that Horne Financial and Deseret Financial were paid commissions by VesCor. Respondents are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in paragraph 41 and, therefore, deny the allegations. Additionally, the Respondents have already been tried by FINRA and received sanctions pertaining to these allegations and therefore the Division is attempting to try and sanction Respondents twice for the same allegations violating double jeopardy laws. This allegation is therefore barred.

59. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 59 and, therefore, deny the allegations. Additionally, the Respondents have already been tried by FINRA and received sanctions pertaining to these allegations and therefore the Division is attempting to try and sanction Respondents twice for the same allegations violating double jeopardy laws. This allegation is therefore barred.

60. Respondents are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 60 and, therefore, deny the allegations. The Division is referring to, and specifically identifies, security violations that took place in 2002-2004, seven

to nine years ago and well past the 4 year statute of limitations. This allegation is therefore barred.

61. **REQUESTED RELIEF**

WHEREFORE, Respondents request judgment in their favor and against Plaintiff, dismissing the Complaint with prejudice on the merits, and that Plaintiff take nothing thereby and for such additional and further relief as may be just and equitable under the circumstances, including, but not limited to, an award of attorneys' fees and costs incurred in defending this action pursuant to contract and as otherwise provided by law. Respondents request a trial by jury if a trial is necessary.

SECOND DEFENSE

The Division's claims are barred due to statute of limitations and double jeopardy laws, rules, regulations, and court rules and opinions.

THIRD DEFENSE

Plaintiffs' claims are barred by the doctrines of waiver, estoppel, laches, and unclean hands.

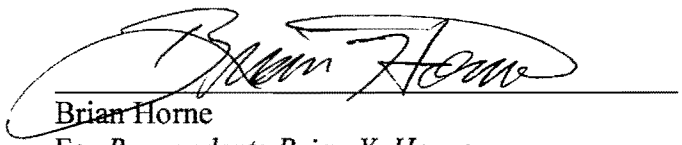
FOURTH DEFENSE

The matters complained of in the Verified Complaint were proximately caused, in whole or in part, by the acts or omissions of a third party or parties or by the Division. Accordingly, the liability of Respondents and responsible parties, named, or unnamed, should be apportioned and the liability, if any, of Respondents should be reduced accordingly taking into account the sanctions, fines, judgments, and/or the disgorgement or return of commissions that had already taken place.

FIFTH DEFENSE

At this time, Respondents have insufficient knowledge or information as to whether it may have additional affirmative defenses available. Respondents therefore reserve the right to assert additional affirmative defenses in the event that discovery indicates that they would be appropriate.

DATED this 31 day of March, 2011.



Brian Horne
For *Respondents Brian Y. Horne, Deseret Financial Services, Inc., and Horne Financial, Inc.*

Kevin Kunz
For *Respondents Kevin D. Kunz, Investment Management Corporation Twin K Investments, Inc., and Modena Hills, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 1 day of April, 2011, I caused a true and correct copy of the foregoing **ANSWER OF DEFENDANT BRIAN HORNE, KEVIN KUNZ, DESERET FINANCIAL SERVICES, HORNE FINANCIAL, INC., INVESTMENT MANAGEMENT CORPORATION, TWIN K INVESTMENTS, INC., AND MODENA HILLS, INC.** to be mailed, postage prepaid to:

Administrative Court Clerk
c/o Julie Price
Utah Division of Securities
160 E 300 S
PO Box 146760
Salt Lake City, UT 84114-6760

D. Scott Davis
Assistant Attorney General
Utah Division of Securities
160 E 300 S, 5th Floor
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