

Division of Securities
Utah Department of Commerce
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Salt Lake City, UT 84114-6760
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BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF:

CITY LIPS COSMETICS, LLC
CITY LIPS MARKETING, LLC
JORY C. ALLEN
CHAD D. WRIGHT
FRANK J. GILLEN

Respondents.

STIPULATION AND CONSENT
ORDER AS TO **JORY ALLEN**

Docket No. SD-06-0068
Docket No. SD-06-0069
Docket No. SD-06-0070
Docket No. SD-06-0071
Docket No. SD-06-0072

The Utah Division of Securities (the Division), by and through its Director of Enforcement, Michael Hines, and Jory C. Allen hereby stipulate and agree as follows:

1. Jory C. Allen (Allen) and others were the subject of an investigation by the Division into allegations that he violated certain provisions of the Utah Uniform Securities Act (the Act), Utah Code Ann. § 61-1-1, *et seq.*, as amended.
2. In connection with that investigation, on September 14, 2006 the Division issued an

3. On December 6, 2006, default was entered against Allen in this matter.
1. On April 24, 2010, Allen pleaded guilty to two counts of Securities Fraud.¹
2. Allen and the Division have agreed to settle this matter by way of this Stipulation and Consent Order (Consent Order).²
3. Allen is represented by Attorney Dana M. Smith and is satisfied with the representation he has received.
4. Allen admits to the jurisdiction of the Division over him and over the subject matter of this action.
5. Allen acknowledges that this Consent Order does not affect any enforcement action that might be brought by a criminal prosecutor or any other local, state, or federal enforcement authority.
6. Allen waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.
7. In exchange, the Division agrees to set aside the Default Order against him.

I. THE DIVISION'S INVESTIGATIVE FINDINGS

¹*State of Utah v. Jory C. Allen*, Case No. 071401444 in Fourth Judicial District Court (Utah 2007).

²The Division entered a default order against City Lips Cosmetics, LLC, City Lips Marketing, LLC, Jory C. Allen, and Chad D. Wright on December 7, 2006, which included fines, for failing to file a response to the September 14, 2006 Order to Show Cause.

8. City Lips Cosmetics, LLC (City Lips Cosmetics) was registered as a Utah limited liability company from February 2, 2005, until June 2007 when its status as a business entity expired. On March 31, 2006, City Lips Cosmetics changed its name to Distributor Sales, LLC.
9. City Lips Marketing, LLC (City Lips Marketing) was registered as a Utah limited liability company from December 2, 2005, until April 2007 when its status as a business entity expired. On May 30, 2006, City Lips Marketing changed its name to Distributor Marketing, LLC. City Lips Cosmetics and City Lips Marketing (collectively "City Lips" or "Company") were in the business of manufacturing and marketing cosmetics.
10. Allen was a resident of Utah at all times relevant to the matters asserted in this action. Allen held himself out to be City Lips' chief operations officer.
11. From June 2004 to February 2005, Allen, directly or indirectly, offered a total of \$454,000 in investments from three different investors.

Investor S. B.

12. In January 2004, S. B. talked to Chad Wright (Wright) about investing in City Lips. S. B. was told she would receive a return of 3% per month on her investment, she would be secured by City Lips' inventory, and the investment would mature in six months. S. B. was also told she would receive a promissory note from City Lips to evidence her investment in addition to City Lips' financial statements.
13. On June 14, 2004, S. B. invested \$100,000 in City Lips by depositing a cashier's check

made payable to City Lips directly into City Lips' account at Wells Fargo Bank.

14. S. B. met with Allen and the other principals of City Lips on February 15, 2005, at an office in Provo, Utah.
15. At the meeting, S. B. asked Allen if City Lips was financially secure, and was told yes.
16. At a future meeting, Allen promised to provide S. B. with a promissory note and financial statements.
17. S. B. rolled over her first investment of \$100,000 with City Lips, and invested an additional \$50,000 by depositing a \$50,000 cashier's check made payable to City Lips into its bank account at Wells Fargo Bank.
18. In April 2005, Allen gave S. B. a "Custom Detail Transaction Report" outlining her investments and all interest payments made to her.
19. S. B. received her monthly interest payments from City Lips from the time she first invested in June 2004, until May 2005, totaling approximately \$33,000.
20. In May 2005, when S. B. stopped receiving her monthly interest payments, she called and left many telephone messages for Allen and the other principals.
21. Despite several demands, S. B. received no more interest payments or principal from City Lips.

Investor L. J.

22. On November 22, 2004, L. J. invested \$75,000 in City Lips by mailing a certified check made payable to City Lips at its office in Salt Lake City.

23. L. J. received his first interest payment from City Lips about thirty days after investing.
24. On January 1, 2005, L. J. invested another \$4,000 in City Lips by mailing a personal check made payable to City Lips to its office in Salt Lake City.
25. On January 11, 2005, L. J. invested another \$21,000 in City Lips by mailing a check from his TD Waterhouse account made payable to City Lips to its office in Salt Lake City.
26. After mailing his last two investment checks, L. J. stopped receiving interest payments from City Lips.
27. L. J. tried to contact Allen and Wright by telephone, e-mail, and through Frank Gillen (Gillen), but received no response until September 2005.
28. In September 2005, L. J. spoke to Allen. City Lips told L. J. that the company could no longer make payments to L. J.
29. Despite several demands for payment, L. J. has received no additional interest or principal payments from City Lips.

Investors B. J. and C. J., Husband and Wife

30. On February 15, 2005, B. J. and C. J. met with Allen and the other principals of City Lips at an office in Provo, Utah.
31. Allen said City Lips was doing very well and they could easily pay interest of 36% per year to investors. C. J. asked if City Lips was financially solvent enough to pay that much interest, and was told yes. Allen promised to provide C. J. with signed investment contracts immediately.

32. B. J. told Allen that he did not have the money readily available, and he would need to make a withdrawal from his IRA account.
33. On March 7, 2005, B. J. and C. J. transferred, via wire transfer, \$200,000 to their daughter's bank account, and she immediately transferred the money to City Lips' bank account. B. J. and C. J. were both over 65 years old when they invested in City Lips.
34. B. J. and C. J. received just two interest payments of \$6,000 each from City Lips.
35. C. J. arranged a meeting with Gillen and Allen in Salt Lake City to get a signed contract or promissory note, and discuss the status of the investment.
36. Allen gave B. J. and C. J. a contract. B. J. and C. J. signed the contract, which stated new terms of payment, and returned it to City Lips. B.J. and C.J. received no more payments.
37. In March 2006, C. J. called Allen and said she and her husband were in terrible financial condition and needed their money. Allen told C. J. he was not the decision-maker regarding timing and amounts of payments to investors, and not a signer on the City Lips' accounts.
38. Several months later, Allen telephoned C. J. and offered to make payments to B. J. and C. J. as long as they signed a new agreement with City Lips and a release of all claims against City Lips.
39. Allen provided B. J. and C. J. with a "Settlement Agreement and Mutual Release" with City Lips. B. J. and C. J. refused to sign.
40. Despite many demands, B. J. and C. J. received no more interest payments from City

Lips, nor did they receive any of their principal.

SECURITIES FRAUD

41. In connection with the offer and sale of a security to investors, Allen, directly or indirectly, made false statements, including, but not limited to, the following:
- a. That City Lips was a “good company,” was “doing well,” that City Lips was “booming,” or that it was a “successful” company and was “financially secure,” when, given that City Lips had a very limited operating history having only been incorporated in December 2005, well after investors invested, Allen had no reasonable basis on which to make these representations; and
 - b. Investors B. J. and C. J. were told that City Lips could easily pay interest of 36% per year to investors, when, given that City Lips had a very limited operating history having only been incorporated in December 2005, well after investors invested, Allen had no reasonable basis on which to make these representations.
42. In connection with the offer and sale of a security to investors, Allen, directly or indirectly, failed to disclose material information, including, but not limited to, the following:
- a. Gillen was investigated by the SEC in 1997, and by the NASD in 1999 and 2000, in connection with the sale of stock, and was aware of all three investigations.
 - b. In 2002, the NASD fined Gillen \$25,000 for selling unregistered securities.
 - c. In 2003, the NASD revoked Gillen’s securities license due to unpaid fines.

- d. In 1998, Wright was criminally convicted of telephone harassment, sentenced to 90 days in jail, and fined \$250.
- e. In 1999, the Utah State Tax Commission filed a \$1,295 tax lien against Allen for unpaid income taxes for the year 1998. The tax lien was dismissed in 2001.
- f. Some or all of the information typically provided in an offering circular or prospectus regarding City Lips, such as:
 - i. The business and operating history for City Lips;
 - ii. Identities of City Lips' principals along with their experience in this type of business;
 - iii. City Lips' financial statements;
 - iv. The market for the product of the company;
 - v. The nature of the competition for the product;
 - vi. Current capitalization of the issuer;
 - vii. A description of how the investment would be used by the business;
 - viii. The company's past performance for its investors;
 - ix. Risk factors for investors;
 - x. The number of other investors;
 - xi. The minimum capitalization needed to participate in the investment;
 - xii. The disposition of any investments received if the minimum capitalization were not achieved;

- xiii. The liquidity of the investment;
- xiv. Discussion of pertinent suitability factors for the investment;
- xv. The proposed use of the investment proceeds;
- xvi. Any conflicts of interest the issuer, the principals, or the agent may have with regard to the investment;
- xvii. Agent commissions or compensation for selling the investment;
- xviii. Whether the investment is a registered security or exempt from registration; and
- xix. Whether the person selling the investment was licensed.

THE CRIMINAL ACTION

- 43. On April 3, 2007, in connection with the same allegations contained in this administrative action, the State of Utah filed a criminal action against Allen and others in Utah's Fourth Judicial District Court (Case No. 071401445), charging them each with three counts of securities fraud and one count of abuse of a vulnerable adult.
- 44. On April 24, 2008, Allen pleaded guilty to two counts of Securities Fraud.³ The plea was held in abeyance for thirty-six months on the condition that Allen pay \$10,000 in restitution after the first twelve months, \$20,000 after the second twelve months, and the remaining balance of restitution after the end of the plea in abeyance period. The total

³See footnote 1.

restitution amount was \$83,333.33.

45. On December 12, 2009, the Court ordered that the plea in abeyance conditions were violated, revoked the plea in abeyance, and imposed the sentence. Allen was sentenced to serve zero to fifteen years in the Utah State Prison on each of two counts of securities fraud, but the prison term was suspended. The restitution order stood and Allen was placed on probation for thirty-six months.

II. THE DIVISION'S CONCLUSIONS

46. Based on the Division's investigative findings, the Division concludes that:
- a. The investment opportunity offered and sold by Allen is an investment contract, and therefore a security, under § 61-1-13 of the Act;
 - b. Allen violated § 61-1-1 of the Act by making misrepresentations of material fact and omitting to state material facts in connection with the offer and sale of a security, disclosure of which was necessary in order to make representations made not misleading.

III. REMEDIAL ACTIONS / SANCTIONS

47. Allen admits the substance of the Division's investigative conclusions and consents to the sanctions below being imposed by the Division.
48. Allen represents that any information he has provided to the Division as part of the Division's investigation of this matter is accurate.
49. Pursuant to Utah Code Ann. § 61-1-6(1)(d) and in consideration of the guidelines set

forth in Utah Admin. Code Rule R163-31-1, the Division imposes a fine of \$25,000 with the following provisions:

- a. The \$25,000 fine will be waived contingent on no securities laws violations during the thirty-six month probationary period imposed by the Fourth District Court on December 17, 2009.
- b. If Allen materially violates any of the terms of this Stipulation and Consent Order within the three-year probationary period, after notice and opportunity to be heard before an administrative officer, the entire fine shall become immediately due.

50. Allen agrees to the imposition of a cease and desist order, prohibiting him from any conduct that violates the Act.

IV. FINAL RESOLUTION

51. Allen acknowledges that this Consent Order, upon approval by the Securities Commission shall be the final compromise and settlement of this matter. Allen further acknowledges that if the Securities Commission does not accept the terms of the Consent Order, it shall be deemed null and void and without any force or effect whatsoever.
52. Allen acknowledges that the Consent Order does not affect any civil or arbitration causes of action that third parties may have against Allen arising in whole or in part from their actions, and that the Consent Order does not affect any criminal cause of action that a prosecutor might bring.
53. This Consent Order constitutes the entire agreement between the parties herein and

supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Consent Order in any way.

Utah Division of Securities

Date: 10/13/10

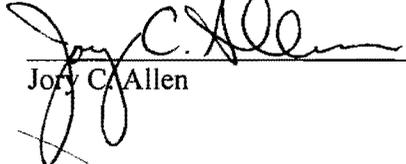
By: 
Michael Hines
Director of Enforcement

Approved:


Jeff Buckner
Assistant Attorney General
J.S.

Respondent Allen

Date: 10/12/2010

by: 
Jory C. Allen

Approved:


Dana M. Smith
Attorney for Respondent

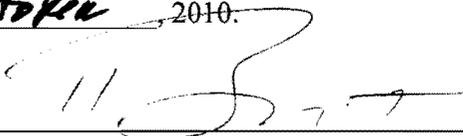
ORDER

IT IS HEREBY ORDERED THAT:

1. The Default Order against Allen is set aside.
2. The Division has made sufficient showing of Findings of Fact and Conclusions of Law to form a basis for this settlement.
3. Allen pay a fine of \$25,000. The \$25,000 fine will be waived contingent on no securities laws violations during the thirty-six month probationary period imposed against Allen by the Fourth District Court on December 17, 2009. If Allen materially violates any of the terms of this Stipulation and Consent Order within this three-year probationary period, after notice and opportunity to be heard before an administrative officer, the entire fine shall become immediately due.
4. Allen cease and desist from violating the Utah Uniform Securities Act.

BY THE UTAH SECURITIES COMMISSION:

DATED this 28th day of October, 2010.



Tim Bangerter



Jane Cameron

Erik Christiansen

Laura Polacheck



Michael O'Brien

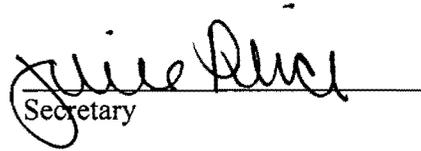
Certificate of Mailing

I certify that on the 9th day of November, 2010, I mailed, by certified mail, a true

and correct copy of the Stipulation and Consent Order to the Respondents' counsel at:

Jory C. Allen
c/o Dana M. Smith
10757 S. Riverfront Pkwy #125
South Jordan, UT 84095

Certified Mail # 7008 1140 0004 1042 0794


Secretary