

EARL XAIZ, #3572
YENGICH, RICH & XAIZ
Attorneys for Defendant
175 East 400 South, Suite 400
Salt Lake City, Utah 84111
Telephone: (801) 355-0320
Fax: (801) 364-6026

FILED DISTRICT COURT
Third Judicial District

DEC 19 2006

By MO
SALT LAKE COUNTY
Deputy Clerk

**IN THE THIRD JUDICIAL DISTRICT COURT, SALT LAKE DEPARTMENT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

THE STATE OF UTAH,

Plaintiff,

vs.

MICHAEL P. MESERVY,

Defendant.

**PLEA IN ABEYANCE
AND ORDER**

Case No. 051902432FS

Judge Paul Maughan

COME NOW the State of Utah, by and through E. Neal Gunnarson, Assistant Attorney General, and Defendant Michael P. Meservy, by and through his attorney of record, Earl Xaiz, who agree as follows:

1. Michael P. Meservy, the above-named defendant, has been charged in the above-entitled matter with the offenses of Securities Fraud and Sales By an Unlicensed Agent.
2. E. Neal Gunnarson, Assistant Attorney General, and Michael P. Meservy, defendant, have entered into an agreement to dispose of the case. The terms of the agreement are set forth herein.

3. It is agreeable to the State of Utah in this case that the plea of guilty to Count II as reduced to a Class A Misdemeanor to herein be held in abeyance by the Court for a period of 18 months. During the time the plea is held in abeyance, the defendant is to comply with any condition agreed upon herein or otherwise imposed by the Court. Upon Defendant's compliance with the terms and conditions of the plea in abeyance agreement and at the termination of the 18 months time period, the defendant will be allowed to withdraw the guilty plea to Count II and the Court will dismiss the Information.

4. The defendant further agrees not to violate any law, federal, state or local, except for minor traffic violations. Other terms and conditions include the following:

1) no violation of Law.
2) Defendant shall pay Restitution in the amount of \$5,000⁰⁰.

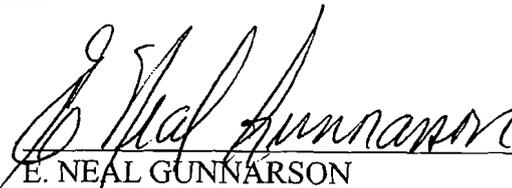
5. It is agreed and understood that there will be no trial in this case. In the event the defendant violates any term of this Agreement or does not otherwise live according to the conditions imposed by the Court, the guilty plea entered by the defendant may be entered on the court records and the defendant will thereby be convicted of the offenses charged. In the event the guilty plea is entered, all that will be left to complete the case is for the Court to impose sentence.

6. By entering into this Agreement, the defendant waives his right to a trial, such as confrontation of witnesses against him and the presumption of innocence until the State of Utah

proves beyond a reasonable doubt that he is guilty. The defendant further, in that regard, waives his right to a speedy trial and enters his plea knowingly and intentionally.

7. It is believed by the parties to this Agreement that the terms hereof are in the interest of justice.

DATED this 19 day of Dec, 2006.



E. NEAL GUNNARSON
Assistant Attorney General



MICHAEL P. MESERVY
Defendant



EARL XAIZ
Attorney for Defendant

ORDER

This Court, having read the foregoing, and it appearing that the plea in abeyance of the charges against the above-named defendant would be in the best interest of justice and the public interest,

IT IS HEREBY ORDERED that any and all further criminal proceedings be suspended for a period not to exceed 18 months from the date of this Order, and the defendant comply fully with the above Plea in Abeyance agreement. In the event that the defendant complies fully with the Plea in Abeyance agreement for the above-stated period, his guilty plea shall be withdrawn and the case shall be dismissed.

DATED this 19th day of December, 2006.



PAUL MAUGHAN
Third District Court Judge

FILED DISTRICT COURT
Third Judicial District

DEC 19 2006

By MPD
SALT LAKE COUNTY
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IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

THE STATE OF UTAH,

Plaintiff,

vs.

MICHAEL P. MESERVY,

Defendant.

**STATEMENT OF DEFENDANT IN
SUPPORT OF GUILTY PLEA AND
CERTIFICATE OF COUNSEL**

Case No's. 051902432FS

Judge Paul Maughan

I, Michael P. Meservy, hereby acknowledge and certify that I have been advised of and that I understand the following facts and rights:

Notification of Charges

I am pleading guilty to the following crime(s):

Crime & Statutory Provision

A. Attempted Sales by an Unlicensed
Agent, § 61-1-3(1) and § 61-1-21, Utah
Code Ann 1953 as amended

C. _____

B. _____

D. _____

Degree

**Punishment
Min/Max and/or Minimum Mandatory**

<u>Class A Misdemeanor</u>	<u>0 - 12 months jail and/or \$2,500 fine plus 85% surcharge</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

I have received a copy of the (Amended) Information against me. I have read it, or had it read to me, and I understand the nature and the elements of crime(s) to which I am pleading guilty.

The elements of the crime(s) of which I am pleading guilty are:

1) On or about August 2002 in Salt Lake County, State of Utah; 2) Defendant attempted, to sell securities 3) without having first procured the appropriate license.

I understand that by pleading guilty I will be admitting that I committed the crimes listed above. I stipulate and agree that the following facts describe my conduct and the conduct of other persons for which I am criminally liable. These facts provide a basis for the court to accept my guilty pleas and prove the elements of the crime(s) to which I am pleading guilty:

On or about August 2002, the Defendant was involved with the sell of securities without the procurement of a license.

Waiver of Constitutional Rights

 I am entering these pleas voluntarily. I understand that I have the following rights under the Constitutions of Utah and of the United States. I also understand that if I plead guilty I will give up all the following rights:

 Counsel: I know that I have the right to be represented by an attorney and that if I cannot afford one, an attorney will be appointed by the court at no cost to me. I understand that I might later, if the judge determined that I was able, be required to pay for the appointed lawyer's service to me.

 I (have not)(have) waived my right to counsel. If I have waived my right to counsel, I have done so knowingly, intelligently, and voluntarily for the following reasons:

 If I have waived my right to counsel, I certify that I have read this statement and that I understand the nature and elements of the charges and crimes to which I am pleading guilty. I also understand my rights in this case and other cases and the consequences of my guilty plea(s).

 If I have not waived my right to counsel, my attorney is Earl Xaiz. My attorney and I have fully discussed this statement, my rights, and the consequences of my guilty plea(s).

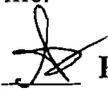
 Jury Trial. I know that I have a right to a speedy and public trial by an impartial (unbiased) jury and that I will be giving up that right by pleading guilty.

 Confrontation and cross-examination of witnesses. I know that if I were to have a jury trial (a) I would have the right to see and observe the witnesses who testified against me and (b) my attorney, or myself if I waived my right to an attorney, would have the opportunity to cross-examine all of the witnesses who testified against me.

 Right to compel witnesses. I know that if I were to have a jury trial, I could call witnesses if I chose to, and I would be able to obtain subpoenas requiring the attendance and testimony of those witnesses. If I could not afford to pay for the witnesses to appear, the State would pay those costs.

 Right to testify and privilege against self-incrimination. I know that if I were to have a jury trial, I would have the right to testify on my own behalf. I also know that if I chose not to testify, no one could make me testify or make me give evidence against myself. I also know

that if I chose not to testify, the jury would be told that they could not hold my refusal to testify against me.

 **Presumption of innocence and burden of proof.** I know that if I do not plead guilty, I am presumed innocent until the State proves that I am guilty of the charged crime(s). If I choose to fight the charges against me, I need only plead "not guilty," and my case will be set for a trial. At a trial, the State would have the burden of proving each element of the charge(s) beyond a reasonable doubt. If the trial is before a jury, the verdict must be unanimous, meaning that each juror would have to find me guilty.

 I understand that if I plead guilty, I give up the presumption of innocence and will be admitting that I committed the crime(s) stated above.

 **Appeal.** I know that under the Utah Constitution, if I were convicted by a jury or judge, I would have the right to appeal my conviction and sentence. If I could not afford the costs of an appeal, the State would pay those costs for me. I understand that I am giving up my right to appeal my conviction if I plead guilty. I understand that if I wish to appeal my sentence, I must file a notice of appeal within 30 days after my sentence is entered.

 I know and understand that by pleading guilty, I am waiving and giving up all the statutory and constitutional rights as explained above.

Consequences of Entering a Guilty Plea

 **Potential penalties.** I know the maximum sentence that may be imposed for each crime to which I am pleading guilty. I know that by pleading guilty to a crime that carries a mandatory penalty, I will be subjecting myself to serving a mandatory penalty for that crime. I know my sentence may include a prison term, fine, or both.

 I know that in addition to a fine, an eighty-five percent (85%) surcharge will be imposed. I also know that I may be ordered to make restitution to any victim(s) of my crimes, including any restitution that may be owed on charges that are dismissed as part of a plea agreement.

 **Consecutive/concurrent prison terms.** I know that if there is more than one crime involved, the sentences may be imposed one after another (consecutively), or they may run at the same time (concurrently). I know that I may be charged an additional fine for each crime that I plead to. I also know that if I am on probation or parole, or awaiting sentencing on another offense of which I have been convicted or which I have pled guilty, my guilty plea(s) now may result in consecutive sentences being imposed on me. If the offense to which I am now pleading guilty occurred when I was imprisoned or on parole, I know the law requires the court to impose

consecutive sentences unless the court finds and states on the record that consecutive sentences would be inappropriate.

[Signature] **Plea agreement.** My guilty plea(s) (is/are) (is/are not) the result of a plea agreement between myself and the prosecuting attorney. All the promises, duties, and provisions of the plea agreement, if any, are fully contained in this statement, including those explained below:

Defendant's guilty plea to Count II as reduced to a Class A Misdemeanor will be held in abeyance for a period of 18 months.

Defendant agrees to testify against co-Defendant Lamar Jensen in subsequent hearings, including pre-trials and for trials

[Signature] **Trial judge not bound.** I know that any charge or sentencing concession or recommendation of probation or suspended sentence, including a reduction of the charges for sentencing, made or sought by either defense counsel or the prosecuting attorney are not binding on the judge. I also know that any opinions they express to me as to what they believe the judge may do are not binding on the judge.

Defendant's Certification of Voluntariness

[Signature] I am entering this plea of my own free will and choice. No force, threats of unlawful influence of any kind have been made to get me to plead guilty. No promises except those contained in this statement have been made to me.

[Signature] I have read this statement, or I have had it read to me by my attorney, and I understand its contents and adopt each statement in it as my own. I know that I am free to change or delete anything contained in this statement, but I do not wish to make any changes because all of the statements are correct.

[Signature] I am satisfied with the advice and assistance of my attorney.

[Signature] I am 60 years of age. I have attended school through the BA grade. I can read and understand the English language. If I do not understand English, an interpreter has been provided to me. I was not under the influence of any drugs, medication, or intoxicants which would impair my judgment when I decided to plead guilty. I am not presently under the influence of any drug, medication, or intoxicants which impair my judgment.

[Signature] I believe myself to be of sound and discerning mind and to be mentally capable of understanding these proceedings and the consequences of my plea. I am free of any mental disease,

defect, or impairment that would prevent me from understanding what I am doing or from knowingly, intelligently, and voluntarily entering my plea.

~~✍~~ I understand that if I want to withdraw my guilty plea(s), I must file a written motion to withdraw my plea(s) before sentence is announced. I understand that for a plea held in abeyance, a motion to withdraw from the plea agreement must be made within 30 days of pleading guilty or no contest. I will only be allowed to withdraw my plea if I show that it was not knowingly and voluntarily made. I understand that any challenge to my plea(s) made after sentencing must be pursued under the Post-Conviction Remedies Act in Title 78, Chapter 35a, and Rule 65C of the Utah Rules of Civil Procedure.

Dated this 19th day of December, 2006.



MICHAEL P. MESERVY
Defendant

Certificate of Defense Attorney

I certify that I am the attorney for Michael P. Meservy, the defendant above, and that I know he has read the statement or that I have read it to him; I have discussed it with him and believe that he fully understands the meaning of its contents and is mentally and physically competent. To the best of my knowledge and belief, after an appropriate investigation, the elements of the crime(s) and the factual synopsis of the defendant's criminal conduct are correctly stated; and these, along with the other representations and declarations made by the defendant in the foregoing affidavit, are accurate and true.


EARL XAIZ
Attorney for Defendant
Bar No. 3572

Certificate of Prosecuting Attorney

I certify that I am the attorney for the State of Utah in the case against Michael P. Meservy, defendant. I have reviewed this Statement of Defendant and find that the factual basis of the defendant's criminal conduct which constitutes the offense(s) is true and correct. No improper inducements, threats, or coercion to encourage a plea has been offered defendant. The plea negotiations are fully contained in the Statement and in the attached Plea Agreement or as supplemented on the record before the Court. There is reasonable cause to believe that the evidence would support the conviction of defendant for the offense(s) for which the plea(s) is/are entered and that the acceptance of the plea(s) would serve the public interest.


E. NEAL GUNNARSON
Assistant Attorney General
Bar No. 1273

Order

Based on the facts set forth in the foregoing Statement and the certification of the defendant and counsel, and based on any oral representations in court, the Court witnesses the signatures and finds that defendant's guilty plea(s) is/are freely, knowingly, and voluntarily made.

IT IS HEREBY ORDERED, that the defendant's guilty plea(s) to the crime(s) set forth in the Statement be accepted and entered.

Dated this 19 day of Dec, 2006.



PAUL MAUGHAN
Third District Court Judge