

Division of Securities  
Utah Department of Commerce  
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BEFORE THE DIVISION OF SECURITIES  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH

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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

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**

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

1. Frank J. Gillen was 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

Order to Show Cause to City Lips Cosmetics, LLC, City Lips Marketing, LLC, Jory C. Allen, Chad D. Wright, and Frank J. Gillen, alleging securities fraud.

3. Frank J. Gillen and the Division have agreed to settle this matter by way of this Stipulation and Consent Order.<sup>1</sup>
4. Frank J. Gillen admits to the jurisdiction of the Division over him and over the subject matter of this action.
5. Frank J. Gillen waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.

#### I. THE DIVISION'S INVESTIGATIVE FINDINGS

6. 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.
7. 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

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<sup>1</sup>The 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.

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.

8. Frank J. Gillen (Gillen) was a resident of Utah at all times relevant to the matters asserted in this action.
9. From June 2004 to February 2005, Gillen, directly or indirectly, solicited a total of \$454,000 in investments from three different investors.
10. Gillen told investors City Lips needed to raise capital to keep the business growing, to launch a new product, to replenish inventory, and to take the company public. Gillen told investors they would receive monthly interest payments of 3%, and promised either a promissory note or a contract evidencing their investment to two of the investors.
11. Gillen failed to tell investors, among other things, that Gillen was investigated by the SEC in 1997, and by the NASD in 1999 and 2000, in connection with the sale of stock, and that the NASD fined Gillen \$25,000 for selling unregistered securities, and revoked his securities license when he did not pay the fine.
12. Gillen also failed to tell investors that the manager of City Lips Marketing (Chad Wright) had a criminal history.
13. The investors received a small amount of interest from City Lips. but eventually the payments stopped.

Investor S. B.

14. In January 2004, Gillen told S. B. about an investment in City Lips. Gillen said City Lips was a "good company," and that a prior investor had received 3% per month without fail from his investment in City Lips.
15. Shortly after talking to Gillen, S. B. talked to one of the principals of City Lips about investing. City Lips told S. B. 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.
16. 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.
17. S. B. was still receiving her monthly interest checks from City Lips when Gillen contacted her, and asked her to meet with the principals to discuss her investment. S. B. met with them and Gillen on February 15, 2005, at an office in Provo, Utah.
18. At the meeting, City Lips said it was "booming," but was in need of more capital. City Lips asked S. B. if she would extend her investment for another six months.
19. S. B. asked City Lips if it was financially secure, and was told yes.
20. City Lips again promised to provide S. B. with a promissory note and financial statements.

21. 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.
22. In April 2005, City Lips gave S. B. a "Custom Detail Transaction Report" outlining her investments and all interest payments made to her.
23. 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.
24. In May 2005, when S. B. stopped receiving her monthly interest payments, she called and left many telephone messages for City Lips. None of her calls were returned.
25. Despite several demands, S. B. received no more interest payments or principal from City Lips.

Investor L. J.

26. In November 2004, Gillen telephoned L. J. about an investment opportunity in City Lips.
27. Gillen told L. J. that City Lips was a successful cosmetics company, and that it had contracts with Sephora, a well-known cosmetics company. Gillen told L. J. that City Lips needed capital to launch a new product, and L. J. would receive interest of 3% per month if he invested.
28. 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.

29. L. J. received his first interest payment from City Lips about thirty days after investing.
30. 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.
31. 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.
32. After mailing his last two investment checks, L. J. asked Gillen for a written contract to evidence his investments. Gillen e-mailed a contract to L. J., and L. J. immediately signed and mailed it to City Lips' office. The contract matured in six months and stated that City Lips would pay L. J. 3% per month on his investments. L. J. never received a signed copy of the contract.
33. About the time L. J. sent the signed contract to City Lips, he stopped receiving interest payments from City Lips.
34. L. J. tried to contact City Lips by telephone, e-mail, and through Gillen, but received no response.
35. In September 2005, L. J. spoke to City Lips. City Lips told L. J. that the company could no longer make payments to L. J., and that the contract signed by L. J. was not signed by City Lips, but was signed and created by Gillen.
36. 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

37. In February 2005, Gillen contacted C. J. and asked her and her husband to meet with the founders of City Lips to hear about the investment opportunity in City Lips. Gillen told C. J. City Lips was doing well, but needed cash to replace product and to take the company "to the next step." Gillen also told C. J. that City Lips only needed the money for a short time and that they were going to try and take City Lips public.
38. On February 15, 2005, B. J. and C. J. met with Gillen and City Lips at an office in Provo, Utah.
39. 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.
40. C. J. contacted Gillen after she did not receive the investment contracts from City Lips. Gillen told C. J. he had been trying to get the contracts from City Lips, but had so far been unsuccessful.
41. B. J. and C. J. received just two interest payments of \$6,000 each from City Lips.
42. C. J. arranged a meeting with Gillen and City Lips in Salt Lake City to get a signed contract or promissory note, and discuss the status of the investment.
43. 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

44. In connection with the offer and sale of a security to investors, Gillen, 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, and given Gillen’s history with the NASD and SEC, Gillen had no reasonable basis on which to make these representations; and
  - b. Investors B. J. and C. J. were told by Gillen 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, and given Gillen’s history with the NASD and SEC, Gillen had no reasonable basis on which to make these representations.
45. In connection with the offer and sale of a security to investors, Gillen, 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

- 46. On April 3, 2007, in connection with the same allegations contained in this administrative action, the State of Utah filed a criminal action against Gillen 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.
- 47. On November 20, 2008, Gillen entered a plea of guilty to two counts of securities fraud, and the remaining two counts were dismissed.

48. On January 29, 2009, Gillen was sentenced to serve 1-15 years in the Utah State Prison on each of two counts of securities fraud, but the prison term was suspended. Gillen was ordered to pay restitution, jointly and severally with a co-defendant, in the amount of \$311,167, in monthly payments of \$2,000. Gillen was also ordered to serve 30 days in jail, and placed on probation for 48 months.

## II. THE DIVISION'S CONCLUSIONS

49. Based on the Division's investigative findings, the Division concludes that:
- a. The investment opportunity offered and sold by Gillen is an investment contract, and therefore a security, under § 61-1-13 of the Act;
  - b. Gillen 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

50. Gillen admits the substance of the Division's investigative conclusions and consents to the sanctions below being imposed by the Division.
51. Gillen represents that any information he has provided to the Division as part of the Division's investigation of this matter is accurate.
52. 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 \$175,584, with the following provisions:

- a. The fine may be reduced, dollar for dollar up to \$155,584, by any restitution paid to the investors by February 26, 2013 (or a later date if amended by the court), pursuant to *State v. Gillen* (Case No. 071401445);<sup>2</sup>
  - b. The remaining \$20,000 portion of the fine will be waived contingent on no securities laws violations between the date of the entry of the Order and January 29, 2013 or until full restitution is made, whichever comes first.
  - c. If Gillen materially violates any of the terms of this Stipulation and Consent Order within the four years following the entry of the Order, after notice and opportunity to be heard before an administrative officer, the entire fine shall become immediately due.
53. Gillen agrees to the imposition of a cease and desist order, prohibiting him from any conduct that violates the Act.

#### IV. FINAL RESOLUTION

54. Gillen acknowledges that this Consent Order, upon approval by the Securities Commission shall be the final compromise and settlement of this matter. Gillen further acknowledges that if the Securities Commission does not accept the terms of the Consent

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<sup>2</sup> According to the Utah Attorney General's office, as of September 23, 2010 Gillen has paid \$30,000 towards restitution in this case.

Order, it shall be deemed null and void and without any force or effect whatsoever.

55. Gillen acknowledges that the Consent Order does not affect any civil or arbitration causes of action that third parties may have against Gillen 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.
56. 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:

4/10/10

By:

Michael Hines  
Michael Hines  
Director of Enforcement

Respondent Gillen

Date:

11/10/10

by:

Frank J. Gillen  
Frank J. Gillen

Approved:

Jeff Buckner  
Jeff Buckner  
Assistant Attorney General  
J.S.

**ORDER**

IT IS HEREBY ORDERED THAT:

1. The Division has made sufficient showing of Findings of Fact and Conclusions of Law to form a basis for this settlement.
2. Gillen pay a fine of \$175,584. Each dollar paid by Gillen to the injured investors shall be credited by the Division toward payment of the fine, as described in paragraph 52 above.  
The remaining \$20,000 portion of the fine will be waived contingent on no securities laws violations between the date of the entry of the Order and January 29, 2013 or until full restitution is made, whichever comes first.
3. If Gillen materially violates any of the terms of this Stipulation and Consent Order within

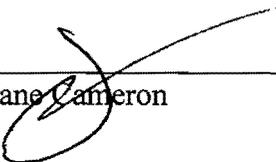
the four years following the entry of this Order, after notice and opportunity to be heard before an administrative officer, the entire fine shall become immediately due.

3. Gillen cease and desist from violating the Utah Uniform Securities Act.

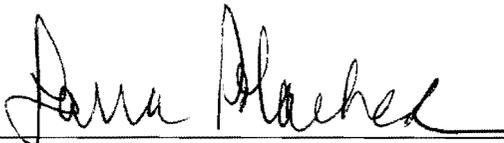
**BY THE UTAH SECURITIES COMMISSION:**

DATED this 20th day of January, 2010.

  
\_\_\_\_\_  
Tim Bangerter

  
\_\_\_\_\_  
Jane Cameron

~~~~ (No)  
\_\_\_\_\_  
Erik Christiansen (Recuse)

  
\_\_\_\_\_  
Laura Polacheck

A handwritten signature in black ink, appearing to read "Michael O'Brien", written in a cursive style. The signature is positioned above a horizontal line.

Michael O'Brien

Certificate of Mailing

I certify that on the 24th day of January, 2011, I mailed, by certified mail, a true

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

Frank Gillen  
2681 W. Kamas Dr.  
Salt Lake City, UT 84118

Certified Mail # 7007 0220 0001 0005 4794

Frank Gillen  
2215 Cedar Springs Rd. # ~~4510~~ #1505  
Dallas, TX 75201

Certified Mail # 7007 0220 0001 0005 4800

Julie Ruhl  
Secretary