**6.6 Section 12 of the Securities Exchange Act of 1933 – 15 U.S.C. § 77l –**

**Sale of an Unregistered Security in Violation of § 5**

[Name of plaintiff] asserts a claim under § 12 of the Securities Act of 1933 for the sale of an unregistered security to [him/her/it] in violation of § 5 of the Securities Act.

Sections 5 and 5 of the Securities Act of 1933 require the offer or sale of certain securities to be registered. Registering securities ensures that companies file essential facts with the Securities and Exchange Commission, also known as the SEC, which then makes these facts public. Without an exemption from the Securities Act’s registration requirements, it’s unlawful for any person to use an instrumentality of interstate commerce to sell an unregistered security.

A person who claims that someone violated § 12 may bring a civil action for damages [he/she/it] suffered as a result.

To prove a claim under § 12, [name of plaintiff] must prove each of the following facts by a preponderance of the evidence:

First, you must find that [name of defendant] directly or indirectly sold securities to [name of plaintiff].

Second, you must find that [name of defendant] used an instrument of transportation or communication in interstate commerce in connection with the offer or sale of a security.

Third, you must find that a registration statement for the securities was not in effect as Securities Act § 5 requires.

And fourth, you must find that [name of plaintiff] suffered damages.

[In the verdict form that I’ll explain in a moment, you’ll be asked to answer questions about these factual issues.]

Now I’ll provide you with some additional instructions to help you as you consider the facts [name of plaintiff] must prove.

For the first element – that [name of defendant] directly or indirectly sold securities to [name of plaintiff] – you must use these definitions:

A “security” is an investment in a commercial, financial, or other business enterprise with the expectation that profits or other gain will be produced by others. Some common types of securities are [stocks,] [bonds,] [debentures,] [warrants,] [and] [investment contracts]. [The [describe type of security] in this case is a security.]

[If there is a genuine question about whether the case involves a security, additional instructions will be needed here.]

The terms “sale” or “sell” mean the transfer of a security for value. This includes the transfer of a contract of sale for value or any other disposition for value of a security or interest in a security.

To “directly or indirectly” sell securities means [name of defendant] was a necessary participant, or substantial factor, in the sale or offer to sell that [name of plaintiff] claims is in violation of Securities Act § 5.

[Name of defendant] may be a “necessary participant” or “substantial factor” in the sale of securities if, for example, [he/she/it] employs or directs others to sell or offer securities, or plans the process by which unregistered securities are offered or sold.

To satisfy this element, [name of plaintiff] isn’t required to show that [name of defendant] had direct contact with any of the investors, including [name of plaintiff], who purchased the securities at issue.

A person who sells unregistered securities violates Securities Act § 5 regardless of whether the violation was committed knowingly, intentionally, recklessly, or negligently. [Name of defendant]’s good-faith belief that the sale was legal, and [his/her/its] reliance on the advice of counsel, aren’t defenses to a violation of Securities Act § 5.

For the second element, [name of plaintiff] must prove that [name of defendant] used an instrument of transportation or communication in interstate commerce in connection with the sale or offer of sale of the securities.

“Instrument of transportation or communication in interstate commerce” means to the use of the mails, telephone, Internet, or some other form of electronic communication, [or] an interstate delivery system such as Federal Express or UPS [, or an inter-dealer electronic-quotation-and-trading system in the over-the-counter securities market].

[A “facility of a national securities exchange” may include a computer-trading program or an online discount brokerage service.]

For the third element, [name of plaintiff] must prove that the securities at issue weren’t registered. [In this case, the securities weren’t registered.]

If you find that [name of plaintiff] has proved these three elements by a preponderance of the evidence, the burden shifts to [name of defendant] to prove by a preponderance of the evidence that the offer or sale of the securities at issue were exempt from the Securities Act’s registration requirements. I’ll determine how to proceed on the exemption [name of defendant] claims.

If you find that [name of plaintiff] has proved one or more of its claims against [name of defendant], [name of plaintiff] must prove that [he/she/it] suffered damage.

In a claim under § 12, a plaintiff who has established a violation of § 5 is entitled to recover [the amount [name of plaintiff] paid for the security, with interest, minus the amount of any income received upon tender of such security or] for damages equal to [name of plaintiff]’s actual loss if [name of plaintiff] no longer owns the security.

**Special Interrogatories to the Jury**

**Do you find from a preponderance of the evidence:**

That [name of defendant] directly or indirectly sold [or offered to sell] securities to [name of plaintiff]?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

That [name of defendant] used an “instrument of transportation or communication in interstate commerce” in connection with the sale of [or offer to sell] securities?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

That a registration statement for the securities was not in effect?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

[ That [name of defendant] has established that an exemption from registration applied to the sale of [or offer to sell] the securities?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

[NOTE: If your answer is “Yes,” your foreperson should sign and date the last page of this verdict form. You are not required to answer Question No. 5. If your answer is “No,” go to the next question.]

That [name of plaintiff] suffered damages?

Answer Yes or No \_\_\_\_\_\_\_\_\_\_\_\_\_

If your answer is “Yes,”

in what amount? $\_\_\_\_\_\_\_\_\_\_\_\_\_

So Say We All.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Foreperson’s Signature

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_