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## **For Immediate Release**

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## **PRESS RELEASE**

### ***RICK KOERBER RELEASES RECORDINGS OF STATE OFFICIALS ENGAGING IN CRIMINAL VIOLATIONS OF UTAH LAW AND OF THE STATE'S CHIEF INVESTIGATOR CLEARING HIM OF WRONGDOING***

SALT LAKE CITY —The following is taken from a statement delivered by FranklinSquires President & CEO Rick Koerber at a press conference held at the Grand America in downtown Salt Lake City, UT at 3:30pm on Friday May 29, 2009—

#### **RELEASE OF RECORDS AND RECORDING**

“Early in the week several media outlets began questioning Utah Representative Carl Wimmer and Utah State Attorney General Mark Shurtleff regarding their activities related to me. Some seemed to be suggesting that having an audience with me, by an elected official, was somehow inappropriate. Why a private citizen, asking to meet with his or her elected representative is ever, in any circumstance inappropriate, is a mystery to me. Are elected officials not representatives of each citizen? Should only special interests and lobbyists have access to government officials? If any citizen were to feel that a government bureaucracy was falsely accusing them, taking illegal actions, and doing serious harm to their business and family – wouldn’t any person so situated be interested in contacting his or her elected official to state their case? Or, instead, have we come so far that as citizens we are now willing to give up our constitutional rights to criticize our government and to petition our government for redress?”

“Yesterday, the local media began reporting on the Utah Attorney Generals refusal to bring an action against me in 2008, citing a lack of evidence. I applaud KSL and reporter John Daley for beginning to uncover the facts related to this topic. When I say “beginning” to uncover the facts it is because there is much more to the story.

“In January I announced my intention to begin releasing several important recordings to the public. Today, I have brought with me several selections of transcripts



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and audio recordings which I'm releasing to the media (and to the public). These recordings document essential information related to the rest of the story about the State of Utah's five year investigation of me and regarding the Attorney General's decision not to bring any action against me based upon the recommendation of Department of Commerce Executive Director Francine Giani and her staff.

"The reason I'll be playing a selection of these audio recordings today is that the information contained in them is in some instances so sensational and so outstanding that only hearing the words coming out of the mouths of the government officials making these statements will anyone likely believe what they hear.

"Each item below has a footnote describing the source of the information. Where I have not been able to obtain audio recordings I have obtained written documents, records or transcripts and have included them in your media packets. The audio clips, records, and documents referenced here today are now available or will soon be available for download, copy and distribution to media representatives as well as interested or concerned citizens via <http://www.franklinsquires.com>.

*Note: Because the most likely defense coming out of the Department will be the contention that these short segments are taken out of context, the full records of the phone calls can be made accessible to legitimate members of the press upon request.*

### **Item #1 – Selected Transcript of Statement from John Brown (Ut. Dept. of Commerce, Division of Real Estate)**

In this transcript you will notice a clear violation of the law as described in title 61, Chapter 2, Section 11.5. This was John Brown's concluding remark to me on my first encounter with the Utah Department of Commerce in 2004. He said,

Mr. Koerber, we haven't yet identified any illegal or fraudulent activity on your part, but we do not like the way you are doing business and we have serious reservations and concerns. We will keep looking, and for the time being let me put you on notice - We cannot touch you, because you are not one of our licensees, however I will use the full power of this office to come down with both of my feet squarely in the chest of any Utah licensee who does business with you or FranklinSquires."<sup>1</sup>

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<sup>1</sup> Jon Brown, Investigator, Division of Real Estate. Source: Personal Meeting with three other department employees and Utah Realtor Roger Hoffman present. The meeting took place in the Department of Commerce offices in downtown Salt Lake City, I took notes during the meeting.



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This kind of over reaching continued for years. At first, I sought an audience with then Department of Commerce Director Mr. Russell Skousen. When Mr. Skousen resigned from his position I hired him as my attorney to help me work to ensure that my businesses were structured and operating properly and to help communicate with state regulators to ensure that I was given fair treatment and individuals like John Brown did not simply have their way. Mr. Skousen and I have worked together now for years, and unfortunately the behavior by a few individuals in the Department of Commerce has only become worse over time.

**Item #2 – Selected audio recording of former Utah Securities Division Director Wayne Klein in discussion with me and two attorneys, in a meeting at the Division of Securities, in the presence of an attorney from the AGs office, and Enforcement Director Michel Hines.**

In this recording, Mr. Klien answers an inquiry, after he and Mr. Hines had both revealed that after several years of investigation no evidence had uncovered that I was involved in any wrongdoing. I asked Mr. Klien why he was so insistent that I admit to violations of the law in order to settle the investigation when no evidence or facts discovered in the investigation had yet implicated me. Mr. Klien's response was telling—

[Sound Clip #2a]

"We're in an unusual situation here where we're trying to find a solution before we get resolved all the factual questions...so we're all sort of planning without necessarily knowing all the facts, so the next stage is to get the facts and then see whether or not the facts conform to the plan."<sup>2</sup>

**Item #3 – Selected transcripts and audio recording of Utah Securities Division Enforcement Director Michael Hines.**

While much controversy seems to exist now given the recent federal indictment, there was never a time when the state investigators told me that any evidence had implicated me in wrongdoing. The opposite was true. For the entire course of the state's investigation (2004-2007), after learning detail after detail related to my businesses, the lead investigator Michael Hines regularly cleared me of any illegal behavior. The statement below is part of the introductory statement he made the first time we met in February of 2006.

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<sup>2</sup> Wayne Klein, Director, Division of Securities, Utah Department of Commerce, 09/07. Source: Audio recording of Mr. Klein explaining his draft version of "Founders Capital Plan of Reorganization and Rescission/Restitution" September 24, 2007.



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"The Department has been investigating you and your companies over the last two years and as of this time has no evidence to suggest and I personally do not believe that you have been involved in wrong doing."<sup>3</sup>

Even when troubling evidence started to surface about the business practices of some of Founders Capital's creditors started to service, Mr. Hines clearly drew the distinction between their activity and mine.

[Sound clip #3a]

"Rick, you recognize that what I call the bottom feeder LLCs here are going down to visit people to borrow money on their homes, cash out their entire retirements, to put money in that LLC to lend it up line to an LLC that goes up line to an LLC and you're right, it doesn't have any association with you."<sup>4</sup>

Mr. Hines not only regularly told me of his findings, but he would openly tell some inquiring third parties the same thing. Towards the end of 2007, when asked by Jacob Dayton about the rumor that my business was a Ponzi-scheme, or a pyramid/multi-level scheme, Mr. Hines clearly explained that the investigation had not uncovered the facts to substantiate this claim.

[Sound clip #3b]

DAYTON: So, I've also heard that Founders and Franklin are operating an illegal pyramid scheme, something along those lines. Is that true?

HINES: I've not heard the word illegal pyramid scheme used.

DAYTON: Well, some people call it ponzi-scheme, is that the same thing?

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<sup>3</sup> Michael Hines, Director of Enforcement, Division of Securities. (2/07) Source: My notes and recollection regarding Hines opening statement to me at an informal meeting at Department of Commerce also attended by my attorneys Mr. Randall Mackey and Jeff Thompson.

<sup>4</sup> Michael Hines, Director of Enforcement, Division of Securities. (09/07) Source: Recording 9/18/2007 at Utah Department of Commerce.



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HINES: Well, there is a difference in a ponzi-scheme and pyramid scheme. A pyramid scheme is nothing more than multi-level marketing where you build downlines. A ponzi-scheme merely means that you are paying old investors promised returns from new investors money. But certainly no one associated with the Division has used either of those terms in reference to this investigation *basically because we don't have the facts to reach any of those conclusions.*"<sup>5</sup>

Between 2006 and 2007 I relied heavily on the advice and communication given to me by the Department of Commerce. They had reviewed my business operations thoroughly and regularly discussed with me their opinion and advised me and my attorneys on what they considered acceptable businesses. In October of 2007 I talked to Mr. Hines when he unequivocally told me—

[Sound clip #3c]

"There is no conduct that has been isolated, to my satisfaction that you violated any laws or rules. There is none. You are not going to be put in jail, there is no warrant and I would tell you if there was. I'd say it. But, Rick there is not...No, you're not going to be put in jail, I would talk to your attorneys, you and I and your attorneys would have lengthy discussions before charges were ever filed."<sup>6</sup>

In the same call Mr. Hines suggested we meet and have a cup of tea together and discuss philosophy. His statements related to his opinion of my rumored involvement in 'wrongdoing' were regularly repeated to unrelated third parties. In the clip below, Mr. Hines—in talking with Jacob Dayton about my case—once again confirms this same opinion. *Note: Mr. Dayton made this recording and provided me a copy.*

[Sound clip #3d]

**[Dayton to Hines]** "You know Rick Koerber right?"

**[Hines to Dayton]** "Sure, yeah, he and I have met several times."

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<sup>5</sup> Michael Hines, Director of Enforcement, Division of Securities. (11/07) Source: Recorded phone conversation between Michael Hines and Jacob Dayton discussing Founders Capital and Rick Koerber.

<sup>6</sup> Michael Hines, Director of Enforcement, Division of Securities. (10/07) Source: Recorded Cell phone conversation between Mr. Hines and myself on October 26, 2007.



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**[Dayton to Hines]** "I've heard he's going to be charged with felony fraud or something, that's what I've heard. Do you know what that's all about?"

**[Hines to Dayton]** "Hmmm. No idea. There is an ongoing investigation relative to the collection of money by a lot of LLCs and uh, there have been decisions made on some individuals that it appears will be charged with criminal conduct, but right now Rick Koerber is not one of those. So, I don't know what that is. There is a tremendous amount of misinformation in the market."<sup>7</sup>

What we would learn during the course of the investigation is that the most serious "misinformation in the market" the Mr. Hines referenced, often came from the Department of Commerce.

When, the story broke yesterday, that Mr. Shurtleff had declined to bring charges against me at the conclusion of the Department's investigation, his decision was consistent with most of Mr. Hines statements throughout the investigation.

Some might suggest that Mr. Hines was not being genuine, that perhaps he was attempting to mislead me as part of his investigation. Evidently this is sometimes permissible by police officers or other law enforcement agents. Unfortunately for Mr. Hines and others in the Division of Securities, the Utah legislature explicitly has prohibited *any person* from using deception in conjunction with enforcing the securities laws, no matter the role they play. The law describes any false statements made in this context as felony violation of the law.

#### 61-1-16 - False statements unlawful

It is unlawful for any person to make or cause to be made, in any document filed with the division or in any proceeding under this chapter, any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect.

If both Mr. Hines and Mr. Shurteff concluded that there was no evidence that justified bringing any charges why was Ms. Giani (who is not a lawyer and not family with the law) so persistent? Well, only she knows the full answer, but the following information might help, at least in part, to clarify the rest of the story.

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<sup>7</sup> Michael Hines, Department of Commerce, Division of Securities, Director of Enforcement & Jacob Dayton owner of Capital Enterprises, LLC in discussion about Securities Investigations by the State. 11/07 Source: Recording of Phone Conversation delivered by Dayton to Koerber.



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**Item #4 – Selected audio recording from Wayne Klein, former Director of the Division of Securities.**

The statement below was made by Mr. Klein following my August 31, 2007 radio broadcast where I openly criticized him and his division, calling him a ‘*commissar*’ (though not by name) and had suggested that the state legislature should reduce the size of government and add some check or balance against the unlimited powers of the Division of Securities.

[Sound Clip #4a]

“Part of the problem is that I’ve been painted in a corner because you’re client has gone on the radio and publicly accused us of stuff. He’s got legislators out there trying to cut our powers because what we’re doing as if he’s entirely right in what he’s doing and government is unfairly coming after him. So ordinarily we have more flexibility but where I’ve got public attacks coming in saying we’re being accused of being unfair...[interrupted].”<sup>8</sup>

It’s important to note that this is the same conversation where Klien admits he does not have the facts (see Sound Clip #2a) and the same conversation where Hines admits the problems being uncovered don’t “have anything to do with” me.

Mr. Klien was so “peaked” that even after he had been provided with a copy of the Founders Capital Balance Sheet showing that the company had approximately sixty million dollars more in assets than it did in liabilities and after his staff had spent the time necessary to investigate the supporting records—including real estate agreements securing the majority of the balance sheet equity—which review included looking at purchase contracts, appraisals, loan documents, property reports, lease agreements, etc.,—nevertheless, Mr. Klien continued in that same meeting to make even more startling demands.

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<sup>8</sup> Wayne Klein, Director, Division of Securities, Utah Department of Commerce, 09/07. Source: Audio recording of Mr. Klein explaining his draft version of “Founders Capital Plan of Reorganization and Rescission/Restitution” September 24, 2007.



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In this meeting and subsequent related meetings Klien explained that he had reviewed the matter with his superior Francine Giani and that in order for me to avoid being charged with criminal violations of the law (though, again, in the same meeting he admitted there was no evidence to warrant it) Mr. Klien demanded that I remove my billboards, that I and my partners sell our “expensive cars” and as part of his written counter proposal (on official Department letterhead) demanded that I agree to a 3<sup>rd</sup> party administrator of my company who would liquidate the companies assets.

Perhaps most alarmingly, his written offer included that demand that I sign a written affidavit promising not to criticize (in public or in any future court) “any action” the Department took against investors in my business.

“Mr. Koerber will provide an affidavit to the Division affirming...[that he] will not claim publicly or in court that any action the Division takes against investors in Founders...is impeding the companies efforts...”<sup>9</sup>

As Mr. Klein continued to insist on his demands, in meeting after meeting he grew more insistent. In other communications he suggested that if I resisted his demands, he and his department would start communicating that my business was a multi-level ponzi-scheme.

When asked why he would communicate such a claim given that he and his staff had investigated financial statements and related documenting, making such a claim absurd, he informed candidly responded that despite the financials, if he and his Department made the allegation of a ponzi-scheme, it would “stick to me like glue” and that he had contacts in the media who would tell the story.

The first media source to publicly allege that my business was a ponzi-scheme was City Weekly reporter Eric Peterson. Evidently City Weekly was publishing its information with Klein as a source, because an insider later forwarded me an email from Klein (who had since been forced to resign from office) congratulating Eric on the story and asking if, now that the story had been published if “it was acceptable” for him to by Mr. Peterson lunch.

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<sup>9</sup> Mr. Klein’s written draft requirements entitled “Founders Capital Plan of Reorganization and Rescission/Restitution” September 24, 2007. I added the ellipses for conciseness only; the original clearly substantiates the substance of the requirement.



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**Item #5 – Audio recording of Mr. Hines changing his story and telling third parties that my business was a multi-level scheme.**

While Mr. Hines sometimes insisted that “no one in the Division of Securities” would use the terms “ponzi-scheme” or “multi-level scheme” because the evidence did not warrant it, consistent with Mr. Klein’s agenda Hines himself spread this gossip to Jonathan Bond in a telephone conversation.

[Sound Clip #5a]

“I know what happened in this case, clearly, everybody got carried away with this idiotic multilevel marketing of promissory notes is what occurred...they did violate state and federal law...as long as the money was coming this was a wonderful multi-level marketing program and then the money dried up.”<sup>10</sup>

**Item #6 – Audio recording of Corporate Finance employee Gary Bowen carrying out the policy of Klein in a conversation with an unrelated third party.**

Hines was not the only one who later engaged in spreading gossip about me and my company after I refused to give in to the terms outlined by Mr. Klein. In November of 2007, Mr. Gary Bowen then in the Corporate Finance section of the Securities Division offered the following to Devon Anderson who had called about an unrelated matter. In an effort to “get the word out” made several startling, false, and criminal accusations.

[Sound clip #6a]

“If [your friends have] invested in FranklinSquires they’re going to lose their money. FranklinSquires is putting the buzz out that the division is going to lock them up, that’s not so. We’ve seen their balance sheets and they’ve got a shortfall of about \$60 million dollars so it’s just a matter of time before that collapses. So if you know anyone that’s invested, bye-bye they’ve lost their money...under securities regulations and rules, this secrecy concept, and that’s part of the FranklinSquires model, is fraud. Its just, it is.”<sup>11</sup>

<sup>10</sup> Michael Hines, Director of Enforcement, Division of Securities. (10/19/07) Source: Recorded phone conversation between Michael Hines and Jonathon Bond.

<sup>11</sup> A. Gary Bowen, Securities Examiner, Division of Securities. Source: Telephone recording, November 28, 2007 phone call from Devon Anderson.



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Of course there is not, and never has been, any secrecy concept related to FranklinSquires. At the time of this statement the financials in possession of the Division showed approximately sixty million in assets that exceeded liabilities. I was so startled by this behavior by a government employee (whose statements directly impacted our ability to do business successfully) that I promptly called Mr. Bowen to challenge him on his statement. The following transcribed selection is from Mr. Bowen's portion of our telephone conversation.

[Sound clip #7a]

"Rick, I have not seen your financials. I don't know that you're going bankrupt. I don't know where these people are getting that information... They're not getting it from me... I'm not in the loop on investigations and so forth...I understand that you are in the process of dealing with either Mike or Wayne but I haven't seen it..."<sup>12</sup>

## CONCLUSION

When the Attorney General's office declined to bring charges against me in 2007, after the government had thoroughly investigated my business and on multiple occasions advised that there was "nothing illegal" about our business and that I "had not broken any rule or law" despite the gossip and rumors otherwise, I was relieved and thankful that in Utah we have an Attorney General who was more interested in the law than in retaliating against me for my political opinions, my criticisms, or my refusal to agree to a corrupt regulators unjust demands.

I cannot imagine how anyone would suggest that Mr. Wimmer, in joining with other elected representatives, in calling for an audit of the Division of Securities, after learning of the kind of behavior, was doing me a favor. He was doing all Utahns a favor.

Mr. Wimmer and his associates were clearly vindicated when the independent audit – which declined to include my case in its review since it was then an ongoing investigation – documented abusive prosecutorial and enforcement tactics by the division, a lack of leadership and policy guidelines for how and when to bring changes, lying and deception in settlement offers with innocent citizens, and several other very serious problems.

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<sup>12</sup> A. Gary Bowen, Securities Examiner, Division of Securities. Source: Telephone recording, December 2007, phone call from Rick Koerber to Gary Bowen.



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I did not invent the results of the audit. I did not influence the results of the audit. I am only astonished that after Wayne Klein resigned (one month after the approval of the audit) the rest of the leadership of the Department (Ms. Giani) and the head of Securities Enforcement (Mr. Hines) where most of the audit's documented abuses took place—are both still employed by the State. The results of that audit have to be the most under reported political and public policy event of the last year and a half.

I want to thank not only Mr. Wimmer and Mr. Shurtleff, but the other government officials and representatives who listened to my evidence. Speaker Curtis, Rep. Dougal, Senator Stephens, and several others who all voiced agreement with me that Ms. Giani was known to be unable to effectively manage her department.

In our breakfast meeting Mr. Shurtleff told me that given what he had learned about Mr. Klien when he had worked for the AGs office, he was certain that Ms. Giani did not have the qualifications to reign in someone like Mr. Klien who was known even in his past employment as chasing down personal vendettas rather than focusing on the law.

I cannot believe that after Ms. Giani supported these activities, after Klein was forced to resign, after she unequivocally stood by him and publicly predicted that he and his department would be vindicated by the audit (which he most clearly was not) and after she herself was directly implicated in the audit results, and now after she has admitted that she (not being an attorney, nor authorized by the law to do so) went against the advice of the Attorney General, went against the facts uncovered in her case — that she still has her job. Tuesday, was Ms. Giani's victory day as she was able to orchestrate the premature celebration that took place during last Tuesday's press conference. But, this indictment represents an ominous precedent for all Utah business owners.

My statements today have not been to offer up any defense on my case whatsoever — I am satisfied to do that in court. I am willing to be accountable for all of my actions. I can only hope that with the release of this information, the governing authorities might take the necessary steps to ensure that Ms. Giani and her colleagues finally have to do the same.

--END