DECLARATION OF QUENTIN M. RHOADES

I, Quentin M. Rhoades, declare as follows:

1. All statements made hereinunder are based upon my personal knowledge except for those stated to be under information and belief.

2. I am a founding member of Rhoades, Siefert & Erickson, PLLC. My statewide practice is focused exclusively on litigation, especially in matters to be presented to a jury. I have a wealth of courtroom experience before Montana and federal trial and appellate courts. I am admitted to practice before the United States Supreme Court; the Montana Supreme Court; the U.S. Eighth Circuit Court of Appeals; the U.S. Ninth Circuit Court of Appeals; the U.S. Ninth Circuit Bankruptcy Appellate Panel; U.S. District Court for the District of Montana; the U.S. Court of Claims; the U.S. Tax Court; the U.S. Immigration Court for the Districts of Montana, Washington and Colorado; and the U.S. Board of Immigration Appeals. I have also been admitted to practice pro hac vice before circuit courts in Alaska, Idaho, and federal courts in the Western District of Arkansas, the Eastern and Southern Districts of Texas, the Western District of Washington, and the District of Minnesota.

3. I place an emphasis on serving small businesses and individuals with trials and appeals in both civil and criminal settings. I have a broad range of trial experience including business, commercial, and real estate law; personal injury and wrongful death; airplane crashes; bad faith; construction litigation; forest fire lawsuits; self-defense; felony criminal defense; legal and

professional malpractice; and political practice and election law. I am a regular speaker on topics involving firearms law, jury trial techniques, and legal ethics.

4. I attended Montana State University, earning a Bachelor of Science degree in Economics with honors in 1989 and a Master of Arts degree in American History with high honors in 1992. I then eared a Juris Doctorate degree at University of Montana School of Law in 1995. While attending school, I was active as a hotshot crew member and smokejumper in states all over the west from 1985 through 1994 and served as an Infantryman in the Montana National Guard.

5. I was admitted to the State Bar of Montana in 1995, after which I served as a Law Clerk for the Honorable John L. Peterson, Chief Judge, Bankruptcy Court, District of Montana before joining the Missoula law firm of Sullivan & Tabaracci in October, 1997. I was a principal shareholder in the law firm of Sullivan, Tabaracci & Rhoades, P.C. from 2000 to 2014. In 2015, I co-founded the law firm of Rhoades, Siefert & Erickson, PLLC. In 2016 I was awarded the Peer Review Rating of "Preeminent" from Martindale-Hubbell, the gold standard in attorney ratings, which I have maintained since.

6. I represented James Bryant in the companion case to that of Mr. Himes. During my representation, I interacted frequently with Mr. Himes. He provided me with evidence relative to the case and transcripts of both his criminal trial in Hamilton, Montana and his California State Bar Court trial in Los Angeles, California.

7. I also represented Mr. Himes in his efforts to be conditionally released from supervised probation. We succeeded.

8. While reviewing the records of Mr. Himes' underlying criminal case, I noted several things which impact my evaluation of Mr. Himes. I will express those situations under information and belief.

9. The record reflects substantial anti-Christian bias in the Montana State Auditor's office; and, when Mr. Himes sought to prove selective prosecution, his efforts were stymied by both his trial judge and the Montana State Supreme Court.

10. There is also evidence that his case was politically motivated.

11. There is substantial evidence that Mr. Himes faced a biased, adversarial judge.

12. The judge frequently demeaned Mr. Himes and his witnesses.

13. He refused to hear twelve offers of proof, where even one such denial is reversible error. *State v. Davis,* 156 A.2d 392, 393 (1959).

14. There is also a problem with the jury instruction having to do with securities. The jury instruction read: "A person acts 'willfully' if the person is aware of what the person is doing. It does not mean that the person intended to violate the law, injure another, or acquire any advantage."

15. The State admitted to fabricating a definition when they defined "willfully" in terms of "knowingly": "...The definition of willfully in Title 1 is almost identical to the definition of knowingly...." (Sentencing Transcript

47:20-22). In other words, there is no such statute which defines "willfully" in this manner.

16. Since there is no such statute, there is no offense of which Mr. Himes was convicted, because, for there to be an offense, it must be described in the law: Section 45-1-104(2), MCA reads: "No conduct constitutes an offense unless it is described as an offense in this code or in another statute of this state."

17. This instruction also violated another quintessential due process statute, Section 45-1-102(1)(c), MCA: definitions of offenses are "to give fair warning of the nature of the conduct declared to constitute an offense...."

18. Therefore, even if this definition were in the codes, Mr. Himes didn't have "fair warning" in March 2008 of two counts of alleged criminal conduct when this non-codified definition appeared for the first time in September, 2013—just before his trial.

19. There is also the issue that there is clearly no intent required in this jury instruction. Yet, Mr. Himes was convicted of a felony based upon this jury instruction. This would seem to fly in the face of *U.S.* v. *U.S. Gypsum Co.*, 438 U.S. 422, 436-438, 98 S.Ct. 2864, 57 L.Ed.2d 854 (1978).

20. The jury foreman stated:

> We the jury found that there was no criminal intent on the part of Mr. Himes in any of the issues before the Court in the trial. While he may have been ignorant of the law we decided that no criminal intentions were evident.... the jury instruction [for theft by deception] said that the two men had the "intent" of depriving Mr. Serata of his property. We agreed that Mr. Himes and the other pastor had a vision of creating a company to serve the Lord and

> hopefully to turn a profit as well. While their business savvy isn't readily apparent their intentions seemed genuine to us.

(Sentencing Transcript 77:2-10.)

21. The judge gave Mr. Himes a suspended sentence, which included serving time in jail and paying $150,000 in restitution (plus $15,000 interest and fines), but his sentence should have been deferred, since he was convicted of nonviolent offenses, had no prior criminal record, and his "participation was relatively minor" (§46-18-222(4), MCA).

22. There is also an issue as to Mr. Himes's incarceration. The sentencing court: "must provide alternatives to imprisonment for the punishment of those nonviolent felony offenders who do not have serious criminal records...." (§46-18-101(3)(f), MCA). Mr. Himes was convicted of nonviolent felonies and had no prior criminal record.

23. As to remorse, I know Mr. Himes regrets any harm that he might have caused. I see in the sentencing transcript he apologized to Mr. Serata. Mr. Himes also confessed that, like many attorneys, he was unaware of the all-encompassing requirements under the securities laws. Had he been aware of them, I am sure he would not have run afoul of them.

24. I have known Mr. Himes in various capacities for 15 years. We became aquatinted and worked together on various service projects long before he became my client. In my experience and observation, he possesses the qualities of honesty, fairness, candor, trustworthiness, observance of fiduciary responsibility, respect for and obedience to the law, and respect for the rights

of others and the judicial process. Given these virtues, I believe he is of good moral character and would serve with distinction as a member of the California Bar, if readmitted to practice.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 9th day of November 2020 at Missoula, Montana.

Quentin M. Rhoades, Declarant