Division of Securities
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**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:	**STIPULATION AND CONSENT ORDER**
ERIC LARSON SAMPSON, CRD#3269514	**Docket No. SD-17-0009**
Respondent.	

The Utah Division of Securities ("Division"), by and through its Director of Compliance, Kenneth O. Barton, and Respondent Eric Larson Sampson ("Sampson") hereby stipulate and agree as follows:

1. Respondent has been the subject of an examination by the Division into allegations that he violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. § 61-1-1, *et seq.*, as amended.

2. On or about January 20, 2017 the Division initiated an administrative action against Respondent by filing a Petition to Revoke, Bar and Impose a Fine.

3. Respondent hereby agrees to settle this matter with the Division by way of this Stipulation and Consent Order ("Order"). If entered, the Order will fully resolve all claims the Division has against Respondent pertaining to the Petition.

4. Respondent admits that the Division has jurisdiction over him and the subject matter of this action.

5. Respondent hereby waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.

6. Respondent has read this Order, understands its contents, and voluntarily agrees to the entry of the Order as set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Respondent to enter into this Order, other than as described in this Order.

7. Respondent is represented by the law firm of Ray Quinney & Nebeker P.C. and is satisfied with the legal representation he has received.

The Parties

8. My IA is a Delaware corporation that is licensed with the Division as an investment adviser firm with its principal place of business in Washington, Utah. During the period relevant to this action, approximately 2010 through July 2016 ("relevant period"), My IA's principal place of business was in St. George, Utah. My IA has been licensed in Utah since January 2009.

9. Sampson is a St. George, Utah resident who was licensed as an investment adviser representative of My IA during the period relevant to this action. He has taken and passed the FINRA Series 6, 63 and 65 examinations. During the relevant period, records

contained in the Central Registration Depository ("CRD")[1] show Sampson was the president and majority owner of My IA and was the designated official for My IA from 2009 until September 1, 2016 when he terminated his employment and requested the termination of his securities licenses.

10. Prior to My IA, between 1999 and 2008, Sampson was licensed as an agent of five different broker-dealer firms, and from 2006 to 2008 as an investment adviser representative of one investment adviser firm.

11. Although he was no longer associated with My IA, Sampson still appeared on the web site myinvestmentadvisor.com, which described him as a "registered investment advisor representative" and "firm manager."[2]

12. As the designated official of My IA, Sampson was responsible for the supervision of My IA's business, including the accuracy of information provided to clients and information filed with the Division.

13. Niki Sampson is Sampson's wife ("Niki"). She has never been licensed in the securities industry in any capacity. Records filed with the Utah Division of Corporations identified her as the president and registered agent of My IA during the relevant period.

Sale of My IA

14. In August 2016, My IA was purchased by two individuals who were licensed investment adviser representatives of My IA. Neither of those individuals were involved in the

[1] CRD is an electronic database maintained by the Financial Industry Regulatory Authority and the states. Among other things, CRD contains licensing and disciplinary information on broker-dealers, investment advisers, agents, and investment adviser representatives.

[2] http://www.myinvestmentadvisor.com/agents.cfm (accessed September 29, 2016)

conduct giving rise to the Division's action as described further herein. My IA, which was also named as a respondent in the Petition against Sampson, entered a stipulation and consent order on or about May 25, 2017.[3]

Sampson Business Entities

15. Shooks Run, LLC ("Shooks Run") is a Colorado limited liability corporation with a registered address in Colorado and a mailing address in St. George, Utah. Corporate records filed with the Colorado Secretary of State identify Niki as the registered agent and founder.

16. Wright Total Indoor Comfort, Inc. ("Wright") is a Colorado corporation with its principal place of business in Colorado Springs, Colorado. Wright is a heating and air conditioning ("HVAC") business controlled by Sampson. Corporate records filed with the Colorado Secretary of State identify Niki as the registered agent and founder.

17. The Hills at Santa Clara, Inc. ("The Hills") is a Utah corporation with its principal place of business in St. George, Utah. The Hills is a residential property development company that is developing and selling lots in Washington County, Utah. Utah Division of Corporations records identify Niki as registered agent, director, and president.

18. Santa Clara Hills Holding, LLC ("Hills Holding") is a Utah limited liability company with its principal place of business in St. George, Utah. It serves as the holding company for The Hills. Utah Division of Corporations records identify Sampson as registered

[3] *See* https://securities.utah.gov/dockets/17001009.pdf

agent and manager.[4]

19. Golden Assets, LLC ("Golden Assets") is a Utah limited liability company with its principal place of business in St. George, Utah. Utah Division of Corporations records indicate that between 2009 and November 2014 its members were Niki, as well as Arizona resident James Shepherdson and Utah resident Brent George Theobald. On November 11, 2014, Niki filed documents removing Shepherdson and Theobald as members.

20. Niki, Shooks Run, Wright, The Hills, Hills Holding, and Golden Assets were named as Respondents in an Order to Show Cause filed contemporaneously with this action.[5] Those actions are being resolved through a separate Stipulation and Consent Order.

My IA Business Model

21. My IA provides advisory services to approximately 250 clients but does not directly hold or manage client assets. Rather, My IA acts as a solicitor for other investment advisory firms that invest and manage client monies. My IA receives compensation for referring clients to those firms.

22. Accordingly, My IA's structure and business model do not permit it to take custody of client monies or investments, nor does My IA have discretionary authority to make trades

[4] Utah corporate filings indicate Niki was the initial registered agent and manager in May 2012. On May 25, 2012, the registered agent and manager were changed to Chandy Fabrizio, the wife of a then-investment adviser representative of My IA, Brandon Fabrizio. On August 16, 2012, the registered agent and manager were changed to Sampson.

[5] *See* https://securities.utah.gov/dockets/17000301.pdf

in or withdrawals from client accounts.[6] My IA's Form ADV[7] filed with the Division describes its services as limited to third-party referrals as described above. Significantly, during the relevant period My IA's Form ADV did not disclose any other business activities of Sampson or My IA.

Division Examination

23. In March 2015, the Division conducted an examination of My IA, which revealed that from approximately 2010 through 2015 Sampson solicited My IA clients to invest in other businesses he directly or indirectly owns and controls, including Shooks Run, Wright and Golden Assets, raising more than $6.2 million from at least 26 investors.

24. Sampson provided only general details to investors, who believed they were investing in The Hills at Santa Clara or Sampson's HVAC business, Wright. Sampson provided no financial or disclosure documents to investors, who believed they were making the investments through My IA, and as clients of My IA. In some cases, clients liquidated investments purchased through Sampson's prior recommendations in order to instead invest in his companies.

25. As described further below, in connection with the offer and sale of promissory notes

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[6] Advisers with custody or discretionary authority are subject to additional requirements, including maintaining a bond. *See* Utah Administrative Code Rule R164-4-5(F).

[7] Form ADV is a uniform document used by investment advisers to register with the United States Securities and Exchange Commission ("SEC") or with state securities regulators. Form ADV Part 2 requires investment advisers to prepare narrative brochures written in plain English that contain information such as the types of advisory services offered, the adviser's fee schedule, disciplinary information, conflicts of interest, and the educational and business background of management and key advisory personnel of the adviser. It also requires advisers to disclose business activities apart from their advisory business. The brochure is the primary disclosure document that investment advisers provide to their clients.

issued for those investments, Sampson misrepresented and failed to disclose material facts to investors. Sampson also converted investors' monies for personal use, and used new investor monies to pay interest to prior investors.

26. A significant portion of the monies raised by Sampson were retirement monies. Sampson had clients sign paper work to establish accounts at Equity Trust Company ("Equity Trust"), a custodial company that allows investors to hold non-traditional investments in "self-directed" individual retirement accounts ("IRAs"). Sampson then created online logins and passwords for those accounts, which he then used to withdraw client funds and freely transfer monies among various bank accounts owned and controlled by Sampson.[8]

27. In addition, for investors with non-retirement monies Sampson had clients write checks or wire monies directly to bank accounts he owned or controlled.

28. Investors were not given access to Sampson's bank information, nor were they provided information regarding the nature of the payments that were made with their funds. Investors likewise did not receive statements regarding their account balances. Account statements were instead sent to Sampson.

Sampson's Outside Businesses

Initial Denials

29. Sampson was interviewed three times by the Division: by telephone on March 12 and March 16, 2015, and in person on July 17, 2015.

30. Sampson was not forthcoming with regard to his outside businesses, despite the fact that

[8] Sampson and his wife Niki had signatory authority on the bank accounts through which investors' monies passed.

at least 26 My IA clients had invested in them. For example, when asked about Shooks Run, Sampson initially spoke about it in the past tense, claiming it was just a commercial building he had previously owned in Colorado that had not been an active business for three years. When asked about Wright, he told the Division that he spends "a little bit of time there" but that his wife Niki "runs that company." With regard to Golden Assets, Sampson told the Division "it's my wife's entity" the purpose of which "was just to move real estate in and out of."

31. When specifically asked about any other real estate-related or other businesses or entities owned by him, Sampson answered "Ah, me personally, no. My wife owns some, but I don't own any."

32. After the second telephonic interview, the Division requested additional information and documentation pertaining to the other business entities and Sampson's raising of funds.

33. During his third interview, Sampson acknowledged his role as the principal of The Hills at Santa Clara project as well as of the other entities described above. He also admitted Shooks Run was actually currently active, describing it as an entity that "lends money to The Hills at Santa Clara" and that Golden Assets has lent money to Wright.

34. Sampson further acknowledged he had raised funds from My IA clients for those businesses. He likewise admitted that his wife Niki had minimal involvement in those entities, which were actually managed and controlled by him.

Investor M.R.

35. M.R. was a client of Sampson and My IA who had been friends with Sampson's family and known Sampson since Sampson was a child.

36. On or about May 1, 2012, Sampson approached M.R. to recommend M.R. invest $200,000 in IRA monies with My IA. M.R. agreed and signed a number of documents provided to him by Sampson.

37. Sampson did not disclose the purpose of the documents to M.R., and did not tell him that M.R. would be opening an account with Equity Trust, or that the purpose for the new account was to invest M.R.'s IRA monies with Shooks Run.

38. At that time, M.R. was a retired senior citizen and unsophisticated investor. Sampson was aware that M.R. had health problems. M.R. had invested other retirement monies through My IA which were maintained in an account held at Charles Schwab & Co., Inc. ("Schwab").

39. Sampson told M.R. that his monies would be transferred from Utah Retirement Systems ("URS"), where the monies were then invested, into M.R.'s Schwab account.

40. The documents signed by M.R. included an unsecured promissory note agreement with Shooks Run, in the amount of $200,000 with interest at the rate of 5% per annum and a term of four years. The note indicated that interest-only payments would be made annually with the first payment due June 1, 2013.

41. Although the note is signed by Niki on behalf of Shooks Run, she was not present during the meeting and Sampson represented the investment was made in M.R.'s capacity as a client of My IA.

42. On May 15, 2013, M.R.'s $200,000 was wired from Equity Trust to a Shooks Run account held at J.P. Morgan Chase ("Chase").

43. In connection with the offer and sale of the Shooks Run promissory note, Sampson

directly or indirectly misrepresented material facts including but not limited to:

a. that M.R.'s investment would be made through My IA;

b. that M.R.'s funds would be invested with his other monies at Schwab; and

c. that interest-only payments of 5% would be made annually on the first of the month with the first payment on June 1, 2013.

Those representations were false.

44. In connection with the offer and sale of the Shooks Run promissory note, Sampson failed to disclose material facts, including but not limited to:

a. specific details of the investment, including information describing Shooks Run, its line of business, financial condition, and any information about making an investment in Shooks Run;

b. how M.R's monies would be used;

c. risks associated with the investment;

d. conflicts of interest;

e. that M.R.'s funds would be deposited into Shooks Run's Chase bank account ending in -2256, moved among several other bank accounts controlled by Sampson where it was combined with other investors' monies, and thereafter used to purchase real property;

f. an appraisal of the value of the real property;

g. information about encumbrances on the property;

h. that M.R. would have no legal interest in the real property purchased with his monies;

i. that Shooks Run does not have any ownership interest in the Santa Clara real property;

j. that Sampson would later characterize the investment as a "personal loan";

k. The 5% interest would not actually be added to his account or paid annually but instead falsely added to the purported account value reported by Sampson to Equity Trust;

l. Some or all of the information typically provided in an offering circular or prospectus, such as financial statements, financial history, prior liens, judgments or foreclosures, or track record for Sampson and Shooks Run;

m. a February 15, 2012 judgment against Shooks Run, Niki, and Sampson, in the amount of $785,574 arising from a foreclosure;

n. a September 15, 2011 judgment against Wright and Sampson in the amount of $35,296; and

o. whether the investment was a registered security or exempt from registration.

45. After taking M.R.'s monies, Sampson did not further discuss the investment or provide any statements reflecting the account value at Equity Trust until M.R. inquired about the account in July 2015.[9]

Investor K.R.

46. On or about May 10, 2013, Sampson approached M.R.'s wife K.R. and recommended that she invest $100,000 held in her Mountain America Credit Union checking account with My IA. Sampson told her the monies would be deposited into her Schwab account

[9] M.R. died in June 2016.

with her other monies also invested through My IA. K.R. was an unsophisticated senior investor who had never managed her own portfolio.

47. Following Sampson's instructions, K.R. wrote a check payable to "Shooks" in the amount of $100,000.00. While she thought it was peculiar to write a check to "Shooks" K.R. had, like her husband, known Sampson and his family for many years and trusted him.

48. The documents signed by K.R. included an unsecured promissory note agreement with Shooks Run, in the amount of $100,000 with interest at the rate of 5% per annum and a term of seven years. The note indicates that interest-only payments would be made annually with the first payment due June 1, 2013.

49. Although the note is signed by Niki on behalf of Shooks Run, she was not present during the meeting and Sampson represented the investment was made in K.R.'s capacity as a client of My IA.

50. In connection with the offer and sale of the Shooks Run promissory note, Sampson directly or indirectly misrepresented material facts including but not limited to:

a. that K.R.'s investment would be made through My IA;

b. that K.R.'s funds would be invested with her other monies at Schwab; and

c. that interest-only payments of 5% would be made annually on the first of the month with the first payment on June 1, 2013.

Those representations were false.

51. In connection with the offer and sale of the Shooks Run promissory note, Sampson failed to disclose material facts, including but not limited to:

a. specific details of the investment, including information describing Shooks Run, its line of business, financial condition, and any information about making an investment in Shooks Run;

b. how K.R's monies would be used;

c. risks associated with the investment;

d. conflicts of interest;

e. that K.R.'s funds would be deposited into Shooks Run's Town and Country Bank ("TCB") account ending in -6365 and thereafter used for payments to various individuals and entities that were not disclosed to or authorized by K.R.;

f. that Sampson would later characterize the investment as a "personal loan";

g. the 5% interest would not actually be added to her account or paid annually;

h. Some or all of the information typically provided in an offering circular or prospectus, such as financial statements, financial history, prior liens, judgments or foreclosures, or track record for Sampson and Shooks Run;

i. a February 15, 2012 judgment against Shooks Run, Niki, and Sampson, in the amount of $785,574 arising from a foreclosure;

j. a September 15, 2011 judgment against Wright and Sampson in the amount of $35,296; and

k. whether the investment was a registered security or exempt from registration.

52. Prior to the May 10, 2013 deposit of K.R.'s monies, the Shooks Run TCB account ending in -6365 had a balance of $100.30. Her funds were used as follows:

a. on May 13, 2013, Sampson paid $31,400 to a family member, Sam Sampson. A

handwritten notation on the check says "LOAN";

b. on May 14, 2013, Sampson wired $6,500 to the Equity Trust account of another promissory note investor, D.S.;

c. on May 16, 2013, Sampson transferred $206,000[10] to The Hills at Santa Clara's TCB bank account ending in -8031, including approximately $62,100 of K.R.'s invested funds. Among other things, Sampson used The Hills at Santa Clara monies as follows:

i. on May 16, 2013, $50,000 was paid to Sam Sampson;

ii. on May 16, 2013, Sampson withdrew $50,000 from the account, for which a handwritten notation on the withdrawal slip states "Greg loan";[11]

iii. between May 16 and May 22, 2013 Sampson paid approximately $194,500 to several companies and individuals, including $16,740 to Brandon Fabrizio, and a cash withdrawal of $3,260 by Fabrizio (who also had signature authority on the account), leaving a balance of $1,455.48 in The Hills at Santa Clara account.

53. After taking K.R.'s monies, Sampson did not further discuss the investment with her until K.R. inquired about the account in July 2015.

Investor J.J.

54. J.J. was another My IA client of Sampson's who has known the Sampson family for more than twenty years. He was 64 years old, retired, and not an experienced investor.

[10] Other investor monies had been deposited in the bank account following the deposit of K.R.'s funds.

[11] Greg Sampson is the twin brother of Sampson.

55. In August 2015, Sampson approached J.J. and recommended that J.J. liquidate $367,000 held in an IRA account with Millennium Trust Company ("Millennium Trust"). Those monies were in an investment previously recommended by Sampson.

56. Sampson characterized the new opportunity as an investment in a Santa Clara residential development and told J.J. his monies would be used for land development only.

57. J.J. had relied on Sampson for prior retirement investment recommendations and trusted him. He agreed to invest and signed a promissory note issued by Shooks Run, which would pay 9% interest per year. Sampson told J.J. the note would be secured by the property in Santa Clara.

58. J.J. believed he was making the investment as a client of My IA.

59. In connection with the offer and sale of the Shooks Run promissory note, Sampson directly or indirectly misrepresented material facts including but not limited to:

a. that J.J.'s investment would be made through My IA;

b. that J.J.'s funds would be secured by real property; and

c. that J.J.'s monies would only be used for land development; and

d. that the investment would pay J.J. interest of 9% per year, purportedly generated from the revenue of the land development.

Those representations were false.

60. In connection with the offer and sale of the Shooks Run promissory note, Sampson failed to disclose material facts, including but not limited to:

a. that Shooks Run does not have any ownership interest in the Santa Clara real property;

b. that J.J.'s interest in Shooks Run is not secured by any interest in the real property;

c. an appraisal of the value of the real property;

d. information about encumbrances on the property;

e. specific details about the investment, including information describing Shooks Run, its line of business, financial condition, and any information about making an investment in Shooks Run;

f. risks associated with the investment;

g. conflicts of interest;

h. that contrary to Sampson's representations, J.J.'s funds would be deposited into Shooks Run's Chase bank account ending in -2256 and thereafter used for purposes not disclosed to or authorized by J.J., including payments to prior investors and to other businesses owned and controlled by Sampson unrelated to the Santa Clara project;

i. that Sampson would later characterize the investment as a "personal loan";

j. the 9% interest would not actually be added to his account or paid annually;

k. some or all of the information typically provided in an offering circular or prospectus, such as the financial condition of Shooks Run, financial statements, financial history, prior liens, judgments or foreclosures, or track record for Sampson and Shooks Run;

l. a February 15, 2012 judgment against Shooks Run, Niki, and Sampson, in the amount of $785,574 arising from a foreclosure;

m. a September 15, 2011 judgment against Wright and Sampson in the amount of $35,296; and

n. whether the investment was a registered security or exempt from registration.

61. On or about August 3, 2015, Sampson transferred $367,123 from J.J.'s Millennium Trust account to Shooks Run's Chase account ending in -2256. Prior to that deposit, the bank account had a balance of $1,320. The funds were then used as follows:

a. on August 14, 2015, Sampson transferred $167,123 to Golden Assets' Chase account ending in -1993, after which $167,123 was then transferred to the Equity Trust account of a prior investor, J.M., as a payment on his investment;

b. on August 14, 2015, Sampson paid $10,060 to another prior investor, L.B.;

c. on August 18, 2015, Sampson wired $55,260 to the Equity Trust account of another prior investor, K.L., as a payment on her investment;

d. on August 19, 2015 Sampson withdrew the remaining $134,000 and deposited that amount in a Zions Bank account.[12]

Similar Misrepresentations, Non-Disclosure and Misuse of Other Investors' Monies

62. Division interviews with other My IA client investors indicate that Sampson made misrepresentations and omissions similar to those described above to other investors, who were also given unsecured promissory notes with varying interest rates and maturity dates. With few exceptions[13] the notes were all signed by Niki on behalf of the issuing entity.

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[12] The subsequent use of those monies is unknown at this time.

[13] Of the notes reviewed by the Division, Sampson signed five notes on behalf of Shooks Run or Golden Assets, despite lacking any corporate authority to do so.

63. Like the investors described above, others also believed they were making investments, not personal loans, and that they were doing so in their capacity as clients of Sampson and My IA.

64. In addition, bank records indicate similar misuse of other investors' monies. There are numerous instances of Sampson using investors' monies for unauthorized purposes unrelated to what investors were told, including Ponzi-style payments to previous investors, deposits to Sampson's personal bank accounts, and frequent transfer of funds among Sampson's entities.

65. Some investors were told by Sampson that their monies would be used in the Santa Clara property development. Sampson did not disclose, however, that he would also use their monies for his unrelated Colorado HVAC business, Wright. In other cases, the investor received a promissory note from Golden Assets; but rather than being used for that business, investor monies were deposited into Shooks Run accounts and putatively used for the Santa Clara project, among other things.

66. While Sampson had full access to investors' accounts, the investors did not, and did not regularly receive account statements. When the question of account statements was raised, in some cases only after the Division's inquiry, Sampson made assurances to investors that included claims that their account values were increasing in accordance with the terms of their notes, when in fact, they were not.

67. Approximately 44% of the $6,250,218 of investor monies raised by Sampson was used in a manner inconsistent with what Sampson told investors, including but not limited to:

a. at least $1,231,639 was used by Sampson for personal purposes through his

transfer of the monies to a personal account, accounts unrelated to any legitimate business purpose and/or family investment accounts;

b. at least $661,109 was used to pay earlier investors or make "interest" payments to other investors;

c. at least $412,235 of Shooks Run investor monies were used for payments pertaining to Golden Assets and/or Wright;

d. at least $126,000 of Golden Assets and/or Wright investor monies were used for payments pertaining to Shooks Run; and

e. at least $321,261 in cash withdrawals, to pay the balance in overdrawn accounts, or for other unidentifiable transactions.

Form ADV - False Filings Made to Division

68. As described above, investment advisers are required file Form ADV with the Division as part of the application process and must promptly file correcting amendments when any material changes occur.[14]

69. My IA's Form ADV did not contain complete and accurate material information about My IA and Sampson's outside business activities, as required by Utah Administrative Code ("UAC") Rule R164-4-3(E)(1)(d).

70. Form ADV did not disclose the existence of and extent of Sampson's outside business activities, including Sampson's solicitation of advisory clients. Form ADV did not

[14] *See* Utah Code Ann. § 61-1-5(4).

provide material disclosures about the investments or the conflicts of interest presented by Sampson's solicitations and investments.[15]

71. Form ADV likewise did not disclose that My IA and Sampson offered securities in the form of promissory notes to clients.

72. In addition, My IA's Form ADV falsely claimed that My IA and Sampson did not take custody of client monies or exercise discretion in client accounts, both of which claims are false as evidenced by Sampson's depositing or transferring client monies into bank accounts he owned and controlled, and his use of those monies to pay personal expenses or the obligations of entities he controlled, or to pay earlier investors "returns" on their investments.

Criminal Action

73. On or about January 11, 2018, the United States Attorney filed federal felony charges of securities fraud against Sampson arising from the conduct described herein, Case No. 2:18-cr-00019. On February 7, 2018 Sampson pled guilty to one count of felony securities fraud before the United States District Court for the Central District of Utah. On September 5, 2019 Sampson was sentenced to federal prison for a period of thirty-six months and ordered to pay restitution in the amount of $3,089,783.23.[16]

II. CONCLUSIONS OF LAW

Securities Fraud – Misrepresentations or Omissions under § 61-1-1(2) of the Act

[15] When interviewed by the Division, Sampson characterized the investments by My IA clients as "loans" – a claim clearly at odds with what he told clients at the time of solicitation. Regardless, Form ADV likewise did not disclose that Sampson would seek "loans" from clients, which as described further below, constitutes a dishonest or unethical business practice under Utah Admin. Code Rule R164-6-1g(E)(6).

[16] As of the sentencing date, Sampson had paid back approximately $1,091,884 to investors.

74. As described herein, in connection with the offer, sale or purchase of securities, Sampson directly or indirectly misrepresented material facts or omitted material facts necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading, in violation of Section 61-1-1(2) of the Act.

Securities Fraud – Act, Practice, or Course of Business Operating as a Fraud or Deceit under § 61-1-1(3) of the Act

75. As described herein, in connection with the offer, sale or purchase of securities, Sampson directly or indirectly engaged in an act, practice, or course of business which operated as a fraud or deceit on My IA clients, in violation of Section 61-1-1(3) of the Act. That conduct includes but is not limited to Sampson's conversion and misuse of client monies for purposes not disclosed to or authorized by investors, including personal use of monies, Ponzi payments to prior investors, and use in Sampson's unrelated businesses.

Unlawful Acts of Investment Adviser under § 61-1-2 of the Act

76. As described herein, Sampson engaged in unlawful acts in violation of Section 61-1-2(1)(b) of the Act by engaging in an act, practice, or course of business operating as a fraud or deceit on My IA clients. That conduct includes but is not limited to Sampson's conversion and misuse of client monies for purposes not disclosed to or authorized by investors, including personal use of monies, Ponzi payments to prior investors, and use in Sampson's unrelated businesses.

77. In addition, taking custody of clients' funds or securities without complying with Utah Admin. Code Rule R164-2-2(B) – which requires compliance with Rule 206(4)-2 of the Investment Advisers Act of 1940 – constitutes unlawful conduct deemed to be fraudulent,

manipulative, or deceptive acts, practices or a course of business, in violation of Section 61-1-2(3) of the Act. Respondents did not comply with Rule 206(4)-2.[17]

False Statements to Division Under § 61-1-16 of the Act

78. As described herein, Sampson through My IA's Form ADV and in interviews with the Division made materially false representations to the Division about My IA and Sampson, and failed to disclose material information about the investments he offered and sold to clients.

Sale of Unregistered Securities Under § 61-1-7 of the Act

79. The promissory notes offered and sold by Sampson are securities as defined under Section 61-1-13 of the Act. They were not registered with the Division, do not qualify for any exemption from registration, and are not federal covered securities for which any notice filing was made, in violation of Section 61-1-7 of the Act.

Dishonest or Unethical Practices under § 61-1-6 of the Act

Unsuitable Recommendations

80. By making unsuitable recommendations that clients invest in Sampson's outside businesses without reasonable grounds to believe such investments were suitable in light of investor objectives, financial situations and needs, and other information known by Sampson, Sampson engaged in dishonest or unethical practices under Utah Admin. Code Rule R164-6-1g(E)(1), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

Unauthorized Discretionary Power

[17] Rule 206(4)-2 imposes specific safekeeping requirements upon advisers with custody, none of which were complied with by Respondents.

81. By exercising discretionary power by, among other things, obtaining login information for client brokerage accounts at Equity Trust without obtaining written discretionary authority from clients, Sampson engaged in dishonest or unethical practices under Utah Admin. Code Rule R164-6-1g(E)(2), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

Misrepresenting Qualifications

82. Sampson misrepresented his qualifications to clients, the nature of My IA's advisory services, and omitted material facts to make his representations, under the circumstances under which they were made, not misleading. That conduct includes, but is not limited to, telling clients the investments were offered through My IA to the clients in their capacity as My IA clients, misrepresenting Sampson's experience in real estate projects, and representing that real estate was an appropriate retirement investment for clients. In so doing, Sampson engaged in dishonest or unethical practices under Utah Admin. Code Rule R164-6-1g(E)(8), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

Conflicts of Interest

83. Sampson failed to disclose to clients in writing and before the rendering of advice the material conflicts of interest relating to My IA and Sampson, which could reasonably be expected to impair the rendering of unbiased and objective advice. Sampson's conduct constitutes dishonest or unethical practices under Utah Admin. Code Rule R164-6-1g(E)(11), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

Custody of Client Assets

84. By taking custody or possession of client funds without complying with the requirements of Rule 206(4)-2 of the Investment Advisers Act of 1940, Sampson engaged in dishonest or unethical practices under Utah Admin. Code Rule R164-6-1g(E)(15), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

Breach of Fiduciary Duty

85. As described herein, Sampson engaged in numerous fraudulent acts and dishonest and unethical practices in the securities industry. Sampson's misconduct demonstrates a complete, utter abandonment of and disregard for the fiduciary duty he owed to clients – unsophisticated, elderly investors who trusted that Sampson would put the clients' best interests ahead of Sampson's own – a dishonest or unethical practice under R164-6-1g(E), warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

III. REMEDIAL ACTIONS/SANCTIONS

86. Sampson admits the Division's Findings and Conclusions and consents to the sanctions below being imposed by the Division.

87. Sampson agrees to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in this state.

88. Sampson agrees to be barred from associating with any broker-dealer or investment adviser licensed in Utah, and from acting as an agent of any issuer soliciting investor monies in Utah.

89. Pursuant to Section 61-1-6 and in consideration of the factors set forth in Section 61-1-31, the Division imposes a fine of $1,000,000.00. The fine shall be offset by restitution paid by Sampson as ordered in the criminal action.

IV. FINAL RESOLUTION

90. Respondent acknowledges that this Order, upon approval by the Utah Securities Commission ("Commission"), shall be the final compromise and settlement of this matter. Respondent acknowledges that the Commission is not required to approve this Order, in which case the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, Respondent expressly waives any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

91. If Respondent materially violates any term of this Order, after notice and an opportunity to be heard before an administrative law judge solely as to the issue of a material violation, Respondent consents to entry of an order requiring he pay a fine of $100,000 due immediately, with no offset for restitution paid. Notice of the violation will be provided to Respondent's counsel and sent to Respondent's last known address. If Respondent fails to request a hearing within ten (10) days following notice there will be no hearing and the order granting relief will be entered. In addition, the Division may institute judicial proceedings against Respondent in any court of competent jurisdiction and take any other action authorized by the Act or under any other applicable law to collect monies owed by Respondent or to otherwise enforce the terms of this Order. Respondent further agrees to be liable for all reasonable attorneys' fees and costs

associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

92. Respondent acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Respondent also acknowledges that any civil, criminal, arbitration or other causes of actions brought by third-parties against him have no effect on, and do not bar, this administrative action by the Division against him.

93. This 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 Order in any way. Upon entry of the Order, any further scheduled hearings are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 30th day of October, 2019

K Barton

Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Approved:

Jennifer Korb

Dated this 11 day of OCTOBER 2019

Erik Larson Sampson

ERIC

Approved:

Mark W. Pugsley

Assistant Attorney General
Counsel for Division

Counsel for Respondent

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which are admitted by Respondent, are hereby entered.
2. Respondent shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in this state.
3. Respondent is barred from associating with any broker-dealer or investment adviser licensed in Utah, and from acting as an agent for any issuer soliciting investor monies in Utah.
4. Pursuant to Section 61-1-6 of the Act, in consideration of the factors set forth in Section 61-1-31, Respondent shall pay a fine of $1,000,000.00, which shall be offset by restitution paid by Sampson as ordered in the criminal action.

BY THE UTAH SECURITIES COMMISSION:

DATED this 7th day of November, 2019

Brent Cochran

Gary Cornia

Peggy Hunt

Lyndon Ricks

Lyle White

CERTIFICATE OF MAILING

I certify that on the 7th day of November, 2019, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

Mark W. Pugsley
RAY QUINNEY & NEBEKER
36 S. State Street, Suite 1400
Salt Lake City, UT 84111
Counsel for Respondent

Executive Secretary

Division of Securities
Utah Department of Commerce
160 East 300 South
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801) 530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:	**STIPULATION AND CONSENT ORDER**
NIKI SAMPSON **SHOOKS RUN, LLC** **WRIGHT TOTAL INDOOR COMFORT, INC.** **THE HILLS AT SANTA CLARA, INC.** **SANTA CLARA HILLS HOLDING, LLC** **GOLDEN ASSETS, LLC** **Respondents.**	**Docket No. SD-17-0003** **Docket No. SD-17-0004** **Docket No. SD-17-0005** **Docket No. SD-17-0006** **Docket No. SD-17-0007** **Docket No. SD-17-0008**

The Utah Division of Securities ("Division"), by and through its Director of Compliance, Kenneth O. Barton, and Respondents Niki Sampson, Shooks Run, LLC, Wright Total Indoor Comfort, Inc., The Hills at Santa Clara, Inc., Santa Clara Hills Holding, LLC, and Golden Assets, LLC (collectively referred to at times as "Respondents") hereby stipulate and agree as follows:

1. Respondents have been the subject of an examination by the Division into allegations that they violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. § 61-1-1, *et seq.*, as amended.

2. On or about January 20, 2017 the Division initiated an administrative action against

Respondents by filing an Order to Show Cause.

3. Respondents hereby agree to settle this matter with the Division by way of this Stipulation and Consent Order ("Order"). If entered, the Order will fully resolve all claims the Division has against Respondents pertaining to the Order to Show Cause.

4. Respondents admit that the Division has jurisdiction over them and the subject matter of this action.

5. Respondents hereby waive any right to a hearing to challenge the Division's evidence and present evidence on their behalf.

6. Respondents have read this Order, understand its contents, and voluntarily agree to the entry of the Order as set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Respondents to enter into this Order, other than as described in this Order.

7. Respondents are represented by the law firm of Ray Quinney & Nebeker P.C. and are satisfied with the legal representation they have received.

The Parties

8. Niki Sampson ("Niki") is a St. George, Utah resident. She has never been licensed in the securities industry in any capacity. During the period relevant to this action, approximately 2010 through July 2016 ("relevant period"), records filed with the Utah Division of Corporations identified her as the president and registered agent of My Investment Advisor, Inc. ("My IA"), IARD#144616.

9. My IA is a Delaware corporation that is licensed with the Division as an investment adviser firm with its principal place of business in Washington, Utah.

10. During the relevant period, Niki's husband Eric Larson Sampson ("Sampson"), CRD#3269514, was licensed as an investment adviser representative of My IA. According to records contained in the Central Registration Depository ("CRD")[1] Sampson was the president and majority owner of My IA and was the firm's designated official until September 1, 2016 when he terminated his employment and requested termination of his securities licenses.

11. Shooks Run, LLC ("Shooks Run") is a Colorado limited liability corporation with a registered address in Colorado and a mailing address in St. George, Utah. Corporate records filed with the Colorado Secretary of State identify Niki as the registered agent and founder.

12. Wright Total Indoor Comfort, Inc. ("Wright") is a Colorado corporation with its principal place of business in Colorado Springs, Colorado. Wright is a heating and air conditioning ("HVAC") business controlled by Sampson. Corporate records filed with the Colorado Secretary of State identify Niki as the registered agent and founder.

13. The Hills at Santa Clara, Inc. ("The Hills") is a Utah corporation with its principal place of business in St. George, Utah. The Hills is a residential property development company that is developing and selling lots in Washington County, Utah. Utah Division of Corporations records identify Niki as registered agent, director, and president.

14. Santa Clara Hills Holding, LLC ("Hills Holding") is a Utah limited liability company with its principal place of business in St. George, Utah. It serves as the holding company

[1] CRD is an electronic database maintained by the Financial Industry Regulatory Authority and the states. Among other things, CRD contains licensing and disciplinary information on broker-dealers, investment advisers, agents, and investment adviser representatives.

for The Hills. Utah Division of Corporations records identify Sampson as registered agent and manager.[2]

15. Golden Assets, LLC ("Golden Assets") is a Utah limited liability company with its principal place of business in St. George, Utah. Utah Division of Corporations records indicate that between 2009 and November 2014 its members were Niki, as well as Arizona resident James Shepherdson and Utah resident Brent George Theobald. On November 11, 2014, Niki filed documents removing Shepherdson and Theobald as members.

16. My IA and Sampson were named as respondents in a Petition filed contemporaneously with this action.[3] My IA has new ownership and the action against it previously settled through a Stipulation and Consent Order.[4] The action against Sampson is being resolved through a separate Stipulation and Consent Order.

Fraudulent Scheme through My IA and Respondents

17. In March 2015, the Division conducted an examination of My IA, which revealed that from approximately 2010 through 2015 Sampson solicited My IA clients to invest in other businesses he directly or indirectly owns and controls – including Respondents Shooks Run, Wright and Golden Assets – raising more than $6.2 million from at least 26 investors.

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[2] Utah corporate filings indicate Niki was the initial registered agent and manager in May 2012. On May 25, 2012, the registered agent and manager were changed to Chandy Fabrizio, the wife of a then-investment adviser representative of My IA, Brandon Fabrizio. On August 16, 2012, the registered agent and manager were changed to Sampson.
[3] *See* https://securities.utah.gov/dockets/17000901.pdf
[4] *See* https://securities.utah.gov/dockets/17001009.pdf

18. Sampson provided only general details to investors, who believed they were investing in The Hills at Santa Clara or Sampson's HVAC business, Wright. Sampson provided no financial or disclosure documents to investors, who believed they were making the investments through My IA, and as clients of My IA. In some cases, clients liquidated investments purchased through Sampson's prior recommendations in order to instead invest in his companies.

19. In connection with the offer and sale of promissory notes issued for those investments, Shooks Run, Wright, and Golden Assets, through Sampson and Niki, misrepresented and failed to disclose material facts to investors. In addition, investors' monies were converted by the Respondents for personal use, and new investor monies were used to pay interest to prior investors.

20. Promissory notes were issued by Shooks Run, Wright, and Golden Assets (collectively referred to at times as "the Issuers"), and signed by Niki. Although Sampson rather than Niki met with the investors, with few exceptions Niki signed the notes on behalf of the Issuers.[5] Investor monies were thereafter transferred among the Respondent entities controlled by Sampson and Niki and used for the benefit of the Respondents and others. Niki and Sampson had signatory authority on and controlled the bank accounts through which investors' monies passed.

21. A significant portion of the monies raised by the Issuers were retirement monies. Sampson had clients sign paper work to establish accounts at Equity Trust Company

[5] Of the notes reviewed by the Division, Sampson signed five notes on behalf of Shooks Run or Golden Assets, despite lacking any corporate authority to do so.

("Equity Trust"), a custodial company that allows investors to hold non-traditional investments in "self-directed" individual retirement accounts ("IRAs"). Sampson then created online logins and passwords for those accounts, which he then used to withdraw client funds and freely transfer monies among various bank accounts owned and controlled by Sampson and Niki.

22. In addition, for investors with non-retirement monies Sampson had clients write checks or wire monies directly to bank accounts he and Niki owned and controlled.

23. Investors were not given access to Respondents' bank information, nor were they provided information regarding the nature of the payments that were made with investor funds. Investors likewise did not receive statements regarding their account balances. Account statements were instead sent to Sampson.

Sampson Businesses – Issuers, Hills and Hills Holding

Initial Denials

24. Sampson was interviewed three times by the Division: by telephone on March 12 and March 16, 2015, and in person on July 17, 2015.

25. Sampson was not forthcoming with regard to his outside businesses, despite the fact that at least 26 My IA clients had invested in them. For example, when asked about Shooks Run, Sampson initially spoke about it in the past tense, claiming it was just a commercial building he had previously owned in Colorado that had not been an active business for three years. When asked about Wright, he told the Division that he spends "a little bit of time there" but that his wife Niki "runs that company." With regard to Golden Assets, Sampson told the Division "it's my wife's entity" the purpose of which "was just to move

real estate in and out of."

26. When specifically asked about any other real estate-related or other businesses or entities owned by him, Sampson answered "Ah, me personally, no. My wife owns some, but I don't own any."

27. After the second telephonic interview, the Division requested additional information and documentation pertaining to the other business entities and Sampson's raising of funds.

28. During his third interview, Sampson acknowledged his role as the principal of The Hills at Santa Clara project as well as of the other entities described above. He also admitted Shooks Run was actually currently active, describing it as an entity that "lends money to The Hills at Santa Clara" and that Golden Assets has lent money to Wright.

29. Sampson further acknowledged he had raised funds from My IA clients for those businesses. He likewise admitted that his wife Niki signed the promissory notes but had minimal involvement in those entities, which were actually managed and controlled by him.

Investor M.R.

30. M.R. was a client of Sampson and My IA who had been friends with Sampson's family and known Sampson since Sampson was a child.

31. On or about May 1, 2012, Sampson approached M.R. to recommend M.R. invest $200,000 in IRA monies with My IA. M.R. agreed and signed a number of documents provided to him by Sampson.

32. Sampson did not disclose the purpose of the documents to M.R., and did not tell him that M.R. would be opening an account with Equity Trust, or that the purpose for the new

account was to invest M.R.'s IRA monies with Shooks Run.

33. At that time, M.R. was a retired senior citizen and unsophisticated investor. Sampson was aware M.R. had health problems. M.R. had invested other retirement monies through My IA which were maintained in an account held at Charles Schwab & Co., Inc. ("Schwab").

34. Sampson told M.R. that his monies would be transferred from Utah Retirement Systems ("URS"), where the monies were then invested, into M.R.'s Schwab account.

35. The documents signed by M.R. included an unsecured promissory note agreement with Shooks Run, in the amount of $200,000 with interest at the rate of 5% per annum and a term of four years. The note indicates that interest-only payments would be made annually with the first payment due June 1, 2013.

36. Although the note is signed by Niki on behalf of Shooks Run, she was not present during the meeting and Sampson represented the investment was made in M.R.'s capacity as a client of My IA.

37. On May 15, 2013, M.R.'s $200,000 was wired from Equity Trust to a Shooks Run account held at J.P. Morgan Chase ("Chase"). Sampson and Niki held signatory authority on that account.

38. In connection with the offer and sale of the Shooks Run promissory note, Sampson, Shooks Run and Niki directly or indirectly misrepresented material facts including but not limited to:

a. that M.R.'s investment would be made through My IA;

b. that M.R.'s funds would be invested with his other monies at Schwab; and

c. that interest-only payments of 5% would be made annually on the first of the month with the first payment on June 1, 2013.

Those representations were false.

39. In connection with the offer and sale of the Shooks Run promissory note, Sampson, Shooks Run and Niki failed to disclose material facts, including but not limited to:

a. specific details of the investment, including information describing Shooks Run, its line of business, financial condition, and any information about making an investment in Shooks Run;

b. how M.R's monies would be used;

c. risks associated with the investment;

d. conflicts of interest;

e. that M.R.'s funds would be deposited into Shooks Run's Chase bank account ending in -2256, moved among several other bank accounts controlled by Sampson where it was combined with other investors' monies, and thereafter used to purchase real property;

f. an appraisal of the value of the real property;

g. information about encumbrances on the property;

h. that M.R. would have no legal interest in the real property purchased with his monies;

i. that Shooks Run does not have any ownership interest in the Santa Clara real property;

j. that Sampson would later characterize the investment as a "personal loan";

k. The 5% interest would not actually be added to his account or paid annually but instead falsely added to the purported account value reported by Sampson to Equity Trust;

l. Some or all of the information typically provided in an offering circular or prospectus, such as financial statements, financial history, prior liens, judgments or foreclosures, or track record for Sampson and Shooks Run;

m. a February 15, 2012 judgment against Shooks Run, Niki, and Sampson, in the amount of $785,574 arising from a foreclosure;

n. a September 15, 2011 judgment against Wright and Sampson in the amount of $35,296; and

o. whether the investment was a registered security or exempt from registration.

40. After taking M.R.'s monies, Sampson did not further discuss the investment or provide any statements reflecting the account value at Equity Trust until M.R. inquired about the account in July 2015.[6]

Investor K.R.

41. On or about May 10, 2013, Sampson approached M.R.'s wife K.R. and recommended that she invest $100,000 held in her Mountain America Credit Union checking account with My IA. Sampson told her the monies would be deposited into her Schwab account with her other monies also invested through My IA. K.R. was an unsophisticated senior investor who had never managed her own portfolio.

42. Following Sampson's instructions, K.R. wrote a check payable to "Shooks" in the

[6] M.R. died in June 2016.

amount of $100,000.00. While she thought it was peculiar to write a check to "Shooks" K.R. had, like her husband, known Sampson and his family for many years and trusted him.

43. The documents signed by K.R. included an unsecured promissory note agreement with Shooks Run, in the amount of $100,000 with interest at the rate of 5% per annum and a term of seven years. The note indicates that interest-only payments would be made annually with the first payment due June 1, 2013.

44. Although the note is signed by Niki on behalf of Shooks Run, she was not present during the meeting and Sampson represented the investment was made in K.R.'s capacity as a client of My IA.

45. In connection with the offer and sale of the Shooks Run promissory note, Sampson, Shooks Run and Niki directly or indirectly misrepresented material facts including but not limited to:

a. that K.R.'s investment would be made through My IA;

b. that K.R.'s funds would be invested with her other monies at Schwab; and

c. that interest-only payments of 5% would be made annually on the first of the month with the first payment on June 1, 2013.

Those representations were false.

46. In connection with the offer and sale of the Shooks Run promissory note, Sampson, Shooks Run and Niki failed to disclose material facts, including but not limited to:

a. specific details of the investment, including information describing Shooks Run,

its line of business, financial condition, and any information about making an investment in Shooks Run;

b. how K.R's monies would be used;

c. risks associated with the investment;

d. conflicts of interest;

e. that K.R.'s funds would be deposited into Shooks Run's Town and Country Bank ("TCB") account ending in -6365 and thereafter used for payments to various individuals and entities that were not disclosed to or authorized by K.R.;

f. that Sampson would later characterize the investment as a "personal loan";

g. the 5% interest would not actually be added to her account or paid annually;

h. Some or all of the information typically provided in an offering circular or prospectus, such as financial statements, financial history, prior liens, judgments or foreclosures, or track record for Sampson and Shooks Run;

i. a February 15, 2012 judgment against Shooks Run, Niki, and Sampson, in the amount of $785,574 arising from a foreclosure;

j. a September 15, 2011 judgment against Wright and Sampson in the amount of $35,296; and

k. whether the investment was a registered security or exempt from registration.

47. Prior to the May 10, 2013 deposit of K.R.'s monies, the Shooks Run TCB account ending in -6365 had a balance of $100.30. Her funds were used as follows:

a. on May 13, 2013, Sampson paid $31,400 to a family member, Sam Sampson. A handwritten notation on the check says "LOAN";

b. on May 14, 2013, Sampson wired $6,500 to the Equity Trust account of another promissory note investor, D.S.;

c. on May 16, 2013, Sampson transferred $206,000[7] to The Hills at Santa Clara's TCB bank account ending in -8031, including approximately $62,100 of K.R.'s invested funds. Among other things, Sampson used The Hills at Santa Clara monies as follows:

i. on May 16, 2013, $50,000 was paid to Sam Sampson;

ii. on May 16, 2013, Sampson withdrew $50,000 from the account, for which a handwritten notation on the withdrawal slip states "Greg loan";[8]

iii. between May 16 and May 22, 2013 Sampson paid approximately $194,500 to several companies and individuals, including $16,740 to Brandon Fabrizio, and a cash withdrawal of $3,260 by Fabrizio (who also had signature authority on the account), leaving a balance of $1,455.48 in The Hills at Santa Clara account.

48. After taking K.R.'s monies, Sampson did not further discuss the investment with her until K.R. inquired about the account in July 2015.

Investor J.J.

49. J.J. was another My IA client of Sampson's who has known the Sampson family for more than twenty years. He was 64 years old, retired, and not an experienced investor.

50. In August 2015, Sampson approached J.J. and recommended that J.J. liquidate $367,000

[7] Other investor monies had been deposited in the bank account following the deposit of K.R.'s funds.

[8] Greg Sampson is the twin brother of Sampson.

held in an IRA account with Millennium Trust Company ("Millennium Trust"). Those monies were in an investment previously recommended by Sampson.

51. Sampson characterized the new opportunity as an investment in a Santa Clara residential development and told J.J. his monies would be used for land development only.

52. J.J. had relied on Sampson for prior retirement investment recommendations and trusted him. He agreed to invest and signed a promissory note issued by Shooks Run, which would pay 9% interest per year. Sampson told J.J. the note would be secured by the property in Santa Clara.

53. J.J. believed he was making the investment as a client of My IA.

54. In connection with the offer and sale of the Shooks Run promissory note, Sampson, Shooks Run and Niki directly or indirectly misrepresented material facts including but not limited to:

a. that J.J.'s investment would be made through My IA;

b. that J.J.'s funds would be secured by real property; and

c. that J.J.'s monies would only be used for land development; and

d. that the investment would pay J.J. interest of 9% per year, purportedly generated from the revenue of the land development.

Those representations were false.

55. In connection with the offer and sale of the Shooks Run promissory note, Sampson, Shooks Run and Niki failed to disclose material facts, including but not limited to:

a. that Shooks Run does not have any ownership interest in the Santa Clara real property;

b. that J.J.'s interest in Shooks Run is not secured by any interest in the real property;

c. an appraisal of the value of the real property;

d. information about encumbrances on the property;

e. specific details about the investment, including information describing Shooks Run, its line of business, financial condition, and any information about making an investment in Shooks Run;

f. risks associated with the investment;

g. conflicts of interest;

h. that contrary to Sampson's representations, J.J.'s funds would be deposited into Shooks Run's Chase bank account ending in -2256 and thereafter used for purposes not disclosed to or authorized by J.J., including payments to prior investors and to other businesses owned and controlled by Sampson unrelated to the Santa Clara project;

i. that Sampson would later characterize the investment as a "personal loan";

j. the 9% interest would not actually be added to his account or paid annually;

k. some or all of the information typically provided in an offering circular or prospectus, such as the financial condition of Shooks Run, financial statements, financial history, prior liens, judgments or foreclosures, or track record for Sampson and Shooks Run;

l. a February 15, 2012 judgment against Shooks Run, Niki, and Sampson, in the amount of $785,574 arising from a foreclosure;

m. a September 15, 2011 judgment against Wright and Sampson in the amount of $35,296; and

n. whether the investment was a registered security or exempt from registration.

56. On or about August 3, 2015, Sampson transferred $367,123 from J.J.'s Millennium Trust account to Shooks Run's Chase account ending in -2256. Prior to that deposit, the bank account had a balance of $1,320. The funds were then used as follows:

a. on August 14, 2015, Sampson transferred $167,123 to Golden Assets' Chase account ending in -1993, after which $167,123 was then transferred to the Equity Trust account of a prior investor, J.M., as a payment on his investment;

b. on August 14, 2015, Sampson paid $10,060 to another prior investor, L.B.;

c. on August 18, 2015, Sampson wired $55,260 to the Equity Trust account of another prior investor, K.L., as a payment on her investment;

d. on August 19, 2015 Sampson withdrew the remaining $134,000 and deposited that amount in a Zions Bank account.[9]

Similar Misrepresentations, Non-Disclosure and Misuse of Other Investors' Monies

57. Division interviews with other My IA client investors indicate that the Issuers, through Sampson and Niki, made misrepresentations and omissions similar to those described above to other investors, who were also given unsecured promissory notes with varying interest rates and maturity dates. The notes were signed by Niki on behalf of the Issuers.

58. Like the investors described above, others also believed they were making investments, not personal loans, and that they were doing so in their capacity as clients of Sampson

[9] The subsequent use of those monies is unknown at this time.

and My IA.

59. In addition, bank records indicate similar misuse of other investors' monies. There are numerous instances of Sampson using investors' monies for unauthorized purposes unrelated to what investors were told, including Ponzi-style payments to previous investors, deposits to Sampson's personal bank accounts, and frequent transfer of funds among Sampson's entities.

60. Some investors were told by Sampson that their monies would be used in the Santa Clara property development. Sampson did not disclose, however, that he would also use their monies for his unrelated Colorado HVAC business, Wright. In other cases, the investor received a promissory note from Golden Assets; but rather than being used for that business, investor monies were deposited into Shooks Run accounts and putatively used for the Santa Clara project, among other things.

61. While Sampson had full access to investors' accounts, the investors did not, and did not regularly receive account statements. When the question of account statements was raised, in some cases only after the Division's inquiry, Sampson made assurances to investors that included claims that their account values were increasing in accordance with the terms of their notes, when in fact, they were not.

62. Approximately 44% of the $6,250,218 of investor monies raised by Sampson was used in a manner inconsistent with what Sampson and Respondents told investors, including but not limited to:

    a. at least $1,231,639 was used by Sampson for personal purposes through his transfer of the monies to a personal account, accounts unrelated to any legitimate

business purpose and/or family investment accounts;

b. at least $661,109 was used to pay earlier investors or make "interest" payments to other investors;

c. at least $412,235 of Shooks Run investor monies were used for payments pertaining to Golden Assets and/or Wright;

d. at least $126,000 of Golden Assets and/or Wright investor monies were used for payments pertaining to Shooks Run; and

e. at least $321,261 in cash withdrawals, to pay the balance in overdrawn accounts, or for other unidentifiable transactions.

Criminal Case Against Sampson

63. On or about January 11, 2018, the United States Attorney filed federal felony charges of securities fraud against Sampson arising from the conduct described herein, Case No. 2:18-cr-00019. On February 7, 2018 Sampson pled guilty to one count of felony securities fraud before the United States District Court for the Central District of Utah. On September 5, 2019 Sampson was sentenced to federal prison for a period of thirty-six months and ordered to pay restitution in the amount of $3,089,783.23.[10]

II. CONCLUSIONS OF LAW

Securities Fraud – Misrepresentations or Omissions under § 61-1-1(2) of the Act
(Niki, Shooks Run, Wright, Golden Assets)

63. As described herein, in connection with the offer, sale or purchase of securities, Respondents directly or indirectly misrepresented material facts or omitted material facts

[10] As of the sentencing date, Sampson had paid back approximately $1,091,884 to investors.

necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading, in violation of Section 61-1-1(2) of the Act.

Securities Fraud – Act, Practice, or Course of Business Operating as a Fraud or Deceit under § 61-1-1(3) of the Act
(All Respondents)

64. As described herein, in connection with the offer, sale or purchase of securities, Respondents directly or indirectly engaged in an act, practice, or course of business which operated as a fraud or deceit on My IA clients, in violation of Section 61-1-1(3) of the Act. That conduct includes but is not limited to Respondents' conversion and misuse of client monies for purposes not disclosed to or authorized by investors, including personal use of monies, Ponzi payments to prior investors, and use in businesses unrelated to the Issuers.

Sale of Unregistered Securities Under § 61-1-7 of the Act
(Shooks Run, Wright, Golden Assets)

65. The promissory notes offered and sold by Respondents are securities as defined under Section 61-1-13 of the Act. They were not registered with the Division, do not qualify for any exemption from registration, and are not federal covered securities for which any notice filing was made, in violation of Section 61-1-7 of the Act.

III. REMEDIAL ACTIONS/SANCTIONS

66. Respondents admit the Division's Findings and Conclusions and consent to the sanctions below being imposed by the Division.

87. Respondents agree to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in this state.

88. Respondents agree to be barred from associating with any broker-dealer or investment adviser licensed in Utah, and from soliciting investor monies in Utah.

89. Pursuant to Section 61-1-20 and in consideration of the factors set forth in Section 61-1-31, the Division imposes a fine, jointly and severally, of $100,000.00. The fine shall be offset by restitution paid by Sampson as ordered in the criminal action.

IV. FINAL RESOLUTION

90. Respondents acknowledge that this Order, upon approval by the Utah Securities Commission ("Commission"), shall be the final compromise and settlement of this matter. Respondents acknowledge that the Commission is not required to approve this Order, in which case the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, Respondents expressly waive any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

91. If Respondents materially violate any term of this Order, after notice and an opportunity to be heard before an administrative law judge solely as to the issue of a material violation, Respondents consent to entry of an order requiring they pay a fine of $100,000, jointly and severally, due immediately, with no offset for restitution paid by Sampson. Notice of the violation will be provided to Respondents' counsel and sent to Respondents' last known addresses. If Respondents fails to request a hearing within ten (10) days following notice there will be no hearing and the order granting relief will be entered. In addition, the Division may institute judicial proceedings against Respondents in any court of competent jurisdiction and take any other action authorized by the Act or

under any other applicable law to collect monies owed by Respondents or to otherwise enforce the terms of this Order. Respondents further agree to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

92. Respondents acknowledge that the Order does not affect any civil or arbitration causes of action that third-parties may have against them arising in whole or in part from their actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Respondents also acknowledge that any civil, criminal, arbitration or other causes of actions brought by third-parties against them have no effect on, and do not bar, this administrative action by the Division against them.

93. This 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 Order in any way. Upon entry of the Order, any further scheduled hearings are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 30 day of October, 2019

K Barton

Kenneth O. Barton
Director of Compliance
Utah Division of Securities

Dated this 10 day of October, 2019

Niki Sampson

Shooks Run, LLC
Its

Wright Total Indoor Comfort, Inc.
Its _____

The Hills at Santa Clara, Inc.
Its _____

Santa Clara Hills Holding, LLC
Its _____

Golden Assets, LLC
Its _____

Approved:

Jennifer Korb
Assistant Attorney General
Counsel for Division

Approved:

Mark W. Pugsley
Counsel for Respondent

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which are admitted by Respondents, are hereby entered.
2. Respondents shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in this state.
3. Respondents are barred from associating with any broker-dealer or investment adviser licensed in Utah, and from soliciting investor monies in Utah.
4. Pursuant to Section 61-1-6 of the Act, in consideration of the factors set forth in Section 61-1-31, Respondents shall pay a fine of $100,000.00, jointly and severally, which shall be offset by restitution paid by Sampson as ordered in the criminal action.

BY THE UTAH SECURITIES COMMISSION:

DATED this 7th day of November, 2019

Brent Cochran

Gary Cornia

Peggy Hunt

Lyndon Ricks

Lyle White

CERTIFICATE OF MAILING

I certify that on the 7th day of November, 2019, I mailed a true and correct copy of the fully executed Stipulation and Consent Order to:

Mark W. Pugsley
RAY QUINNEY & NEBEKER
36 S. State Street, Suite 1400
Salt Lake City, UT 84111
Counsel for Respondent

Sabrina Arvidson

Executive Secretary

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801)530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:	**STIPULATION AND CONSENT ORDER**
FERNANDO DELUNA,	**Docket No. 19-0009**
ISRAEL PINEDA,	Docket No. 19-0010
Respondents.	

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave Hermansen, and Respondent Fernando DeLuna ("DeLuna") or ("Respondent") hereby stipulate and agree as follows:

1. DeLuna has been the subject of an investigation by the Division into allegations that he violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. §61-1-1(2) (securities fraud), and §61-1-3(1) (unlicensed activity) while engaged in the offer and/or sale of securities in or from Utah.
2. On or about February 11, 2019, the Division initiated an administrative action against DeLuna and Israel Pineda ("Pineda") by filing an Order to Show Cause.
3. DeLuna hereby agrees to settle this matter with the Division by way of this Stipulation and Consent Order ("Order"). If entered, the Order will fully resolve all claims the Division has against DeLuna pertaining to the Order to Show Cause.

4. DeLuna admits that the Division has jurisdiction over him and over the subject matter of this action.

5. DeLuna hereby waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.

6. My attorney has explained this Order to me in Spanish, I understand its contents and voluntarily agree to the entry of the Order as set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce DeLuna to enter into this Order, other than as described in this Order.

7. DeLuna is represented by attorney S. Grace Acosta from the law firm of Lewis Hansen, and is satisfied with the legal representation he has received.

FINDINGS OF FACTS

THE RESPONDENT

8. DeLuna resided in Utah during all times relevant to the allegations asserted herein and has never been licensed in the securities industry. DeLuna was a solicitor for a company called My Trader Coin ("MTC") and he collected funds from investors on behalf of MTC.[1] MTC has no known ownership structure, origin, entity registration, or location information currently available.[2] According to Respondents, MTC's purpose was to generate returns for investors by trading cryptocurrencies.

GENERAL ALLEGATIONS

9. The Division's investigation of this matter revealed that from approximately March 2017

[1] Top level MTC solicitors were referred to as "leaders" within the organization who were primarily responsible for collecting investor funds and opening "investment accounts" on the MTC online platform. DeLuna is believed to be a "leader" of MTC.

[2] Many investors believe MTC was started in the Dominican Republic, and was introduced to Utah in or about February 2017 by Juan Tacuri and David Carmona from the state of New York.

to August 2018, while conducting business in or from the state of Utah, DeLuna offered and sold several investment opportunities to at least four (4) investors, and raised approximately $19,400 in connection therewith.

10. The investment opportunities offered and sold by Respondent are investment contracts.

11. Investment contracts are securities under §61-1-13 of the Act.

12. In connection with the offer and/or sale of securities, Respondent, either directly or indirectly, made material omissions and/or misrepresentations of material facts.

13. In connection with the offer and/or sale of securities, Respondent solicited investor funds on behalf of MTC, and hosted several investment seminars where Respondent distributed investment literature and presented information regarding the MTC investment.

14. To date, investors are owed at least $19,400 in principal alone.

INVESTOR INFORMATION

15. From approximately March 2017 to August 2018, Respondent solicited at least four (4) investors to invest in MTC.

16. DeLuna and other MTC solicitors specifically targeted members of the Latino community to invest in MTC, many of whom did not speak English.

17. Respondent solicited investors primarily located in Utah. The solicitations occurred in person during seminars hosted by Respondent.

18. MTC's business model was based on a multi-level marketing structure in which investors could receive referral bonuses by introducing new investors to MTC. With the exception of a few investors who introduced new investors to Respondent to invest in MTC, most investors did not receive any referral bonuses for introducing new investors to

Respondent, and no investor had a role in the managerial functions or investment opportunities, other than providing investment funds.[3]

MTC Cryptocurrency Investment

THE SOLICITATION

19. DeLuna began soliciting investors to invest in MTC in or about March 2017, and recruited Pineda shortly thereafter to become a solicitor for MTC.

20. Respondent solicited investors by hosting seminars, inviting investors to DeLuna's place of business[4], and presenting at locations such as the Megaplex Theatres at the Valley Fair Mall in West Valley City, Utah.[5]

21. Respondent represented to investors that MTC would use investors' funds to trade cryptocurrencies, and that investors would realize the following returns based on the investment plan selected: a return of $12 each day per $1,000 invested in MTC over a three hundred-day time period, $6 each day per $500 invested in MTC over a three hundred-day time period, and $1 each day per $100 invested in MTC over a three hundred-day time period.

22. Most investors used cash to invest, which could not be immediately accounted for during the Division's investigation.

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[3] Any investor who may have received a referral bonus for introducing new investors to Respondents, only invited new investors to Respondents' seminars, were not involved in the solicitation, and lost their investment in MTC as well.

[4] Entity documents registered with the Utah Division of Corporations and Commercial Code lists DeLuna as the director of Dlunasolutions Inc. with an entity address as 4152 King Arthur Dr., West Valley City, UT 84119.

[5] MTC leaders circulated an advertisement written partially in Spanish entitled, "SEMINARIO DE EDUCACIÓN FINANCIERA EN UTAH USA" with a date and time of March 18 at 7:00 PM. The advertisement contains MTC's website (mytradercoin.com) and photographs with names listed as: Rodrigo Murga, Claudia Gonzalez, Juan Tacuri, Edith Plancarte, Fernando Luna, and Maria Maynes. The location of the seminar is listed as the Megaplex Theatres at the Valley Fair Mall, with an address of 3620 South 2400 West, West Valley City, UT 84119. Pineda did not present during this seminar.

23. After investors gave Respondent their cash investment, DeLuna created an alleged investment account on MTC's website immediately displaying the investor's funds within the account.

24. Respondent promised investors a "bonus referral" of $200 to $300 in cash or MTC account credits if investors referred a new investor to invest in MTC.

25. During the solicitation, Respondent made numerous statements and representations to investors regarding the investment opportunity in MTC, including, but not limited to, the following:

a. That MTC was offering an opportunity for investors to receive a substantial return by trading in cryptocurrencies;

b. That investors would receive a return of $1 to $12 each day depending upon which investment plan was chosen;

c. That investors would realize a return on their investment in 100 to 300 days;

d. That the MTC investment was guaranteed and risk free;

e. That investors would be able to access their investment account and funds on the MTC website;

f. That investors could earn referral bonuses by introducing other investors to Respondents; and

g. That MTC was an opportunity to gain financial security and independence.

26. Based on Respondent's statements and representations, investors provided funds by cash totaling approximately $19,400 to Respondents to invest in MTC, as they were instructed to do by DeLuna.

THE INVESTMENT AGREEMENT

27. In exchange for their investments in MTC, DeLuna gave investors a username and password to access their investment account on the MTC website. When investors asked for additional documentation of their MTC investment, Respondent informed investors that their usernames and passwords were evidence of their investment.

28. MTC's online account access allowed investors to review their alleged account balances, daily credits, and e-wallets to transfer cryptocurrency or additional funds.

29. Respondent promised investors a return of $1 to $12 each day in 100 to 300 days for their investment in MTC.

MISSTATEMENTS AND OMISSIONS

30. In connection with the offer and/or sale of securities, Respondent made the following material misstatements to investors including, but not limited to, the following:

a. That all investor funds would be invested in MTC accounts to trade in cryptocurrencies, when in fact, this representation was false, there is no evidence that cryptocurrencies were ever traded, and the MTC investor accounts were opened but never funded by investors' cash investments;

b. That investors would receive a return of $1 to $12 each day in 100 to 300 days, when in fact, this representation was false, there was no reasonable basis for making this statement, and investors lost their entire investment in MTC; and

c. That investors would be able to withdraw their funds at any time using their online MTC investment account, when in fact, this representation was false, investor balances reflected on the online MTC account were fictitious and not actually

d. deposited within the investor's account during the solicitation, and the MTC online platform did not provide a functioning system for investors to withdraw funds.

31. In connection with the offer and/or sale of securities, Respondent failed to disclose material information to investors including, but not limited to, the following:

a. That Respondent would collect substantial cash investments from investors without maintaining accurate accounting records detailing business expenses and the use of investor funds;

b. That Respondent would not provide to investors account statements or receipts verifying their MTC investments;

c. That DeLuna knew the MTC investment was fraudulent when he solicited later investors to investment in MTC;

d. That DeLuna opened MTC online accounts for investors that displayed a credit balance of their investment before DeLuna or another MTC leader actually deposited investor funds into the MTC account;

e. That Respondent were not licensed to sell securities; and

f. Some or all of the information typically provided in an offering circular or prospectus concerning Respondent and MTC relevant to the investment opportunity, such as:

i. Business and operating history;

ii. Financial statements;

iii. Information regarding principles involved in the company;

iv. Conflicts of interest;

v. Risk factors;

vi. Suitability factors for investment; and

vii. Whether the securities offered were registered in the state of Utah.

32. To date, investors are owed at least $19,400 in principal alone on their investments in MTC.

CONCLUSIONS OF LAW

Securities Fraud under § 61-1-1(2) of the Act

33. Based upon the Division's investigative findings, the Division concludes that the MTC investment opportunities offered and sold by DeLuna are securities under §61-1-13 of the Act.

34. In violation of §61-1-1(2) of the Act, and in connection with the offer and sale of a security, DeLuna, directly or indirectly failed to disclose material facts to investors including, but not limited to, the following:

a. That all investor funds would be invested in MTC accounts to trade in cryptocurrencies, when in fact, this representation was false, there is no evidence that cryptocurrencies were ever traded, and the MTC investor accounts were opened but never funded by investors' cash investments;

b. That investors would receive a return of $1 to $12 each day in 100 to 300 days, when in fact, this representation was false, there was no reasonable basis for making this statement, and investors lost their entire investment in MTC; and

c. That investors would be able to withdraw their funds at any time using their online MTC investment account, when in fact, this representation was false, investor balances reflected on the online MTC account were fictitious and not actually deposited within the investor's account during the solicitation, and the MTC online

platform did not provide a functioning system for investors to withdraw funds.

35. In violation of § 61-1-1(2) of the Act, and in connection with the offer and/or sale of a security, DeLuna omitted material facts which were necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading including, but not limited to, the following:

a. That Respondent would collect substantial cash investments from investors without maintaining accurate accounting records detailing business expenses and the use of investor funds;

b. That Respondent would not provide to investors account statements or receipts verifying their MTC investments;

c. That DeLuna knew the MTC investment was fraudulent when he solicited later investors to investment in MTC;

d. That DeLuna opened MTC online accounts for investors that displayed a credit balance of their investment before DeLuna or another MTC leader actually deposited investor funds into the MTC account;

e. That Respondent were not licensed to sell securities; and

f. Some or all of the information typically provided in an offering circular or prospectus concerning Respondent and MTC relevant to the investment opportunity, such as:

i. Business and operating history;

ii. Financial statements;

iii. Information regarding principles involved in the company;

iv. Conflicts of interest;

v. Risk factors;

vi. Suitability factors for investment; and

vii. Whether the securities offered were registered in the state of Utah.

36. To date, investors are owed at least $19,400 in principal alone on their investments in MTC.

Unlicensed Activity under § 61-1-3(1) of the Act

37. In violation of § 61-1-3(1) of the Act, DeLuna was not licensed in the securities industry in any capacity when he offered and sold securities on behalf of MTC.

REMEDIAL ACTIONS/SANCTIONS

38. DeLuna neither admits nor denies the Division's Findings of Fact and Conclusions of Law, but consents to the below sanctions being imposed by the Division. Respondent disputes that he received any compensation or that he kept any of the proceeds given to him.

39. DeLuna represents that the information he has provided to the Division as part of its investigation is accurate and complete.

40. DeLuna agrees to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in the state of Utah.

41. DeLuna agrees to be barred from associating with any broker-dealer or investment adviser licensed in the state of Utah; from acting as an agent for any issuer soliciting investor funds in the state of Utah; and from being licensed in any capacity in the securities industry in the state of Utah.

42. DeLuna agrees to cooperate with the Division's investigation of MTC, and to provide testimony in this proceeding or others if requested.

43. DeLuna agrees to pay restitution to the following four investors in the amounts provided (totaling $12,000):

a. Investor P.F. $3,092.78

b. Investor Y.R. $3,092.78

c. Investor M.A. $4,577.32

d. Investor R.A.L. $1,237.12

DeLuna agrees to pay a total of $2,000 of the restitution directly to the four investors within fourteen (14) days following entry of this Order. DeLuna agrees to pay the remaining restitution amount of $10,000 in equal monthly payments directly to the four investors within 36 months following entry of this Order. The first monthly restitution payments will be due on November 21, 2019. DeLuna agrees to provide proof of each restitution payment to the Division within ten (10) days following each payment. The Division and DeLuna agree to the restitution payment schedule attached hereto as Exhibit A.

44. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, the Division imposes a fine of $6,000 against DeLuna, to be paid to the Division within 36 months following entry of this Order. If DeLuna makes timely restitution payments as outlined in paragraph 43, at the end of the 36-month period, the Division will waive all but $1,500 of the fine amount ordered against DeLuna.

FINAL RESOLUTION

45. DeLuna acknowledges that this Order, upon approval by the Utah Securities Commission ("Commission"), shall be the final compromise and settlement of this matter. DeLuna acknowledges that the Commission is not required to approve this Order, in which case

the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, DeLuna expressly waives any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

46. If DeLuna materially violates any term of this Order, after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, DeLuna consents to entry of an order in which he admits the Division's Findings of Fact and Conclusions of Law, and the total fine amount owed by DeLuna is increased by 20% and becomes immediately due and payable. Notice of the violation will be provided to DeLuna at his last known address, and to his counsel if he has one. If DeLuna fails to request a hearing within ten (10) days following the notice, there will be no hearing and the order granting relief will be entered.

47. In addition, the Division may institute judicial proceedings against DeLuna in any court of competent jurisdiction and take any other action authorized by the Act or under any other applicable law to collect monies owed by DeLuna or to otherwise enforce the terms of this Order. DeLuna further agrees to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

48. DeLuna acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. DeLuna also acknowledges that any civil, criminal, arbitration or other causes of actions brought by third-parties against him have no effect on, and do not bar this administrative action by the Division against him.

49. This 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 Order in any way. Upon entry of the Order, any further scheduled hearings involving Respondent DeLuna are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 26 day of August, 2019

Dave R. Hermansen
Director of Enforcement
Utah Division of Securities

Dated this 22nd day of August, 2019

Fernando DeLuna

Approved:

Paula Faerber
Assistant Attorney General
Counsel for Division

S. Grace Acosta
Counsel for Respondent DeLuna

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which DeLuna neither admits nor denies are hereby entered.
2. DeLuna shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in the state of Utah.
3. DeLuna shall be barred from associating with any broker-dealer or investment adviser licensed in the state of Utah; from acting as an agent for any issuer soliciting investor funds in the state of Utah; and from being licensed in any capacity in the securities industry in the state of Utah.
4. DeLuna shall cooperate with the Division's investigation of MTC, and provide testimony in this proceeding or others if requested.
5. DeLuna shall pay restitution in the total amount of $12,000, pursuant to the terms set forth in paragraph 43.
6. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, DeLuna shall pay a fine of $6,000 to the Division pursuant to the terms set forth in paragraph 44.

BY THE UTAH SECURITIES COMMISSION:

DATED this 7th day of November, 2019.

Gary Cornia

Lyle White

Peggy Hunt

Lyndon Ricks

Brent Cochran

CERTIFICATE OF SERVICE

I certify that on the 1th day of November, 2019, I emailed and mailed a true and correct copy of the Stipulation and Consent Order to:

S. Grace Acosta (Attorney DeLuna)
Lewis Hansen
8 East Broadway, Suite 410
Salt Lake City, UT 84111
gacosta@lewishansen.com

And hand-delivered via drop box to:
Bruce Dibb, Administrative Law Judge
Department of Commerce

Paula Faerber, Assistant Attorney General
Utah Attorney General's Office

Dave R. Hermansen, Director of Enforcement
Utah Division of Securities

Executive Secretary

EXHIBIT A

Investor	Initial Payment	Monthly Payments	Total Payment
Investor P.F.	$500	$76	$3,092.78
Investor Y.R.	$500	$76	$3,092.78
Investor M.A.	$500	$119	$4,577.32
Investor R.A.L.	$500	$21.68	$1,237.12

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801)530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:	**STIPULATION AND CONSENT ORDER**
PROLUNG INC,	Docket No. 19-0014
JARED BAUER,	Docket No. 19-0015
CLARK A. CAMPBELL,	**Docket No. 19-0016**
TIM TREU,	Docket No. 19-0017
TODD MARK MORGAN,	Docket No. 19-0018
ROBERT W. RAYBOULD,	Docket No. 19-0019
Respondents.	

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave Hermansen, and Respondent Clark A. Campbell ("Campbell") hereby stipulate and agree as follows:

1. Campbell has been the subject of an investigation by the Division into allegations that he violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. §61-1-1(2) (securities fraud), §61-1-1(3) (securities fraud), and §61-1-3(1) (unlicensed activity) while engaged in the offer and/or sale of securities in or from Utah.

2. On or about April 23, 2019, the Division initiated an administrative action against ProLung Inc. ("ProLung"), Jared Bauer ("Bauer"), Campbell, Tim Treu ("Treu"), Todd Mark Morgan ("Morgan"), and Robert W. Raybould ("Raybould") (collectively referred to herein as "Respondents") by filing an Order to Show Cause.

3. Campbell hereby agrees to settle this matter with the Division by way of this Stipulation and Consent Order ("Order"). If entered, the Order will fully resolve all claims the Division has against Campbell pertaining to the Order to Show Cause.

4. Campbell admits that the Division has jurisdiction over him and over the subject matter of this action.

5. Campbell hereby waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.

6. Campbell has read this Order, understands its contents, and voluntarily agrees to the entry of the Order as set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Campbell to enter into this Order, other than as described in this Order.

7. Campbell is represented by attorney Mark W. Pugsley from the law firm of Ray Quinney & Nebeker, and is satisfied with the legal representation he has received.

FINDINGS OF FACTS

THE RESPONDENT

8. Campbell resided in Salt Lake County, Utah during all times relevant to the allegations asserted herein, and has never been licensed in the securities industry. Campbell served as ProLung's Chairman of the Board from 2012 to May 2016.

RELATED ENTITY INFORMATION

9. ProLung is a corporation registered with the Delaware Division of Corporations on November 22, 2004. ProLung's headquarters are located in Salt Lake City, Utah.[1] Jared Bauer ("Bauer") is listed as the current interim CEO of ProLung and has been the interim CEO since September 2018, according to ProLung's website. From November 2004 to June 2018, Steve Eror ("Eror") was the CEO of ProLung. The purported purpose of ProLung is to develop and deploy medical devices and procedures specializing in the immediate, non-invasive evaluation of indeterminate masses seen in CT and radiography scans. ProLung's principal activities include: research and development, product prototyping, securing strategic alliances, and obtaining corporate financing.

10. One device that ProLung developed, tested, and began the process to commercialize recently is its non-invasive lung cancer diagnostic test, the "Electro Pulmonary Nodule Scan" ("EPN Scan"). According to ProLung's 2014 10Q report filed with the U.S. Securities and Exchange Commission ("SEC"), in April 2013 ProLung entered into an agreement to license this technology to a distributor in China. In May 2013, ProLung received the "CE Mark" in Europe, permitting the marketing of the EPN scan in the

[1]ProLung's entity documents list a principal address as 757 E S Temple #150, Salt Lake City, Utah 84102. The Utah Division of Corporations and Commercial Code lists the entity's registration status as active as of December 21, 2018.

According to ProLung's Form S-1 filed with the SEC, ProLung has undergone several entity name changes. In November 2004, ProLung was incorporated in Delaware under the name Hilltop Group Technologies Corp. In November 2006, ProLung changed its name to Fresh Medical Laboratories, Inc. Finally, in April 2017, ProLung changed its name to ProLung, Inc.

European Union ("EU") and other countries.[2] In addition, ProLung has submitted corporate notice filings with the Division.[3]

GENERAL ALLEGATIONS

11. The Division's investigation of this matter revealed that from approximately February 2012 to March 2014, while conducting business in or from the state of Utah, ProLung BOD member Campbell solicited investments in a ProLung investment opportunity from at least eight (8) investors, and raised approximately $445,000 in connection therewith.

12. In connection with the offer and/or sale of securities, from 2012 to 2014 Campbell received compensation for soliciting investors on behalf of ProLung in the form of ProLung stock shares valued at $.50 per share.

13. Campbell solicited investments in an investment opportunity that took the form of stock.

14. Stocks are securities under §61-1-13 of the Act.

15. In connection with the offer and/or sale of securities, Campbell purchased a ProLung shareholder's business using ProLung shares Campbell received as compensation for soliciting ProLung investors, in violation of Utah securities laws.

16. In connection with the offer and/or sale of securities, Campbell, either directly or indirectly, made material omissions of material facts.

17. To date, shareholders solicited by Campbell have invested at least $445,000 in ProLung stock.

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[2] *See ProLung's website,* http://prolunginc.com/quality/, CE marketing is the medical device manufacturer's claim that a product meets the essential requirements of all relevant European medical device directives, and allows the ProLung device to be sold in EU member states. The directives outline the safety and performance requirements for medical devices in the EU.

[3] *See* Division filing numbers, B01428622, B01464333, B01646762

PROLUNG INVESTMENT

THE SOLICITATIONS

18. Between 2012 to 2014, while a member of the ProLung BOD, Campbell solicited approximately $445,000 from at least eight (8) investors to invest in ProLung.

19. BOD member Campbell was not securities licensed during these solicitations to investors, or when he received compensation for the sale of securities.

PROLUNG BOARD OF DIRECTORS

STOCK GRANT VOTE

20. On or about April 29, 2014, the ProLung BOD circulated a consent agreement amongst ProLung BOD members to vote regarding the issuance of 582,102 ProLung stock shares to select members of the ProLung BOD in connection with "financing services provided" by those select BOD members. The consent agreement was circulated by email in lieu of holding a special BOD meeting.[4]

21. According to the consent agreement, 582,102 shares were to be distributed to the following: 216,000 shares granted to Raybould; 16,350 shares granted to Eror; 63,750 shares granted to Treu; 193,500 shares granted to Campbell; and 97,500 shares granted to Morgan.

22. The stock grant was intended to compensate those members of the ProLung BOD who raised funds for ProLung from approximately February 2012 to March 2014.

23. The members of the BOD who received the consent agreement included: Wayne Adams ("Adams"), Eror, Raybould, Dennis Tulane ("Tulane"), Campbell, Morgan, Treu, and

[4] The consent agreement was addressed to "Members of the Board of Directors Freshmedx". Freshmedx is a DBA and the former entity name of ProLung.

Nathan Wade ("Wade").

24. Six of the eight BOD members voted in favor of issuing common stock grants to Eror, Raybould, Campbell, Morgan, and Treu for financing services provided to ProLung. Adams, Tulane, and Wade did not receive compensation for soliciting ProLung investors.

STOCK TRANSFER

25. On or about April 29, 2014, ProLung issued the following stock grants to select members of the ProLung BOD:[5]

a. 216,000 shares granted to Raybould valued at $.50 per share or $108,000;

b. 16,350 shares granted to Eror valued at $.50 per share or $8,175;

c. 63,750 shares granted to Treu valued at $.50 per share or $31,875;

d. 193,500 shares granted to Campbell valued at $.50 per share or $96,750; and

e. 97,500 shares granted to Morgan valued at $.50 per share or $48,750.

26. In or about the fall of 2014, ProLung's legal counsel informed Eror of potential tax consequences for receiving the shares and violations of securities laws for receipt of compensation for the sale of securities without a securities license. ProLung's legal counsel further requested a meeting with the entire ProLung BOD to inform them of the issues discussed with Eror.

27. After being informed by ProLung's legal counsel of the potential securities and tax violations from the receipt of ProLung shares for compensation, Eror on several occasions informed other ProLung BOD members of legal counsel's advice.

28. In or about the spring of 2015, ProLung's legal counsel met with the BOD to discuss the stock grant concerns, tax consequences, and securities violations. After the BOD's

[5] On or about December 1, 2017, ProLung initiated a1 for 8 reverse stock split. The amount of shares held by the BOD decreased, the price per share increased to $4 per share, but the overall value of the shares remained the same.

meeting with ProLung's legal counsel, Raybould, Treu, Campbell, and Morgan elected not to return the stock to ProLung, which was granted to them for soliciting ProLung investors.

CAMPBELL'S STOCK TRANSFER

29. On or about May 3, 2018, Campbell entered into an agreement to purchase a business from E.S., a resident of Florida and existing ProLung shareholder.

30. Campbell paid E.S. $1 million for the business, which was financed in part by transferring 25,438 ProLung shares to E.S., valued at $7.25 per share or $184,425.50.

31. ProLung's transfer agent records indicate that of the 25,438 shares Campbell transferred to E.S. to purchase the business, 24,188 of those shares were received by Campbell from ProLung as compensation for soliciting ProLung investors.

32. Campbell did not disclose to E.S. that he received the ProLung shares as compensation for soliciting new ProLung investors. Campbell also did not disclose to E.S. that ProLung's legal counsel advised Campbell that he would be in violation of securities and tax laws by accepting the shares for compensation.

OMISSIONS

CAMPBELL

33. In connection with the offer and sale of securities to E.S., in May 2018, Campbell failed to disclose material information to E.S. including, but not limited to, the following:

a. That Campbell had obtained the ProLung shares used to purchase E.S.'s business from a stock grant that was in violation of securities laws, and that Campbell had ignored ProLung's legal counsel's advice regarding receipt of the stock grant;

b. That some members, including Campbell, of the ProLung BOD were acting as

unlicensed agents when they solicited shareholders to invest in ProLung; and

c. That Campbell received compensation for soliciting ProLung investors.

CONCLUSIONS OF LAW

Securities Fraud under § 61-1-1(2) of the Act

34. Based upon the Division's investigative findings, the Division concludes that the ProLung stock offered and sold by Campbell is a security under §61-1-13 of the Act.

35. In violation of §61-1-1(2) of the Act, and in connection with the offer and sale of a security, Campbell, directly or indirectly failed to disclose material facts to investor E.S. including, but not limited to, the following:

a. That Campbell had obtained the ProLung shares used to purchase E.S.'s business from a stock grant that was in violation of securities laws, and that Campbell had ignored ProLung's legal counsel's advice regarding receipt of the stock grant;

b. That some members, including Campbell, of the ProLung BOD were acting as unlicensed agents when they solicited shareholders to invest in ProLung; and

c. That Campbell received compensation for soliciting ProLung investors.

Securities Fraud under § 61-1-1(3) of the Act

36. In violation of §61-1-1(3) of the Act, and in connection with the offer and sale of a security, Campbell directly or indirectly engaged in an act, practice, or course of business which operated as a fraud or deceit on investor E.S. when he ignored the advice of ProLung's legal counsel that receipt of the granted shares for compensation was a violation of securities laws and purchased E.S.'s business using shares Campbell knew were obtained in violation of securities laws.

Unlicensed Activity under § 61-1-3(1) of the Act

37. Based upon the Division's investigative findings, the Division concludes that Campbell solicited investments in ProLung stock, which stock is a security under §61-1-13 of the Act.

38. Campbell acted as an agent to ProLung when he solicited investments in ProLung stock on behalf of ProLung, and received compensation in connection therewith.

39. In violation of §61-1-3(1) of the Act, Campbell was not licensed as an issuer-agent when he solicited investments in ProLung securities from investors.

REMEDIAL ACTIONS/SANCTIONS

40. Campbell neither admits nor denies the Division's Findings of Fact contained in paragraphs 15-16, 27-28 and 32-33. Campbell admits to acting as an unlicensed agent, and to the Division's Conclusions of Law except he neither admits nor denies paragraphs 34-36. Campbell consents to the below sanctions being imposed by the Division.

41. Campbell represents that the information he has provided to the Division as part of its investigation is accurate and complete.

42. Campbell agrees to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in the state of Utah.

43. Campbell agrees to be barred from associating with any broker-dealer or investment adviser licensed in the state of Utah; from acting as an agent for any issuer soliciting investor funds in the state of Utah; and from being licensed in any capacity in the securities industry in the state of Utah.

44. Campbell agrees to cooperate with the Division's investigation of ProLung, and to provide testimony in this proceeding or others if requested.

45. Campbell agrees to return 24,188 shares (post reverse stock split) of ProLung stock to ProLung's treasury within five (5) business days of entry of the final Order.[6] Campbell also agrees to provide the Division with copies of the stock certificates returned to ProLung's treasury within five (5) business days of entry of the final Order.

46. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, the Division imposes a fine of $34,000 against Campbell, and in addition orders him to disgorge $8,613 to the Division. Campbell agrees to pay $15,000 of the combined fine and disgorgement to the Division within five (5) business days of entry of the final Order, and pay the remaining $27,613 to the Division in equal quarterly payments within 36 months of entry of the final Order. The first quarterly payment is due to the Division on January 1, 2020.

FINAL RESOLUTION

47. Campbell acknowledges that this Order, upon approval by the Utah Securities Commission ("Commission"), shall be the final compromise and settlement of this matter. Campbell acknowledges that the Commission is not required to approve this Order, in which case the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, Campbell expressly waives any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

48. If Campbell materially violates any term of this Order, after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, Campbell consents to entry of an order in which the total fine amount is increased by

[6] On or about December 1, 2017, ProLung initiated a1 for 8 reverse stock split. The 24,188 shares represent the share amounts to be returned by Campbell after ProLung's reverse stock split occurred.

20% and any fine payments owed by Campbell become immediately due and payable. Notice of the violation will be provided to Campbell at his last known address, and to his counsel if he has one. If Campbell fails to request a hearing within ten (10) days following the notice, there will be no hearing and the order granting relief will be entered.

49. In addition, the Division may institute judicial proceedings against Campbell in any court of competent jurisdiction and take any other action authorized by the Act or under any other applicable law to collect monies owed by Campbell or to otherwise enforce the terms of this Order. Campbell further agrees to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

50. Campbell acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Campbell also acknowledges that any civil, criminal, arbitration or other causes of actions brought by third-parties against him have no effect on, and do not bar this administrative action by the Division against him.

51. This 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 Order in any way. Upon entry of the Order, any further scheduled hearings involving Respondent Campbell are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 28 day of August, 2019

Dave R. Hermansen
Director of Enforcement
Utah Division of Securities

Dated this 20 day of August, 2019

Clark A. Campbell

Approved:

Jennifer Korb
Assistant Attorney General
Counsel for Division

Mark Pugsley
Counsel for Respondent Campbell

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which Campbell admits in part and neither admits nor denies in part are hereby entered.
2. Campbell shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in the state of Utah.
3. Campbell shall be barred from associating with any broker-dealer or investment adviser licensed in the state of Utah; from acting as an agent for any issuer soliciting investor funds in the state of Utah; and from being licensed in any capacity in the securities industry in the state of Utah.
4. Campbell shall cooperate with the Division's investigation of ProLung, and provide testimony in this proceeding or others if requested.
5. Campbell shall return 24,188 shares of ProLung stock to ProLung's treasury within five (5) business days of entry of the final Order. Campbell shall also provide the Division with copies of the stock certificates returned to ProLung's treasury within five (5) business days of entry of the final Order.
6. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, Campbell shall pay a fine and disgorgement totaling $42,613 to the Division pursuant to the terms set forth in paragraph 46.

BY THE UTAH SECURITIES COMMISSION:

DATED this 1st day of November, 2019

Gary Cornia

Lyle White

Peggy Hunt

Lyndon Ricks

Brent Cochran

CERTIFICATE OF SERVICE

I certify that on the 1st day of NOV, 2019, I emailed and mailed a true and correct copy of the Stipulation & Consent Order:

Clark A. Campbell
[redacted]

Mark Pugsley (Attorney Campbell)
Ray Quinney & Nebeker P.C.
36 South State St., Suite 1400
Salt Lake City, UT 84111
mpugsley@rqn.com

And hand-delivered via drop box to:
Bruce Dibb, Administrative Law Judge
Department of Commerce

Jennifer Korb, Assistant Attorney General
Utah Attorney General's Office

Dave R. Hermansen, Director of Enforcement
Utah Division of Securities

Fabrina Ajridi
Executive Secretary

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801)530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:	**STIPULATION AND CONSENT ORDER**
PROLUNG INC,	Docket No. 19-0014
JARED BAUER,	Docket No. 19-0015
CLARK A. CAMPBELL,	Docket No. 19-0016
TIM TREU,	**Docket No. 19-0017**
TODD MARK MORGAN,	Docket No. 19-0018
ROBERT W. RAYBOULD,	Docket No. 19-0019
Respondents.	

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave Hermansen, and Respondent Tim Treu ("Treu") hereby stipulate and agree as follows:

1. Treu has been the subject of an investigation by the Division into allegations that he violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. §61-1-3(1) (unlicensed activity) while engaged in the offer and/or sale of securities in or from Utah.

2. On or about April 23, 2019, the Division initiated an administrative action against ProLung Inc. ("ProLung"), Jared Bauer ("Bauer"), Clark A. Campbell ("Campbell"),

Todd Mark Morgan ("Morgan"), and Robert W. Raybould ("Raybould") (collectively referred to herein as "Respondents") by filing an Order to Show Cause.

3. Treu hereby agrees to settle this matter with the Division by way of this Stipulation and Consent Order ("Order"). If entered, the Order will fully resolve all claims the Division has against Treu pertaining to the Order to Show Cause.

4. Treu admits that the Division has jurisdiction over him and over the subject matter of this action.

5. Treu hereby waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.

6. Treu has read this Order, understands its contents, and voluntarily agrees to the entry of the Order as set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Treu to enter into this Order, other than as described in this Order.

7. Treu is represented by attorney Mark W. Pugsley from the law firm of Ray Quinney & Nebeker, and is satisfied with the legal representation he has received.

FINDINGS OF FACTS

THE RESPONDENT

8. Treu resided in Davis County, Utah during all times relevant to the allegations asserted herein, and has never been licensed in the securities industry. Treu was a member of ProLung's Board of Directors ("BOD") from July 2013 to March 2016.

RELATED ENTITY INFORMATION

9. ProLung is a corporation registered with the Delaware Division of Corporations on November 22, 2004. ProLung's headquarters are located in Salt Lake City, Utah.[1] Jared Bauer ("Bauer") is listed as the current interim CEO of ProLung and has been the interim CEO since September 2018, according to ProLung's website. From November 2004 to June 2018, Steve Eror ("Eror") was the CEO of ProLung. The purported purpose of ProLung is to develop and deploy medical devices and procedures specializing in the immediate, non-invasive evaluation of indeterminate masses seen in CT and radiography scans. ProLung's principal activities include: research and development, product prototyping, securing strategic alliances, and obtaining corporate financing.

10. One device that ProLung developed, tested, and began the process to commercialize recently is its non-invasive lung cancer diagnostic test, the "Electro Pulmonary Nodule Scan" ("EPN Scan"). According to ProLung's 2014 10Q report filed with the U.S. Securities and Exchange Commission ("SEC"), in April 2013 ProLung entered into an agreement to license this technology to a distributor in China. In May 2013, ProLung received the "CE Mark" in Europe, permitting the marketing of the EPN scan in the European Union ("EU") and other countries.[2] In addition, ProLung has submitted corporate notice filings with the Division.[3]

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[1]ProLung's entity documents list a principal address as 757 E S Temple #150, Salt Lake City, Utah 84102. The Utah Division of Corporations and Commercial Code lists the entity's registration status as active as of December 21, 2018.

According to ProLung's Form S-1 filed with the SEC, ProLung has undergone several entity name changes. In November 2004, ProLung was incorporated in Delaware under the name Hilltop Group Technologies Corp. In November 2006, ProLung changed its name to Fresh Medical Laboratories, Inc. Finally, in April 2017, ProLung changed its name to ProLung, Inc.

[2]*See ProLung's website,* http://prolunginc.com/quality/. CE marketing is the medical device manufacturer's claim that a product meets the essential requirements of all relevant European medical device directives, and allows the

GENERAL ALLEGATIONS

11. The Division's investigation of this matter revealed that from approximately July 2013 to March 2014, while conducting business in or from the state of Utah, ProLung BOD member Treu solicited investments in a ProLung investment opportunity from at least five (5) investors, and raised approximately $138,000 in connection therewith.

12. In connection with the offer and/or sale of securities, from 2013 to 2014 Treu received compensation for soliciting investors on behalf of ProLung in the form of ProLung stock shares valued at $.50 per share.

13. Treu solicited investments in an investment opportunity that took the form of stock.

14. Stocks are securities under §61-1-13 of the Act.

15. To date, shareholders solicited by Treu have invested at least $138,000 in ProLung stock.

PROLUNG INVESTMENT

THE SOLICITATIONS

16. From 2013 to 2014, while a member of the ProLung BOD Treu solicited approximately $138,000 from at least five (5) investors to invest in ProLung.

17. BOD member Treu was not securities licensed during his solicitations to investors, or when he received compensation for the sale of securities.

PROLUNG BOARD OF DIRECTORS

STOCK GRANT VOTE

18. On or about April 29, 2014, the ProLung BOD circulated a consent agreement amongst

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ProLung device to be sold in EU member states. The directives outline the safety and performance requirements for medical devices in the EU.

[3] *See* Division filing numbers, B01428622, B01464333, B01646762

ProLung BOD members to vote regarding the issuance of 582,102 ProLung stock shares to select members of the ProLung BOD in connection with "financing services provided" by those select BOD members. The consent agreement was circulated by email in lieu of holding a special BOD meeting.[4]

19. According to the consent agreement, 582,102 shares were to be distributed to the following: 216,000 shares granted to Raybould; 16,350 shares granted to Eror; 63,750 shares granted to Treu; 193,500 shares granted to Campbell; and 97,500 shares granted to Morgan.

20. The stock grant was intended to compensate those members of the ProLung BOD who raised approximately $1,563,000 in investor funds from approximately February 2012 to March 2014.

21. The members of the BOD who received the consent agreement included: Wayne Adams ("Adams"), Eror, Raybould, Dennis Tulane ("Tulane"), Campbell, Morgan, Treu, and Nathan Wade ("Wade").

22. Six of the eight BOD members voted in favor of issuing common stock grants to Eror, Raybould, Campbell, Morgan, and Treu for financing services provided to ProLung. Adams, Tulane, and Wade did not receive compensation for soliciting ProLung investors.

STOCK TRANSFER

23. On or about April 29, 2014, ProLung issued the following stock grants to select members of the ProLung BOD:[5]

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[4] The consent agreement was addressed to "Members of the Board of Directors Freshmedx". Freshmedx is a DBA and the former entity name of ProLung.

[5] On or about December 1, 2017, ProLung initiated a1for 8 reverse stock split. The amount of shares held by the

a. 216,000 shares granted to Raybould valued at $.50 per share or $108,000;

b. 16,350 shares granted to Eror valued at $.50 per share or $8,175;

c. 63,750 shares granted to Treu valued at $.50 per share or $31,875;

d. 193,500 shares granted to Campbell valued at $.50 per share or $96,750; and

e. 97,500 shares granted to Morgan valued at $.50 per share or $48,750.

24. In or about the fall of 2014, ProLung's legal counsel informed Eror of potential tax consequences for receiving the shares and violations of securities laws for receipt of compensation for the sale of securities without a securities license. ProLung's legal counsel further requested a meeting with the entire ProLung BOD to inform them of the issues discussed with Eror.

25. Following Eror's receipt of 16,350 ProLung shares, on or about November 10, 2014, Eror returned his shares back to ProLung based upon advice from ProLung's legal counsel.

26. After being informed by ProLung's legal counsel of the potential securities and tax violations from the receipt of ProLung shares for compensation, Eror on several occasions informed other ProLung BOD members of legal counsel's advice.

27. In or about the spring of 2015, ProLung's legal counsel met with the BOD to discuss the stock grant concerns, tax consequences, and securities violations. After the BOD's meeting with ProLung's legal counsel, Raybould, Treu, Campbell, and Morgan elected not to return the stock to ProLung, which was granted to them for soliciting ProLung investors.

CONCLUSIONS OF LAW

Unlicensed Activity under § 61-1-3(1) of the Act

28. Based upon the Division's investigative findings, the Division concludes that Treu

BOD decreased, the price per share increased to $4 per share, but the overall value of the shares remained the same.

solicited investments in ProLung stock, which stock is a security under §61-1-13 of the Act.

29. Treu acted as an agent to ProLung when he solicited investments in ProLung stock on behalf of ProLung, and received compensation in connection therewith.

30. In violation of §61-1-3(1) of the Act, Treu was not licensed as an issuer-agent when he solicited investments in ProLung securities from investors.

REMEDIAL ACTIONS/SANCTIONS

31. Treu neither admits nor denies the Division's Findings of Fact contained in paragraphs 26-27. Treu admits to acting as an unlicensed agent, and to the Division's Conclusions of Law. Treu consents to the below sanctions being imposed by the Division.

32. Treu represents that the information he has provided to the Division as part of its investigation is accurate and complete.

33. Treu agrees to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in the state of Utah.

34. Treu agrees to be barred from associating with any broker-dealer or investment adviser licensed in the state of Utah; from acting as an agent for any issuer soliciting investor funds in the state of Utah; and from being licensed in any capacity in the securities industry in the state of Utah.

35. Treu agrees to cooperate with the Division's investigation of ProLung, and to provide testimony in this proceeding or others if requested.

36. Treu agrees to return 7,969 shares (post reverse stock split) of ProLung stock to ProLung's treasury within five (5) business days of entry of the final Order.[6] Treu has

[6] On or about December 1, 2017, ProLung initiated a 1 for 8 reverse stock split. The 7,969 shares represent the share amounts to be returned by Treu after ProLung's reverse stock split occurred.

provided the Division with evidence satisfactory to the Division to show that on January 21, 2019, he returned the 7,969 shares to ProLung's treasury.

37. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, the Division imposes a fine of $12,500 against Treu. Treu agrees to pay $12,500 to the Division within five (5) business days of entry of the final Order.

FINAL RESOLUTION

38. Treu acknowledges that this Order, upon approval by the Utah Securities Commission ("Commission"), shall be the final compromise and settlement of this matter. Treu acknowledges that the Commission is not required to approve this Order, in which case the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, Treu expressly waives any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

39. If Treu materially violates any term of this Order, after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, Treu consents to entry of an order in which the total fine amount is increased by 20% and any fine payments owed by Treu become immediately due and payable. Notice of the violation will be provided to Treu at his last known address, and to his counsel if he has one. If Treu fails to request a hearing within ten (10) days following the notice, there will be no hearing and the order granting relief will be entered.

40. In addition, the Division may institute judicial proceedings against Treu in any court of competent jurisdiction and take any other action authorized by the Act or under any other applicable law to collect monies owed by Treu or to otherwise enforce the terms of this

Order. Treu further agrees to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

41. Treu acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Treu also acknowledges that any civil, criminal, arbitration or other causes of actions brought by third-parties against him have no effect on, and do not bar this administrative action by the Division against him.

42. This 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 Order in any way. Upon entry of the Order, any further scheduled hearings involving Respondent Treu are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 10 day of September, 2019

Dave R. Hermansen
Director of Enforcement
Utah Division of Securities

Dated this 30th day of September, 2019

Tim Treu

Approved:

Jennifer Korb
Assistant Attorney General
Counsel for Division

Mark Pugsley
Counsel for Respondent Treu

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which Treu admits in part and neither admits nor denies in part are hereby entered.
2. Treu shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in the state of Utah.
3. Treu shall be barred from associating with any broker-dealer or investment adviser licensed in the state of Utah; from acting as an agent for any issuer soliciting investor funds in the state of Utah; and from being licensed in any capacity in the securities industry in the state of Utah.
4. Treu shall cooperate with the Division's investigation of ProLung, and provide testimony in this proceeding or others if requested.
5. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, Treu shall pay a fine of $12,500 to the Division pursuant to the terms set forth in paragraph 37.

BY THE UTAH SECURITIES COMMISSION:

DATED this 7th day of November, 2019

Gary Cornia

Lyle White

Peggy Hunt

Lyndon Ricks

Brent Cochran

CERTIFICATE OF SERVICE

I certify that on the 7th day of NOV, 2019, I emailed and mailed a true and correct copy of the Stipulation and Consent Order to:

Tim Treu
[redacted]

Mark Pugsley (Attorney Treu)
Ray Quinney & Nebeker P.C.
36 South State St., Suite 1400
Salt Lake City, UT 84111
mpugsley@rqn.com

And hand-delivered via drop box to:
Bruce Dibb, Administrative Law Judge
Department of Commerce

Jennifer Korb, Assistant Attorney General
Utah Attorney General's Office

Dave R. Hermansen, Director of Enforcement
Utah Division of Securities

Sabrina Mrid
Executive Secretary

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801)530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:	**STIPULATION AND CONSENT ORDER**
PROLUNG INC,	Docket No. 19-0014
JARED BAUER,	Docket No. 19-0015
CLARK A. CAMPBELL,	Docket No. 19-0016
TIM TREU,	Docket No. 19-0017
TODD MARK MORGAN,	**Docket No. 19-0018**
ROBERT W. RAYBOULD,	Docket No. 19-0019
Respondents.	

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave Hermansen, and Respondent Todd Mark Morgan ("Morgan") hereby stipulate and agree as follows:

1. Morgan has been the subject of an investigation by the Division into allegations that he violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. §61-1-3(1) (unlicensed activity) while engaged in the offer and/or sale of securities in or from Utah.

2. On or about April 23, 2019, the Division initiated an administrative action against ProLung Inc. ("ProLung"), Jared Bauer ("Bauer"), Clark A. Campbell ("Campbell"), Tim

Treu ("Treu"), and Robert W. Raybould ("Raybould") (collectively referred to herein as "Respondents") by filing an Order to Show Cause.

3. Morgan hereby agrees to settle this matter with the Division by way of this Stipulation and Consent Order ("Order"). If entered, the Order will fully resolve all claims the Division has against Morgan pertaining to the Order to Show Cause.

4. Morgan admits that the Division has jurisdiction over him and over the subject matter of this action.

5. Morgan hereby waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.

6. Morgan has read this Order, understands its contents, and voluntarily agrees to the entry of the Order as set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Morgan to enter into this Order, other than as described in this Order.

7. Morgan is represented by attorney Mark W. Pugsley from the law firm of Ray Quinney & Nebeker, and is satisfied with the legal representation he has received.

FINDINGS OF FACTS

THE RESPONDENT

8. Morgan resided in Davis County, Utah during all times relevant to the allegations asserted herein, and has never been licensed in the securities industry. Morgan was a member of ProLung's BOD from January 2014 to June 2018.

RELATED ENTITY INFORMATION

9. ProLung is a corporation registered with the Delaware Division of Corporations on November 22, 2004. ProLung's headquarters are located in Salt Lake City, Utah.[1] Jared Bauer ("Bauer") is listed as the current interim CEO of ProLung and has been the interim CEO since September 2018, according to ProLung's website. From November 2004 to June 2018, Steve Eror ("Eror") was the CEO of ProLung. The purported purpose of ProLung is to develop and deploy medical devices and procedures specializing in the immediate, non-invasive evaluation of indeterminate masses seen in CT and radiography scans. ProLung's principal activities include: research and development, product prototyping, securing strategic alliances, and obtaining corporate financing.

10. One device that ProLung developed, tested, and began the process to commercialize recently is its non-invasive lung cancer diagnostic test, the "Electro Pulmonary Nodule Scan" ("EPN Scan"). According to ProLung's 2014 10Q report filed with the U.S. Securities and Exchange Commission ("SEC"), in April 2013 ProLung entered into an agreement to license this technology to a distributor in China. In May 2013, ProLung received the "CE Mark" in Europe, permitting the marketing of the EPN scan in the European Union ("EU") and other countries.[2] In addition, ProLung has submitted corporate notice filings with the Division.[3]

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[1] ProLung's entity documents list a principal address as 757 E S Temple #150, Salt Lake City, Utah 84102. The Utah Division of Corporations and Commercial Code lists the entity's registration status as active as of December 21, 2018.

According to ProLung's Form S-1 filed with the SEC, ProLung has undergone several entity name changes. In November 2004, ProLung was incorporated in Delaware under the name Hilltop Group Technologies Corp. In November 2006, ProLung changed its name to Fresh Medical Laboratories, Inc. Finally, in April 2017, ProLung changed its name to ProLung, Inc.

[2] *See ProLung's website,* [redacted]. CE marketing is the medical device manufacturer's claim that a product meets the essential requirements of all relevant European medical device directives, and allows the

GENERAL ALLEGATIONS

11. The Division's investigation of this matter revealed that from approximately January 2014 to March 2014, while conducting business in or from the state of Utah, ProLung BOD member Morgan solicited investments in a ProLung investment opportunity from at least one (1) investor, and raised approximately $25,000 in connection therewith.

12. In connection with the offer and/or sale of securities, in 2014 ProLung BOD member Morgan received compensation for soliciting an investor on behalf of ProLung in the form of ProLung stock shares valued $.50 per share.

13. Morgan solicited investments in an investment opportunity that took the form of stock.

14. Stocks are securities under §61-1-13 of the Act.

15. To date, shareholders solicited by Morgan have invested at least $25,000 in ProLung stock.

PROLUNG INVESTMENT

THE SOLICITATIONS

16. In or about 2014, while a member of the ProLung BOD, Morgan solicited approximately $25,000 from at least one (1) investor to invest in ProLung.

17. BOD member Morgan was not securities licensed during his solicitation to the investor, or when he received compensation for the sale of securities.

PROLUNG BOARD OF DIRECTORS

STOCK GRANT VOTE

18. On or about April 29, 2014, the ProLung BOD circulated a consent agreement amongst

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ProLung device to be sold in EU member states. The directives outline the safety and performance requirements for medical devices in the EU.

[3] *See* Division filing numbers, B01428622, B01464333, B01646762

ProLung BOD members to vote regarding the issuance of 582,102 ProLung stock shares to select members of the ProLung BOD in connection with "financing services provided" by those select BOD members. The consent agreement was circulated by email in lieu of holding a special BOD meeting.[4]

19. According to the consent agreement, 582,102 shares were to be distributed to the following: 216,000 shares granted to Raybould; 16,350 shares granted to Eror; 63,750 shares granted to Treu; 193,500 shares granted to Campbell; and 97,500 shares granted to Morgan.

20. The stock grant was intended to compensate those members of the ProLung BOD who raised approximately $1,563,000 in investor funds from approximately February 2012 to March 2014.

21. The members of the BOD who received the consent agreement included: Wayne Adams ("Adams"), Eror, Raybould, Dennis Tulane ("Tulane"), Campbell, Morgan, Treu, and Nathan Wade ("Wade").

22. Six of the eight BOD members voted in favor of issuing common stock grants to Eror, Raybould, Campbell, Morgan, and Treu for financing services provided to ProLung. Adams, Tulane, and Wade did not receive compensation for soliciting ProLung investors.

STOCK TRANSFER

23. On or about April 29, 2014, ProLung issued the following stock grants to select members of the ProLung BOD:[5]

    a. 216,000 shares granted to Raybould valued at $.50 per share or $108,000;

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[4] The consent agreement was addressed to "Members of the Board of Directors Freshmedx". Freshmedx is a DBA and the former entity name of ProLung.

[5] On or about December 1, 2017, ProLung initiated a 1 for 8 reverse stock split. The amount of shares held by the BOD decreased, the price per share increased to $4 per share, but the overall value of the shares remained the same.

b. 16,350 shares granted to Eror valued at $.50 per share or $8,175;

c. 63,750 shares granted to Treu valued at $.50 per share or $31,875;

d. 193,500 shares granted to Campbell valued at $.50 per share or $96,750; and

e. 97,500 shares granted to Morgan valued at $.50 per share or $48,750.

24. In or about the fall of 2014, ProLung's legal counsel informed Eror of potential tax consequences for receiving the shares and violations of securities laws for receipt of compensation for the sale of securities without a securities license. ProLung's legal counsel further requested a meeting with the entire ProLung BOD to inform them of the issues discussed with Eror.

25. Following Eror's receipt of 16,350 ProLung shares, on or about November 10, 2014, Eror returned his shares back to ProLung based upon advice from ProLung's legal counsel.

26. After being informed by ProLung's legal counsel of the potential securities and tax violations from the receipt of ProLung shares for compensation, Eror on several occasions informed other ProLung BOD members of legal counsel's advice.

27. In or about the spring of 2015, ProLung's legal counsel met with the BOD to discuss the stock grant concerns, tax consequences, and securities violations. After the BOD's meeting with ProLung's legal counsel, Raybould, Treu, Campbell, and Morgan elected not to return the stock to ProLung, which was granted to them for soliciting ProLung investors.

CONCLUSIONS OF LAW

Unlicensed Activity under § 61-1-3(1) of the Act

28. Based upon the Division's investigative findings, the Division concludes that Morgan solicited investments in ProLung stock, which stock is a security under §61-1-13 of the

Act.

29. Morgan acted as an agent to ProLung when he solicited investments in ProLung stock on behalf of ProLung, and received compensation in connection therewith.

30. In violation of §61-1-3(1) of the Act, Morgan was not licensed as an issuer-agent when he solicited investments in ProLung securities from investors.

REMEDIAL ACTIONS/SANCTIONS

31. Morgan neither admits nor denies the Division's Findings of Fact contained in paragraphs 26-27. Morgan admits to acting as an unlicensed agent, and to the Division's Conclusions of Law. Morgan consents to the below sanctions being imposed by the Division.

32. Morgan represents that the information he has provided to the Division as part of its investigation is accurate and complete.

33. Morgan agrees to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in the state of Utah.

34. Morgan agrees to be barred from associating with any broker-dealer or investment adviser licensed in the state of Utah; from acting as an agent for any issuer soliciting investor funds in the state of Utah; and from being licensed in any capacity in the securities industry in the state of Utah.

35. Morgan agrees to cooperate with the Division's investigation of ProLung, and to provide testimony in this proceeding or others if requested.

36. Morgan agrees to return 12,188 shares (post reverse stock split) of ProLung stock to ProLung's treasury within five (5) business days of entry of the final Order.[6] Morgan also

[6] On or about December 1, 2017, ProLung initiated a 1 for 8 reverse stock split. The 12,188 shares represent the share amounts to be returned by Morgan after ProLung's reverse stock split occurred.

agrees to provide the Division with copies of the stock certificates returned to ProLung's treasury within five (5) business days of entry of the final Order.

37. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, the Division imposes a fine of $6,000 against Morgan. Morgan agrees to pay $6,000 to the Division within five (5) business days of entry of the final Order.

FINAL RESOLUTION

38. Morgan acknowledges that this Order, upon approval by the Utah Securities Commission ("Commission"), shall be the final compromise and settlement of this matter. Morgan acknowledges that the Commission is not required to approve this Order, in which case the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, Morgan expressly waives any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

39. If Morgan materially violates any term of this Order, after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, Morgan consents to entry of an order in which the total fine amount is increased by 20% and any fine payments owed by Morgan become immediately due and payable. Notice of the violation will be provided to Morgan at his last known address, and to his counsel if he has one. If Morgan fails to request a hearing within ten (10) days following the notice, there will be no hearing and the order granting relief will be entered.

40. In addition, the Division may institute judicial proceedings against Morgan in any court of competent jurisdiction and take any other action authorized by the Act or under any other applicable law to collect monies owed by Morgan or to otherwise enforce the terms

of this Order. Morgan further agrees to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

41. Morgan acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Morgan also acknowledges that any civil, criminal, arbitration or other causes of actions brought by third-parties against him have no effect on, and do not bar this administrative action by the Division against him.

42. This 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 Order in any way. Upon entry of the Order, any further scheduled hearings involving Respondent Morgan are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 22 day of August, 2019

Dave R. Hermansen
Director of Enforcement
Utah Division of Securities

Dated this 14 day of Aug, 2019

Todd Mark Morgan

Approved:

Jennifer Korb
Assistant Attorney General
Counsel for Division

Mark Pugsley
Counsel for Respondent Morgan

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which Morgan admits in part and neither admits nor denies in part are hereby entered.
2. Morgan shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in the state of Utah.
3. Morgan shall be barred from associating with any broker-dealer or investment adviser licensed in the state of Utah; from acting as an agent for any issuer soliciting investor funds in the state of Utah; and from being licensed in any capacity in the securities industry in the state of Utah.
4. Morgan shall cooperate with the Division's investigation of ProLung, and provide testimony in this proceeding or others if requested.
5. Morgan shall return 12,188 shares of ProLung stock to ProLung's treasury within five (5) business days of entry of the final Order. Morgan shall also provide the Division with copies of the stock certificates returned to ProLung's treasury within five (5) business days of entry of the final Order.
6. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, Morgan shall pay a fine of $6,000 to the Division pursuant to the terms set forth in paragraph 37.

BY THE UTAH SECURITIES COMMISSION:

DATED this 7th day of November, 2019

Gary Cornia

Lyle White

Peggy Hunt

Lyndon Ricks

Brent Cochran

CERTIFICATE OF SERVICE

I certify that on the 1st day of November 2019, I emailed and mailed a true and correct copy of the Order to Show Cause to:

Todd Mark Morgan

[redacted]

Mark Pugsley (Attorney Morgan)
Ray Quinney & Nebeker P.C.
36 South State St., Suite 1400
Salt Lake City, UT 84111
[redacted]

And hand-delivered via drop box to:
Bruce Dibb, Administrative Law Judge
Department of Commerce

Jennifer Korb, Assistant Attorney General
Utah Attorney General's Office

Dave R. Hermansen, Director of Enforcement
Utah Division of Securities

Sabrina Effinli
Executive Secretary

Division of Securities
Utah Department of Commerce
160 East 300 South, 2nd Floor
Box 146760
Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
FAX: (801)530-6980

**BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH**

IN THE MATTER OF:	**STIPULATION AND CONSENT ORDER**
PROLUNG INC,	Docket No. 19-0014
JARED BAUER,	Docket No. 19-0015
CLARK A. CAMPBELL,	Docket No. 19-0016
TIM TREU,	Docket No. 19-0017
TODD MARK MORGAN,	Docket No. 19-0018
ROBERT W. RAYBOULD,	**Docket No. 19-0019**
Respondents.	

The Utah Division of Securities ("Division"), by and through its Director of Enforcement, Dave Hermansen, and Respondent Robert W. Raybould ("Raybould") hereby stipulate and agree as follows:

1. Raybould has been the subject of an investigation by the Division into allegations that he violated the Utah Uniform Securities Act ("Act"), Utah Code Ann. §61-1-3(1) (unlicensed activity) while engaged in the offer and/or sale of securities in or from Utah.

2. On or about April 23, 2019, the Division initiated an administrative action against ProLung Inc. ("ProLung"), Jared Bauer ("Bauer"), Clark A. Campbell ("Campbell"), Tim

Treu ("Treu"), and Todd Mark Morgan ("Morgan") (collectively referred to herein as "Respondents") by filing an Order to Show Cause.

3. Raybould hereby agrees to settle this matter with the Division by way of this Stipulation and Consent Order ("Order"). If entered, the Order will fully resolve all claims the Division has against Raybould pertaining to the Order to Show Cause.

4. Raybould admits that the Division has jurisdiction over him and over the subject matter of this action.

5. Raybould hereby waives any right to a hearing to challenge the Division's evidence and present evidence on his behalf.

6. Raybould has read this Order, understands its contents, and voluntarily agrees to the entry of the Order as set forth below. No promises or other agreements have been made by the Division, nor by any representative of the Division, to induce Raybould to enter into this Order, other than as described in this Order.

7. Raybould is represented by attorney Mark W. Pugsley from the law firm of Ray Quinney & Nebeker, and is satisfied with the legal representation he has received.

FINDINGS OF FACTS

THE RESPONDENT

8. Raybould resided in Salt Lake County, Utah during all times relevant to the allegations asserted herein, and was previously licensed in the securities industry (examination series 6, 65, and 22). Since January 2012, Raybould has been a Director at ProLung, and currently serves as ProLung's Vice President of the Board.

RELATED ENTITY INFORMATION

9. ProLung is a corporation registered with the Delaware Division of Corporations on November 22, 2004. ProLung's headquarters are located in Salt Lake City, Utah.[1] Jared Bauer ("Bauer") is listed as the current interim CEO of ProLung and has been the interim CEO since September 2018, according to ProLung's website. From November 2004 to June 2018, Steve Eror ("Eror") was the CEO of ProLung. The purported purpose of ProLung is to develop and deploy medical devices and procedures specializing in the immediate, non-invasive evaluation of indeterminate masses seen in CT and radiography scans. ProLung's principal activities include: research and development, product prototyping, securing strategic alliances, and obtaining corporate financing.

10. One device that ProLung developed, tested, and began the process to commercialize recently is its non-invasive lung cancer diagnostic test, the "Electro Pulmonary Nodule Scan" ("EPN Scan"). According to ProLung's 2014 10Q report filed with the U.S. Securities and Exchange Commission ("SEC"), in April 2013 ProLung entered into an agreement to license this technology to a distributor in China. In May 2013, ProLung received the "CE Mark" in Europe, permitting the marketing of the EPN scan in the European Union ("EU") and other countries.[2] In addition, ProLung has submitted corporate notice filings with the Division.[3]

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[1]ProLung's entity documents list a principal address as 757 E S Temple #150, Salt Lake City, Utah 84102. The Utah Division of Corporations and Commercial Code lists the entity's registration status as active as of December 21, 2018.

According to ProLung's Form S-1 filed with the SEC, ProLung has undergone several entity name changes. In November 2004, ProLung was incorporated in Delaware under the name Hilltop Group Technologies Corp. In November 2006, ProLung changed its name to Fresh Medical Laboratories, Inc. Finally, in April 2017, ProLung changed its name to ProLung, Inc.

[2]*See ProLung's website,* http://prolunginc.com/quality/. CE marketing is the medical device manufacturer's claim that a product meets the essential requirements of all relevant European medical device directives, and allows the

GENERAL ALLEGATIONS

11. The Division's investigation of this matter revealed that from approximately February 2012 to March 2014, while conducting business in or from the state of Utah, ProLung BOD member Raybould solicited investments in a ProLung investment opportunity from at least 23 investors, and raised approximately $955,000 in connection therewith.

12. In connection with the offer and/or sale of securities, from 2012 to 2014 Raybould received compensation for soliciting investors on behalf of ProLung in the form of ProLung stock shares valued at $.50 per share.

13. Raybould solicited investments in an investment opportunity that took the form of stock.

14. Stocks are securities under §61-1-13 of the Act.

15. To date, shareholders solicited by Raybould have invested at least $955,000 in ProLung stock.

PROLUNG INVESTMENT

THE SOLICITATIONS

16. From 2012 to 2014, while a member of the ProLung BOD, Raybould solicited approximately $955,000 from at least 23 investors to invest in ProLung.

17. BOD member Raybould was not securities licensed during his solicitations to investors, or when he received compensation for the sale of securities.

PROLUNG BOARD OF DIRECTORS

STOCK GRANT VOTE

18. On or about April 29, 2014, the ProLung BOD circulated a consent agreement amongst

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ProLung device to be sold in EU member states. The directives outline the safety and performance requirements for medical devices in the EU.

[3] *See* Division filing numbers, B01428622, B01464333, B01646762

ProLung BOD members to vote regarding the issuance of 582,102 ProLung stock shares to select members of the ProLung BOD in connection with "financing services provided" by those select BOD members. The consent agreement was circulated by email in lieu of holding a special BOD meeting.[4]

19. According to the consent agreement, 582,102 shares were to be distributed to the following: 216,000 shares granted to Raybould; 16,350 shares granted to Eror; 63,750 shares granted to Treu; 193,500 shares granted to Campbell; and 97,500 shares granted to Morgan.

20. The stock grant was intended to compensate those members of the ProLung BOD who raised approximately $1,563,000 in investor funds from approximately February 2012 to March 2014.

21. The members of the BOD who received the consent agreement included: Wayne Adams ("Adams"), Eror, Raybould, Dennis Tulane ("Tulane"), Campbell, Morgan, Treu, and Nathan Wade ("Wade").

22. Six of the eight BOD members voted in favor of issuing common stock grants to Eror, Raybould, Campbell, Morgan, and Treu for financing services provided to ProLung. Adams, Tulane, and Wade did not receive compensation for soliciting ProLung investors.

STOCK TRANSFER

23. On or about April 29, 2014, ProLung issued the following stock grants to select members of the ProLung BOD:[5]

    a. 216,000 shares granted to Raybould valued at $.50 per share or $108,000;

[4] The consent agreement was addressed to "Members of the Board of Directors Freshmedx". Freshmedx is a DBA and the former entity name of ProLung.

[5] On or about December 1, 2017, ProLung initiated a 1 for 8 reverse stock split. The amount of shares held by the BOD decreased, the price per share increased to $4 per share, but the overall value of the shares remained the same.

b. 16,350 shares granted to Eror valued at $.50 per share or $8,175;

c. 63,750 shares granted to Treu valued at $.50 per share or $31,875;

d. 193,500 shares granted to Campbell valued at $.50 per share or $96,750; and

e. 97,500 shares granted to Morgan valued at $.50 per share or $48,750.

24. In or about the fall of 2014, ProLung's legal counsel informed Eror of potential tax consequences for receiving the shares and violations of securities laws for receipt of compensation for the sale of securities without a securities license. ProLung's legal counsel further requested a meeting with the entire ProLung BOD to inform them of the issues discussed with Eror.

25. Following Eror's receipt of 16,350 ProLung shares, on or about November 10, 2014, Eror returned his shares back to ProLung based upon advice from ProLung's legal counsel.

26. After being informed by ProLung's legal counsel of the potential securities and tax violations from the receipt of ProLung shares for compensation, Eror on several occasions informed other ProLung BOD members of legal counsel's advice.

27. In or about the spring of 2015, ProLung's legal counsel met with the BOD to discuss the stock grant concerns, tax consequences, and securities violations. After the BOD's meeting with ProLung's legal counsel, Raybould, Treu, Campbell, and Morgan elected not to return the stock to ProLung, which was granted to them for soliciting ProLung investors.

CONCLUSIONS OF LAW

Unlicensed Activity under § 61-1-3(1) of the Act

28. Based upon the Division's investigative findings, the Division concludes that Raybould solicited investments in ProLung stock, which stock is a security under §61-1-13 of the

Act.

29. Raybould acted as an agent to ProLung when he solicited investments in ProLung stock on behalf of ProLung, and received compensation in connection therewith.

30. In violation of §61-1-3(1) of the Act, Raybould was not licensed as an issuer-agent when he solicited investments in ProLung securities from investors.

REMEDIAL ACTIONS/SANCTIONS

31. Raybould neither admits nor denies the Division's Findings of Fact contained in paragraphs 26-27. Raybould admits to acting as an unlicensed agent, and to the Division's Conclusions of Law. Raybould consents to the below sanctions being imposed by the Division.

32. Raybould represents that the information he has provided to the Division as part of its investigation is accurate and complete.

33. Raybould agrees to cease and desist from violating the Act and to comply with the requirements of the Act in all future business in the state of Utah.

34. Raybould agrees to be barred from associating with any broker-dealer or investment adviser licensed in the state of Utah; from acting as an agent for any issuer soliciting investor funds in the state of Utah; and from being licensed in any capacity in the securities industry in the state of Utah.

35. Raybould agrees to cooperate with the Division's investigation of ProLung, and to provide testimony in this proceeding or others if requested.

36. Raybould agrees to return 27,000 shares (post reverse stock split) of ProLung stock to ProLung's treasury within five (5) business days of entry of the final Order.[6] Raybould

[6] On or about December 1, 2017, ProLung initiated a1for 8 reverse stock split. The 27,000 shares represent the share amounts to be returned by Raybould after ProLung's reverse stock split occurred.

also agrees to provide the Division with copies of the stock certificates returned to ProLung's treasury within five (5) business days of entry of the final Order.

37. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, the Division imposes a fine of $31,000 against Raybould. Raybould agrees to pay $31,000 to the Division within five (5) business days of entry of the final Order.

FINAL RESOLUTION

38. Raybould acknowledges that this Order, upon approval by the Utah Securities Commission ("Commission"), shall be the final compromise and settlement of this matter. Raybould acknowledges that the Commission is not required to approve this Order, in which case the Order shall be null and void and have no force or effect. In the event the Commission does not approve this Order, however, Raybould expressly waives any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.

39. If Raybould materially violates any term of this Order, after notice and an opportunity to be heard before an administrative judge solely as to the issue of a material violation, Raybould consents to entry of an order in which the total fine amount is increased by 20% and any fine payments owed by Raybould become immediately due and payable. Notice of the violation will be provided to Raybould at his last known address, and to his counsel if he has one. If Raybould fails to request a hearing within ten (10) days following the notice, there will be no hearing and the order granting relief will be entered.

40. In addition, the Division may institute judicial proceedings against Raybould in any court of competent jurisdiction and take any other action authorized by the Act or under any

other applicable law to collect monies owed by Raybould or to otherwise enforce the terms of this Order. Raybould further agrees to be liable for all reasonable attorneys' fees and costs associated with any collection efforts pursued by the Division, plus the judgment rate of interest.

41. Raybould acknowledges that the Order does not affect any civil or arbitration causes of action that third-parties may have against him arising in whole or in part from his actions, and that the Order does not affect any criminal causes of action that may arise as a result of the conduct referenced herein. Raybould also acknowledges that any civil, criminal, arbitration or other causes of actions brought by third-parties against him have no effect on, and do not bar this administrative action by the Division against him.

42. This 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 Order in any way. Upon entry of the Order, any further scheduled hearings involving Respondent Raybould are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 22 day of August, 2019

Dave R. Hermansen
Director of Enforcement
Utah Division of Securities

Dated this 16 day of August, 2019

Robert W. Raybould

Approved:

Jennifer Korb
Assistant Attorney General
Counsel for Division

Mark Pugsley
Counsel for Respondent Raybould

ORDER

IT IS HEREBY ORDERED THAT:

1. The Division's Findings and Conclusions, which Raybould admits in part and neither admits nor denies in part are hereby entered.
2. Raybould shall cease and desist from violating the Act and comply with the requirements of the Act in all future business in the state of Utah.
3. Raybould shall be barred from associating with any broker-dealer or investment adviser licensed in the state of Utah; from acting as an agent for any issuer soliciting investor funds in the state of Utah; and from being licensed in any capacity in the securities industry in the state of Utah.
4. Raybould shall cooperate with the Division's investigation of ProLung, and provide testimony in this proceeding or others if requested.
5. Raybould shall return 27,000 shares of ProLung stock to ProLung's treasury within five (5) business days of entry of the final Order. Raybould shall also provide the Division with copies of the stock certificates returned to ProLung's treasury within five (5) business days of entry of the final Order.
6. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, Raybould shall pay a fine of $31,000 to the Division pursuant to the terms set forth in paragraph 37.

BY THE UTAH SECURITIES COMMISSION:

DATED this 7th day of November, 2019.

Gary Cornia

Lyle White

Peggy Hunt

Lyndon Ricks

Brent Cochran

Certificate of Mailing

I certify that on the 7th day of November, 2019, I mailed, by certified mail, a true and correct copy of a Stipulation and Consent Order to:

Mark Pugsley (Attorney Raybould)
Ray Quinney & Nebeker P.C.
36 South State St., Suite 1400
Salt Lake City, UT 84111
mpugsley@rqn.com

Administrative Assistant

DIVISION OF SECURITIES
DEPARTMENT OF COMMERCE
150 EAST 300 SOUTH
SALT LAKE CITY, UTAH 84114-6711

BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
STATE OF UTAH

IN THE MATTER OF: **CHE FINANCIAL RESEARCH, LLC, and WILLIAM RAY CLEMONS,** **Respondents.**	**FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED DEFAULT ORDER** **Docket No. SD-19-0024** **Docket No. SD-19-0025**

This adjudicative proceeding was initiated pursuant to a July 12, 2019 Notice of Agency Action ("NOAA") and Order to Show Cause ("OSC") in the matter of CHE Financial ("CHE") and William Ray Clemons ("Clemons") (collectively "Respondents"). On September 30, 2019, the Utah Division of Securities ("Division") filed a Motion for Default ("Motion") with supporting exhibits.

Findings of Fact

1. On July 12, 2019, the Division issued the NOAA and OSC alleging various violations of the Utah Uniform Securities Act.
2. The NOAA and OSC were sent to multiple known addresses for Respondents. The documents sent to William Ray Clemons, individually and as agent for CHE

Financial at an address in Rochester, MN, were delivered and signed for on July 18, 2019. A copy of the return receipt was attached to the Division's Motion.

3. The NOAA notified the Respondents that they were to file responsive pleadings within 30 days of the mailing of the NOAA. The due date for such responsive pleadings was August 12, 2019. No responsive pleadings have been filed in the more than two months that have expired since that time.
4. The NOAA gave notice of an initial hearing to be held on September 4, 2019. Respondents did not appear at the initial hearing, in person or through counsel. During the hearing, Administrative Law Judge Bruce Dibb ("Judge Dibb") attempted to contact Respondents by telephone at the last known telephone number of the Respondents, but no one answered the phone call made.
5. On September 4, 2019, Judge Dibb entered a Scheduling Order and notice of Hearing (the "Scheduling Order"). The Scheduling Order required that Respondents file responsive pleadings by September 18, 2019. This created a new window of opportunity for the Respondents to file responsive pleadings, but no responsive pleadings have been filed in this matter.
6. The Scheduling Order was sent to Respondents' last known addresses. One of the mailings, to Mr. Clemons at an address in North Salt Lake, came back as undeliverable. None of the other mailings were returned, including the one sent to CHE Financial at the same North Salt Lake address.
7. On September 30, 2019, the Division filed a Motion for Default based on the facts that Respondents did not participate in the initial hearing and did not file any

responsive pleadings.

8. In the present case, Respondents raised $145,095.56 from Utah investors by misrepresenting and omitting material facts related to the sale of those securities and engaging in other fraudulent conduct. (Jaynes Affidavit, ¶4.b)

9. In support of the sanctions referenced in this pleading, investigator Aaron Jaynes recites in his affidavit (filed with the Division's Motion for Default) the following aggravating and mitigating factors:

    a. Seriousness, nature, circumstances, extent and persistence of conduct. Clemons regularly used investor funds for his personal expenses, and solicited nine investors over a period of four years.
    b. Harm to Other Persons. Clemons misused investor funds and has little prospect of ever being able to repay investors.
    c. The need to deter the person or other persons. In 2006, Clemons plead guilty in a Utah 3rd District Court securities fraud case, and in this year has plead guilty in a Utah 2nd District Court criminal case based on the facts of the OSC in this matter.
    d. Cooperation with the investigation. Mr. Clemons did not cooperate in the investigation.
    e. Efforts to Mitigate. Clemons had made payment to three of his investor victims totaling $34,113.
    f. History of Previous Violations, In addition to the above criminal actions, Clemons was previously barred from the securities industry.

Conclusions of Law

1. Section 63G-4-209 of the Utah Administrative Procedures Act ("UAPA") states "[t]he presiding officer may enter an order of default against a party if: (b) a party to a formal adjudicative proceeding fails to attend or participate in a properly scheduled hearing after receiving proper notice; or (c) a respondent in a formal adjudicative proceeding fails to file a response under Section 63G-4-204 of UAPA.

2. The Respondents failed to attend the duly notice scheduling hearing and failed to file responsive pleadings.
3. "After a default judgment is handed down, a defendant admits to a complaint's well-pleaded facts and forfeits his or her ability to contest those facts" (see the Tenth Circuit Court case of *Tripodi v. Welch*, 810 F.3d 761, 764; 2016 U.S. App. LEXIS 502; a securities fraud case tried in the Federal District Court for the District of Utah against principally Utah defendants).
4. The Respondents directly or indirectly misrepresented material facts or omitted material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. This was in violation of Section 61-1-1(2) of the Utah Securities Act (the "Act").
5. The Respondents directly or indirectly engaged in an act, practice, or course of business which operated as a fraud or deceit on Utah investors, in violation of Section 61-1-1(3) of the Act. That conduct includes but is not limited to Respondents' conversion and misuse of investor monies for purposes not disclosed to, or authorized by, the Utah investors, including personal use of monies.
6. Neither of the Respondents were licensed in the securities industry when they offered and sold securities to the Utah investor. The individual Respondent received compensation in connection with the sale of securities, in violation of Section 61-1-3(2)(a) of the Act.
7. The requested fine amounts detailed below were determined after consideration of the guidelines included in U.C.A. §61-1-31.

8. The administrative fine to be assessed under U.C.A. §61-1-31 is to be proportional to the gravity of the Respondents' offenses, as guided by the principles set forth in the United States Supreme Court decision of the *United States v. Hoep Krikor Bajakajian,* 524 U.S. 321, 1998 U.S. LEXIS 4172 (1998).
9. The analysis of the amount of the fine is further aided by the principles set forth in the Utah Court of Appeals case of *Brent Brown Dealerships v. Tax Commission,* 139 P.3d 296; 2006 Utah App. LEXIS 275 (2006).
10. The *Bajakajian* case and the *Brent Brown* case are both discussed in that portion of the recent decision of the Utah Court of Appeals in *Phillips v. Department of Commerce,* 397 P.3d 863, 873-874; 2017 Utah App. LEXIS 84. The *Phillips* case addresses the constitutional law constraints on the amount of a fine. The principles of these cases give guidance to the outside parameters of an appropriate fine.
11. In the *Brent Brown* case, the Utah Court of Appeals cited favorably the Eight Circuit case, *United Sates v. Lippert,* 148 F.3d 974, 978 (8th Cir. 1998), holding that a penalty equal to two times the amount Lippert received in violation of the applicable federal statute was not grossly disproportionate. Here, the Respondent raised $145,095.56 from investors in violation of state securities laws.
12. The requested fine amount and restitution were determined in accordance with the provisions of §61-1-31 of the Utah Uniform Securities Act and are supported by the Declaration of Aaron Jaynes (the "Jaynes Declaration") attached to the Division's

Motion. In reaching this amount, the Division considered the seriousness, nature, circumstances, extent, and persistence of the conduct constituting the violation; the harm to other persons resulting either directly or indirectly from the violation; cooperation by Respondents and any remedial measures taken by them; any prior offenses by the Respondents; the need for deterrence; the circumstances surrounding the vulnerability of the investors; and other matters as justice may require, including any costs incurred by the Division over the course of the investigation and litigation of this matter.

13. In the present case, Respondents raised $145,095.56 from Utah investors by misrepresenting and omitting material facts related to the sale of those securities and engaging in other fraudulent conduct. To date, investors are owed at least $110,982.56, the amount requested for restitution.

14. The fine of $40,000 is supported by the facts that Respondents did nothing to cooperate with the Division's investigation, and took no actions to mitigate the harm caused by the violations.

15. Based upon consideration of these elements, the Division requested a fine of $40,000 and restitution of $110,982.

RECOMMENDED ORDER

The Presiding Officer recommends that the Utah Securities Commission enter default against Respondents ordering as follows:

a. That the allegations contained in the Division's Order to Show Cause are accepted as true;

b. That Respondents cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1 et seq.;

c. That Respondents be ordered to pay to the Division a fine of $40,000 due within 5 days of entry of the order;

d. That Respondents be ordered to pay restitution to the victims in the amount of $110,982 within 5 days of entry of this order; and

e. That Respondents be permanently barred from associating with any broker-dealer or investment adviser licensed in Utah.

Dated this 24th day of October, 2019.

UTAH DEPARTMENT OF COMMERCE

Bruce L. Dibb, Presiding Officer

BY THE UTAH SECURITIES COMMISSION:

DATED this 7th day of November 2019

Gary Cornia

Peggy Hunt

Brent A. Cochran

Lyle White

Lyndon Ricks