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**STATE OF OREGON**  
**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**  
**DIVISION OF FINANCIAL REGULATION**

In the Matter of:

Todd Christopher Grange (d/b/a THC  
Pharmaceutical, Inc.)

Respondent.

Agency Case No. S-15-0108  
OAH Case No. 1604478

**FINAL ORDER TO CEASE AND  
DESIST; ORDER ASSESSING CIVIL  
PENALTIES AND ORDER DENYING  
USE OF EXEMPTIONS TO THE  
SECURITIES REGISTRATION  
REQUIREMENT**

**THIS IS A FINAL ORDER**

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**HISTORY OF THE CASE**

On September 21, 2015, the Department of Consumer and Business Services, Division of Financial Regulation (“Division”) issued an Order to Cease and Desist; Proposed Orders Assessing Civil Penalties and Denying Use of Exemptions; and Notice of Right to a Hearing to Todd C. Grange dba THC Pharmaceutical, Inc. (Respondent or Grange). On October 9, 2015, Respondent requested a hearing.

On February 24, 2016, the Division referred the hearing request to the Office of Administrative Hearings (OAH). The OAH assigned Senior Administrative Law Judge (ALJ) Dove L. Gutman to preside at hearing.

On April 6, 2016, ALJ Gutman convened a prehearing telephone conference. Senior Assistant Attorney General Joanna Tucker-Davis represented the Division. Respondent represented himself. During the telephone conference, ALJ Gutman set dates for the parties to file Motions for Summary Determination (May 26, 2016), Responses (June 16, 2016), and Replies (June 30, 2016). ALJ Gutman also scheduled the hearing for September 20, 2016 through September 22, 2016.

On May 19, 2016, Ms. Tucker-Davis requested that the dates for the parties to file Motions for Summary Determination (MSDs) and Responses be extended to June 9, 2016 and June 30, 2016 respectfully. On May 25, 2016, ALJ Gutman granted the request.

On June 6, 2016, the Division issued a First Amended Order to Cease and Desist; Proposed Orders Assessing Civil Penalties and Denying Use of Exemptions; and Notice of Right to a Hearing to Respondent.

On June 9, 2016, Ms. Tucker-Davis filed the Division’s Motion for Summary Determination and Exhibits A1 through A14. Respondent failed to file a timely Response. On July 12, 2016, ALJ Gutman closed the record and took the matter under advisement.

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350 Winter Street NE, Suite 410  
Salem, OR 97301-3881  
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1 On July 18, 2016, ALJ Gutman issued a Ruling on Motion for Summary  
2 Determination and Proposed Order that granted the Division’s Motion for Summary  
3 Determination in all aspects, cancelled the hearing scheduled for September 20, 2016  
4 through September 22, 2016, and affirmed the Division’s First Amended Order. ALJ  
5 Gutman’s Ruling afforded the Respondent 30 days to file written exceptions with the  
6 Director of the Department of Consumer and Business Services (“Director”); to date, the  
7 Director received no exceptions.

8 Now, therefore, having reviewed the entire record in this matter, the Director  
9 issues the following Findings of Fact, Conclusions of Law and Final Order, consistent  
10 with that proposed by ALJ Gutman, and Notice of Right to Judicial Review.

11 The Director adopts ALJ Gutman’s recommended decision and issues this Final  
12 Order, without modification of the ALJ’s Findings of Fact. The Opinion section has been  
13 supplemented for grammatical purposes only.

### 14 ISSUES

15 1. Whether there are genuine issues of material fact that remain to be determined,  
16 and if not, whether the Division is entitled to a ruling as a matter of law.

17 2. Whether the Director has jurisdiction over Respondent pursuant to ORS  
18 59.235.

19 3. Whether Respondent’s offer to sell securities to JS occurred in the State of  
20 Oregon. ORS 59.345(1)(a).

21 4. Whether JS’s acceptance to purchase THCP’s offered securities occurred in  
22 the State of Oregon. ORS 59.345(2)(b).

23 5. Whether THCP’s shares are “securities” within the meaning of ORS  
24 59.015(19)(a).

25 6. Whether Respondent, acting as THCP, was an “issuer” within the meaning of  
26 ORS 59.015(9).

1 Whether Respondent offered and sold unregistered securities in the State of  
2 Oregon, that were not otherwise exempt from registration, in violation of ORS 59.055.

3 Whether Respondent was selling securities in Oregon without a license, in  
4 violation of ORS 59.165(1).

5 Whether Respondent, directly or indirectly, in connection with the sale or  
6 purchase of securities to JS, made untrue statements or omitted to state a material fact  
7 necessary in order to make the statements made, in light of the circumstances under  
8 which they were made, not misleading, in violation of ORS 59.135(2).

9 Whether Respondent shall be ordered to Cease and Desist from:



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- a. Offering and selling securities that are not registered, in violation of ORS 59.055;
- b. Offering and selling securities in violation of the anti-fraud provisions of ORS 59.135;
- c. Violating any provision of the Oregon Securities Law.

11. Whether, pursuant to ORS 59.045(2), Respondent shall be denied the use of the securities and transactions exemptions that would otherwise be available.

12. Whether, pursuant to ORS 59.995, Respondent shall be assessed the following civil penalties:

- a. \$20,000 for violating ORS 59.055;
- b. \$20,000 for violating ORS 59.135(2);
- c. \$20,000 for violating ORS 59.165(1).

**DOCUMENTS CONSIDERED**

The following documents were reviewed and considered in this matter: The Division’s MSD, Exhibits A1 through A14, and the pleadings.

**LEGAL STANDARD FOR SUMMARY DETERMINATION**

Motions for Summary Determination are governed by OAR 137-003-0580, which provides, in pertinent part:

(1) Not less than 28 calendar days before the date set for hearing, the agency or a party may file a motion requesting a ruling in favor of the agency or party on any or all legal issues (including claims and defenses) in the contested case. The motion, accompanied by any affidavits or other supporting documents, shall be served on the agency and parties in the manner required by OAR 137-003-0520.

(2) Within 14 calendar days after service of the motion, the agency or a party may file a response to the motion. The response may be accompanied by affidavits or other supporting documents and shall be served on the agency and parties in the manner required by OAR 137-003-0520.

(3) The administrative law judge may establish longer or shorter periods than those under section (1) and (2) of this rule for the filing of motions and responses.

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(6) The administrative law judge shall grant the motion for a summary determination if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

(9) A party or the agency may satisfy the burden of producing evidence through affidavits. Affidavits shall be made on personal knowledge, establish that the affiant is competent to testify to the matters stated therein and contain facts that would be admissible at the hearing.

(10) When a motion for summary determination is made and supported as provided in this rule, a non-moving party or non-moving agency may not rest upon the mere allegations or denials contained in that party's or agency's notice or answer, if any. When a motion for summary determination is made and supported as provided in this rule, the administrative law judge or the agency must explain the requirements for filing a response to any unrepresented party or parties.

(11) The administrative law judge's ruling may be rendered on a single issue and need not resolve all issues in the contested case.

(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling or a final order in accordance with OAR 137-003-0665 if the administrative law judge has authority to issue a final order without first issuing a proposed order.

## FINDINGS OF FACT

### Background

1. During all relevant times, Todd Christopher Grange (Grange) was doing business as THC Pharmaceutical, Inc. (THCP). THCP has never been incorporated as an

1 entity in Oregon or registered to do business in Oregon with the Oregon Secretary of  
2 State. (Exs. A1, A14.)

3 2. THCP has never registered a security with the Division. (Exs. A2, A14.)

4 3. Grange has never been licensed as a securities broker-dealer representative,  
5 securities salesperson or investment adviser representative in Oregon. (Exs. A3, A14.)

6 4. On July 3, 2007, Grange entered into an assurance of voluntary compliance  
7 (AVC) agreement with the Oregon Department of Justice in which he agreed to not  
8 advertise goods or services on the internet which he did not have or could not provide and  
9 that he would not represent that a business was incorporated when it was not. (Exs. A4,  
10 A14.)

11 5. On January 19, 2010, Clackamas County Circuit Court Judge Susie L. Norby  
12 found that Mr. Grange was in contempt of the AVC in four separate holdings as a result  
13 of his false representations on a website that advertised a sham business purporting to  
14 offer real estate services to customers. (Exs. A4, A14.)

15 6. On June 19, 2012, Grange was convicted of first degree theft by the State of  
16 Washington. The jury verdict was upheld on appeal on February 20, 2014. (Exs. A5,  
17 A14.)

### 18 **THC Pharmaceutical, Inc.**

19 7. On or about October 31, 2013, Grange entered into a Mailbox Service  
20 Agreement with Mail House Plus, a commercial mail receiving agency, located at 4230  
21 SE King Rd, Milwaukie, Oregon, 97222. Grange obtained mailbox #290 at 4230 SE  
22 King Rd, Milwaukie, Oregon, 97222. (Exs. A1, A6.)

23 8. As part of the Mail Agreement, Grange signed U.S. Postal Form 1583, which  
24 authorized delivery by agent. In the Mail Agreement, Grange listed his phone as 503-  
25 568-0710 and a home address at 9309 SE Grandview Terrace, Happy Valley, Oregon,  
26 97086. (Exs. A1, A6.)

9 Telephone records from Cricket Communications (a wholly owned subsidiary  
of AT&T) confirmed that 503-568-0710 was a prepaid wireless phone subscribed to  
Todd Grange. AT&T's billing records confirmed that Grange's home address was 9309  
SE Grandview, Happy Valley, Oregon, 97086. (Exs. A1, A7.)

10 Sometime prior to Fall 2014, Grange paid for Netfirms to host THCP's  
website (THCpharmaceutical.com) with a credit card in his name and a billing address of  
4230 SW King Road, #290, Milwaukie, OR, 97222. (Exs. A1, A10.)

11 THCP's website offered Blind Member Pool investing, including the chance  
to convert \$10,000 into \$150,000. The website provided a 14 step process to turn a  
deposit into significant profit as follows:





- 1 1. Member registers and verifies account.
  - 2 2. Member makes initial deposit into their member account, deposit verified.
  - 3 3. Member deposit is placed into blind member pool with other member
  - 4 deposits.
  - 5 4. Pooled member deposits are separated into processing batches.
  - 6 5. Pooled member funds transferred to manufacturer in processing batches.
  - 7 6. Pooled funds are used by Licensed Manufacturer to purchase marijuana.
  - 8 7. Licensed Manufacturer processes marijuana into products for sale.
  - 9 8. Processed products transferred to licensed sellers for retail sale.
  - 10 9. Products are sold retail by licensed sellers.
  - 11 10. Profits from sales are transferred into the Blind Member Pool of pooled
  - 12 funds.
  - 13 11. Profits are separated by batch processed and date.
  - 14 12. Profits separated by batch processed [sic] and date are separated by
  - 15 Member ID.
  - 16 13. Multiplier is applied to Member ID account and profit is credited to
  - 17 Member Account.
  - 18 14. Member is able to roll over funds in their account or withdraw them.
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- 14 -(Exs. A1, A10, A11.)
- 15 12. THCP's email address was mail@thcpharmaceutical.com. (Exs. A1, A9,
- 16 A12.)
- 17 13. In Fall 2014, JS, a Colorado resident, located and reviewed THCP's website
- 18 (THCpharmaceutical.com), looking for opportunities to invest money for a profit. (Exs.
- 19 A1, A9.) JS's email address was altitude719@gmail.com. (Exs. A1, A9, A12.)
- 20 14. In October 2014, JS made an initial investment of \$200 in THCP. On
- 21 October 27, 2014, THCP sent an email to JS informing him that he now had a "new
- 22 member credit of \$500" and that if he referred a new member within 7 days who
- 23 deposited an initial deposit equal of his, he would receive an additional \$500 referral
- 24 credit per new member referred. (Exs. A1, A12.)
- 25 15. On or about November 18, 2014, THCP sent an email to JS congratulating
- 26 him for being selected for the holiday special for blind pool members, and informing him
- that he would receive bonus referral credits for referring new members to THCP. (Exs.
- A1, A12.)
16. On or about November 25, 2014, JS took out two lump sums of \$25,000 from
- his bank. (Exs. A1, A12, A13.)

1 17. On December 4, 2014, THCP sent an email to JS informing him that he had  
2 activated 2 credits with his deposits/referrals of \$500(2), and encouraging him to make an  
3 additional deposit to activate his remaining credit: “a deposit of \$250 receives a credit of  
4 \$2,500; \$500 receives a credit of \$5,000.” (Exs. A1, A12.)

5 18. On January 16, 2015, THCP sent an email to JS that stated, in part:

6 2. As you are aware the Blind Member Pool is closing as was the original  
7 plan when we prepared to go public. We have not set a date yet as to when it  
8 will be closed. Any funds in the member account will be cashed out at this  
9 time.

10 \*\*\*\*\*

11 4. All member accounts would have the opportunity to convert their member  
12 accounts into unit shares under our PPM – Private Placement Memorandum.  
13 This means that the member will then be grandfathered in for going public  
14 and will not have to be a qualified investor. It also allows for the member to  
15 keep earning money on the share units and sell off or keep what they want.

16 CONVERSION EXAMPLE: Actual Member Deposit: \$25,000 (this amount  
17 does not include member credits or multiplier). \$25,000 converts to  
18 \$500,000 units (\$500K). The actual amount deposited in the member  
19 account sets the conversion rate. Credits and multipliers are converted dollar  
20 for dollar.

21 \*\*\*\*\*

22 So as you can see members profit highly from this. For THC Pharmaceutical  
23 it means we do not have to seek qualified investors, which allows us to go  
24 public right away.

25 -(Exs. A1, A12.)

26 19. On or about January 19, 2015, THCP emailed JS, in response to his questions  
about how a \$20,000 investment would convert, that “The conversion is set at \$25,000  
for actual deposit which are separate or combined.” THCP referenced the investments  
made by referrals from JS. THCP informed JS that they needed 27 accounts “so we can  
transfer them to our publically [sic] traded stock upon going public.” THCP provided JS  
with three options for depositing additional money in the Blind Member Pool. THCP  
also provided JS with the Form D for his member account that THCP would purportedly  
be filing with the SEC. (Exs. A1, A12.)

20. On or about January 27, 2015, THCP filed a Form D, under Rule 506, as a  
Notice of Exempt Offering of Securities on the United States Securities and Exchange  
Commission. The Form D was digitally signed by “Tim Waren” as “MGR.” On Form  
D, THCP included the following information:





- 1 a. THCP is an “issuer” and a “corporation” that was incorporated “over five  
years ago.”
- 2 b. THCP’s street address is “4230 SE King Rd, Suite 290, Milwaukie,  
Oregon, 97222.”
- 3 c. THCP’s phone number is “503-568-0170.”
- 4 d. THCP’s transaction was exempt from federal registration pursuant to Rule  
506(c).
- 5 e. THCP is offering an “equity” securities transaction in the form of a “Blind  
6 Member Pool Conversion.”
- 7 f. THCP sold “\$9,000,000” in securities to “27” investors and had  
\$91,000,000 remaining to be sold.
- 8 g. “\$25,000,000” would be used to pay persons or entities affiliated with  
THCP.
- 9 h. BMP LLC is a “Related Person” and the address given for BMP LLC is  
10 4230 SE King Rd, Suite 290, Milwaukie, Oregon, 97222.

11 -(Exs. A1, A8.)

12 21. On or about January 27, 2015, THCP sent JS the link to the Form D filed  
13 with the SEC. A major factor in JS’s decision to further invest in THCP was the Form D  
14 filing on the SEC’s website, and his reliance on the information in that Form D filing.  
(Exs. A1, A12.)

15 22. On January 30, 2015, JS sent \$25,000 to invest in THCP at the 4230 SE King  
16 Rd, #290, Milwaukie, Oregon, 97222 address. (Exs. A1, A13.)

17 23. JS never received any stock certificates or return on his investment nor was  
his investment refunded to him. (Ex. A1, A14.)

18 24. BMP LLC is a legitimate Oregon entity. It has no connection to THCP. (Ex.  
19 A1.)

20 25. On or about February 27, 2015, JS filed a complaint with the Oregon  
Department of Justice regarding “THC Pharmaceutical.” JS stated that he had been  
21 defrauded of approximately \$80,000 by a Portland Oregon entity called THC  
Pharmaceutical (THCP), and that THCP’s website was  
22 <http://www.thcpharmaceutical.com/aspx>. JS also submitted copies of the following  
evidentiary documentation:

- 23
- 24 • A “506 Filing” which had been submitted to the US S.E.C. by THCP.
- 25 • Copies of funds he paid to THCP.
- 26 • Copies of a FedEx mail receipt.
- Copies of email communication from THCP.

1 -(Exs. A1, A9.)  
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3 **CONCLUSIONS OF LAW**

4 1. There are no genuine issues of material fact that remain to be determined, and  
5 the Division is entitled to a ruling as a matter of law.

6 2. The Director has jurisdiction over Respondent pursuant to ORS 59.235.

7 3. Respondent's offer to sell securities to JS occurred in the State of Oregon.  
8 ORS 59.345(1)(a).

9 4. JS's acceptance to purchase THCP's offered securities occurred in the State of  
10 Oregon. ORS 59.345(2)(b).

11 5. THCP's shares are "securities" within the meaning of ORS 59.015(19)(a).

12 6. Respondent, acting as THCP, was an "issuer" within the meaning of ORS  
13 59.015(9).

14 7. Respondent offered and sold unregistered securities in the State of Oregon,  
15 that were not otherwise exempt from registration, in violation of ORS 59.055.

16 8. Respondent was selling securities in Oregon without a license, in violation of  
17 ORS 59.165(1).

18 9. Respondent, directly or indirectly, in connection with the sale or purchase of  
19 securities to JS, made untrue statements or omitted to state a material fact necessary in  
20 order to make the statements made, in light of the circumstances under which they were  
21 made, not misleading, in violation of ORS 59.135(2).

22 10. Respondent shall be ordered to Cease and Desist from:

23 a. Offering and selling securities that are not registered, in violation of ORS  
24 59.055;

25 b. Offering and selling securities in violation of the anti-fraud provisions of  
26 ORS 59.135;

c. Violating any provision of the Oregon Securities Law.

11. Pursuant to ORS 59.045(2), Respondent shall be denied the use of the  
securities and transactions exemptions that would otherwise be available.

12. Pursuant to ORS 59.995, Respondent shall be assessed the following civil  
penalties:



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- a. \$20,000 for violating ORS 59.055;
- b. \$20,000 for violating ORS 59.135(2);
- c. \$20,000 for violating ORS 59.165(1).

**OPINION OF ALJ GUTMAN**

The Division contends its Motion for Summary Determination should be granted. The Division contends that there are no genuine issues of material fact that remain to be determined, and it is entitled to a ruling as a matter of law. I agree with the Division.

**Preliminary issues**

1. Whether JS’s investment in THCP involves a sale of securities.

The Division contends that JS’s investment in THCP involved the sale of securities. I agree.

ORS 59.015 is titled “Definitions for Oregon Securities Law” and provides, in part:

(19)(a) “Security” means a note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in a pension plan or profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, variable annuity, certificate of deposit for a security, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such title or lease, real estate paper sold by a broker-dealer, mortgage banker, mortgage broker or a person described in subsection (1)(b) of this section to persons other than persons enumerated in ORS 59.035(4), or, in general, any interest or instrument commonly known as a “security,” or any certificate of interest or participation in, temporary or interim certificates for, receipt for, guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.

Pursuant to ORS 59.015, the term “security” includes, “transferable shares,” “investment contracts,” and “any interest or instrument commonly known as a security.” The fundamental essence of a security is its character as an investment. *Reves v. Ernst & Young*, 494 U.S. 56, 69-70 (1990). The Oregon Supreme Court applies a four-part test to determine whether a particular transaction involves an investment contract: 1) An investment of money (or money’s worth); 2) in a common enterprise; 3) with the expectation of profit; 4) to be made through the management and control of others. *Pratt v. Kross*, 276 Or 483, 498 (1976); *Computer Concepts v. Brandt*, 310 Or 706 (1990).

Beginning sometime in 2013 or 2014, Respondent, doing business as THCP, publicly offered on his website the opportunity to deposit money into a Blind Pool Membership Program and turn that deposit into a significant profit. Respondent’s

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1 website provided a 14 step process, which included: “member deposit is placed into blind  
2 pool with other member deposits...pooled funds are used by licensed manufacturer to  
3 purchase marijuana...processed products transferred to licensed sellers, [and then]  
4 sold...profits are separated by member batch [and a] multiplier [is applied]...member is  
5 able to roll over funds in their accounts or withdraw them.”

6  
7 In fall 2014, JS, a Colorado resident, reviewed Respondent’s website, looking for  
8 opportunities to invest money for a profit. In October 2014, JS made an initial  
9 investment of \$200 into the Blind Pool Membership Program. JS subsequently made  
10 referrals for investments into the Pool.

11 On January 16, 2015, Respondent sent JS an email that stated the Blind Member  
12 Pool was closing, all member accounts would have the opportunity to convert their  
13 member accounts into unit shares (for going public), member deposits of \$25,000  
14 converted to \$500,000 units (\$500K), and members would profit highly from this.

15 On or about January 19, 2015, Respondent emailed JS in response to questions  
16 posed about how a \$20,000 investment would convert. In the email, Respondent notified  
17 JS that “The conversion is set at \$25,000 for actual deposit which are separate or  
18 combined.” Respondent referenced the investments made by referrals from JS.  
19 Respondent informed JS that they needed 27 accounts “so we can transfer them to our  
20 publically [sic] traded stock upon going public.” Respondent provided JS with three  
21 options for depositing additional money in the Blind Member Pool. Respondent also  
22 provided JS with Form D for his member account.

23 On or about January 27, 2015, Respondent sent JS the link to the Form D filed  
24 with the SEC. A major factor in JS’s decision to further invest in THCP was this Form D  
25 filing on the SEC’s website, and his reliance on the information in that Form D filing.

26 On January 30, 2015, JS sent \$25,000 to invest in THCP at the 4230 SE King Rd,  
#290, Milwaukie, Oregon, 97222 address. JS never received any stock certificates or  
return on his investment nor was his investment refunded to him.

First element (the investment of money) – As to the first element, JS and his  
referrals invested money in Respondent’s Blind Pool Membership Program. As such, the  
first element is met.

Second element (in a common enterprise) – With regards to the second element, a  
common enterprise exists where there is horizontal or vertical commonality. “Horizontal  
commonality” requires at least two investors, with the funds of each being pooled  
together. *Black v. Corporate Division*, 4 Or App 432, 441-442 (1981). “Vertical  
commonality” does not require more than one investor, but does require that the investor  
and promotor be involved in a common venture where the fortunes of the investor are  
intertwined and dependent on the efforts and success of those seeking investments or  
third parties. *Id.; Computer Concepts v. Brandt*, 310 Or 706, 715-716 (1990). In Oregon,  
either horizontal or vertical commonality is sufficient to satisfy this component of  
common enterprise.

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1 Respondent's website publicly offered the opportunity to earn a profit by  
2 depositing money into a Blind Pool Membership Program. Respondent's website also  
3 notified potential investors that member deposits would be pooled with others; that the  
4 "pooled funds" would be managed and controlled by THCP; and that the "profits from  
5 sales" would be "transferred [back] into the Blind Member Pool of pooled funds," a  
6 multiplier would be applied, and the member would be able to withdraw the funds.

7 JS invested his own and his referrals' money into the Blind Pool Membership  
8 Program. JS was dependent on the expertise of Respondent to garner a profit from his  
9 investment. JS also relied on statements made by Respondent (through emails and Form  
10 D) that his membership interest would result into a conversion of his membership into  
11 shares of the company, and that the company would be extremely profitable.

12 Thus, Respondent and JS were involved in a common venture where the fortunes  
13 of JS were intertwined and dependent on the efforts and success of Respondent.  
14 Therefore, the second element, vertical commonality, is met.

15 Third element (with the expectation of profit) – As to the third element, JS and his  
16 referrals expected to receive a profit from their investment in Respondent's Blind Pool  
17 Membership Program. Consequently, the third element is met.

18 Fourth element (made through the management and control of others) – With  
19 regards to the fourth element, Respondent, not JS, managed and controlled the Blind Pool  
20 Membership Program (the investment vehicle) and the offered conversion from the Pool  
21 into stocks. As such, the fourth element is met.

22 Accordingly, the evidence in the record establishes that JS's investment in Respondent's  
23 Blind Pool Membership Program involved the sale of securities.

24 2. Whether the Director has jurisdiction over Respondent.

25 The Division contends that the Director has jurisdiction over Respondent. I agree.  
26 ORS 59.235 is titled "General supervision over persons dealing in securities" and  
provides, in relevant part:

Subject to section 18 of the Securities Act of 1933, as amended, section 15 of  
the Securities Exchange Act of 1934, as amended, and sections of 203A and  
222 of the Investment Advisers Act of 1940, as amended, the Director of the  
Department of Consumer and Business Services shall have general  
supervision and control over all issuers, registrants of securities, broker-  
dealers, federal covered investment advisers, state investment adviser,  
investment adviser representatives and salespersons residing or doing  
business in this state and engaged in any activity with respect to securities or  
any aspect of the securities business. All such persons and their records and  
everything connected with their activities shall be subject to examination by  
the director at any time. The provisions of this section and of any section of  
the Oregon Securities Law relating to examinations shall extend to any  
person who should have been licensed as a broker-dealer, state investment



1           adviser, investment adviser representative or salesperson, any person  
2           exempted by rule from those definitions or any person whose license has  
3           expired or has been withdrawn, canceled, suspended or revoked. The  
4           director may collect from each such person the actual expenses incurred in  
5           that examination.

6           Pursuant to ORS 59.235, the Director of the Department of Consumer and  
7           Business Services has general supervision and control over all issuers, registrants of  
8           securities, broker-dealers, federal covered investment advisers, state investment adviser,  
9           investment adviser representatives and salespersons residing or doing business in this  
10          state and engaged in any activity with respect to securities or any aspect of the securities  
11          business.

12          As set forth later in this order, Respondent, doing business as THCP, and without  
13          being properly licensed, offered and sold to JS unregistered securities in the State of  
14          Oregon that were not otherwise exempt from registration. Accordingly, the Director has  
15          general supervision and control (jurisdiction) over Respondent and THCP.

16          **Violations**

17          3. Whether Respondent's offer to sell securities to JS occurred in the State of  
18          Oregon. ORS 59.345(1)(a).

19          ORS 59.345 is titled "When offer to sell or buy is made in this state" and  
20          provides, in part:

21                 (1) For the purpose of ORS 59.335, an offer to sell or to buy is made in this  
22                 state, whether or not either party is then present in this state, when the offer:

23                         (a) Originates from this state;

24          As indicated above, an offer to sell or buy securities is made in this state when the  
25          offer originates from this state. Respondent, doing business as THCP, operated out of  
26          Oregon. THCP's street address was in Milwaukie, Oregon. In addition, THCP's website  
27          was paid with a credit card that was billed to an Oregon address. Moreover, the money  
28          that JS used to purchase the securities from Respondent was sent to THCP's address in  
29          Milwaukie, Oregon. Therefore, the evidence in the record establishes that Respondent's  
30          offer to sell securities to JS occurred in Oregon.

31          4. Whether JS's acceptance to purchase THCP's offered securities occurred in  
32          the State of Oregon.

33          ORS 59.345 further provides:

34                 (2)(a) For the purpose of ORS 59.335, an offer to buy or to sell is accepted in  
35                 this state when acceptance:

36                         (A) Is communicated to the offeror in this state; and

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350 Winter Street NE, Suite 410  
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(B) Has not previously been communicated to the offeror, orally or in writing, outside this state.

(b) Acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received at the place to which it is directed (or at any post office in this state in the case of a mailed acceptance).

As set forth above, an offer to buy securities is accepted in this state when the offeree directs it to the offeror in this statement reasonably believing the offeror to be in this state and it is received at the place to which it is directed.

JS purchased securities from Respondent, doing business as THCP, believing THCP was located in Oregon. JS sent the money for the purchase of securities to THCP's address in Milwaukie, Oregon. Respondent received JS's money at the mailbox he had opened for THCP.

Consequently, the evidence in the record establishes that JS's acceptance to purchase THCP's offered securities occurred in Oregon.

5. Whether THCP's shares are "securities" within the meaning of ORS 59.015(19)(a).

As set forth previously, JS's investment in Respondent's Blind Pool Membership Program involved the sale of securities. Thus, THCP's shares are securities within the meaning of ORS 59.015(19)(a).

6. Whether Respondent, acting as THCP, was an "issuer" within the meaning of ORS 59.015(9).

ORS 59.015 further provides:

(9) "Issuer" means a person who issues, proposes to issue or has issued a security and includes an issuer to be formed. With respect to certificates of deposit, voting-trust certificates or collateral-trust certificates, or with respect to certificates of interest or shares in an unincorporated investment trust not having a board of directors or persons performing similar functions or of the fixed, restricted management or unit type, the "issuer" is the person or persons performing the acts and assuming the duties of depositor or manager pursuant to the provisions of the trust or other instrument or agreement under which the security is issued.

As indicated above, an "issuer" is a person who issues, proposes to issue or has issued a security and includes an issuer to be formed.

Respondent, doing business as THCP, offered to issue a security on his website

1 and through his emails to JS. That offer was accepted by JS to his detriment. Therefore,  
2 the evidence establishes that Respondent, acting as THCP, was an “issuer” within the  
3 meaning of ORS 59.015(9).

4 7. Whether Respondent offered and sold unregistered securities in the State of  
5 Oregon, that were not otherwise exempt from registration, in violation of ORS 59.055.

6 ORS 59.055 is titled “Conditions of offer and sale of securities” and provides, in  
7 part:

8 It is unlawful for any person to offer or sell any security in this state, unless:

9 (1) The security is registered and the offer or sale is not in violation of any  
10 rule or order of the Director of the Department of Consumer and Business  
11 Services or any condition, limitation or restriction imposed by the director  
12 upon such registration;

13 (2) The security is exempt under ORS 59.025 or the sale is exempt under  
14 ORS 59.035; or

15 (3) The security is a federal covered security for which a notice has been filed  
16 and fees have been paid under ORS 59.049.

17 To summarize the authority above, it is unlawful for any person to offer or sell  
18 any security in Oregon unless the security is registered and the offer or sale is not in  
19 violation of any rule or order of the Director, or any condition, limitation or restriction  
20 imposed by the Director; the security is exempt under ORS 59.025 or the sale is exempt  
21 under ORS 59.035; or the security is a federal covered security for which a notice has  
22 been filed and fees have been paid under ORS 59.049.

23 The securities at issue in this case are JS’s investments in Respondent’s Blind  
24 Pool Membership Program, which were not registered with the Division.

25 Pursuant to ORS 59.275, the burden to establish the applicability of an exemption  
26 is on Respondent. Because Respondent failed to file a Response to the Division’s MSD,  
there is no evidence that the securities are exempt under ORS 59.025 or that the sale is  
exempt under ORS 59.035.

Moreover, although Respondent purportedly claimed a federal exemption under  
Rule 506(c) by filing a Form D, Respondent failed to present evidence that he met all of  
the conditions of Rule 506(c), including that JS was an accredited investor and that  
Respondent reasonably verified that JS was an accredited investor. See, 17 C.F.R.  
230.508. As such, Respondent may not rely on Rule 506(c). *Id.*

Accordingly, the evidence establishes that Respondent offered and sold  
unregistered securities in Oregon, that were not otherwise exempt from registration, in  
violation of ORS 59.055.





1 8. Whether Respondent was selling securities in Oregon without a license, in  
violation of ORS 59.165(1).

2 ORS 59.165 is titled “Licensing of broker-dealers, investment advisers and  
3 salespersons required; rules” and provides, in part:

4 (1) It is unlawful for any person to transact business in this state as a broker-  
dealer or salesperson unless the person is licensed under the Oregon  
5 Securities Law.

6 As cited above, it is unlawful for any person to transact business in this state as a  
7 broker-dealer or salesperson unless the person is licensed under the Oregon Securities  
Law.

8 The evidence in the record establishes that Respondent has never been licensed as  
9 a securities broker-dealer representative, securities salesperson or investment adviser  
representative in Oregon. Despite this lack of licensure, in 2014 and 2015, Respondent  
10 acted as a salesperson by purporting to represent an issuer of securities, as well as  
effecting transactions in securities with JS. Consequently, Respondent violated ORS  
11 59.165(1).

12 9. Whether Respondent, directly or indirectly, in connection with the sale or  
13 purchase of securities to JS, made untrue statements or omitted to state a material fact  
necessary in order to make the statements made, in light of the circumstances under  
14 which they were made, not misleading, in violation of ORS 59.135(2).

15 ORS 59.135 is titled “Fraud and deceit with respect to securities or securities  
business” and provides, in part:

16 It is unlawful for any person, directly or indirectly, in connection with the  
17 purchase or sale of any security or the conduct of a securities business or for  
any person who receives any consideration from another person primarily for  
18 advising the other person as to the value of securities or their purchase or  
sale, whether through the issuance of analyses or reports or otherwise:

19 \*\*\*\*\*

20  
21 (2) To make any untrue statement of a material fact or to omit to state a  
material fact necessary in order to make the statements made, in light of the  
22 circumstances under which they are made, not misleading;

23 As indicated above, it is unlawful for any person, directly or indirectly, in  
24 connection with the purchase or sale of any security to make any untrue statement of a  
material fact or to omit to state a material fact necessary in order to make the statements  
25 made not misleading.

26 In the securities regulation context, a fact or omission is material if there is a  
substantial likelihood that a reasonable person would consider it important in deciding

1 whether or not to invest. *See Everts v. Holtmann*, 64 Or App 145 (1983). Disclosure of  
2 all pertinent information to prospective purchasers of securities is traditionally made by  
3 way of prospectus (in connection with a registered securities offering) or private  
4 placement memorandum (in connection with a lawfully exempt securities offering). The  
5 prospectus or memorandum includes a description of reasonably foreseeable risks that  
6 may result in the failure of an investment (known generically as “risk factors”).

7 In this matter, Respondent made disclosures to investor JS via his website, his  
8 emails, and the Form D statement he filed on the SEC website. However, Respondent’s  
9 disclosures misrepresented and omitted key facts that any reasonable investor would want  
10 to know and rely on in making an investment.

11 For instance, Respondent did not disclose that the security or securities were not  
12 registered; Respondent did not disclose that he had a felony conviction or was subject to  
13 an AVC; Respondent did not disclose that his business was not registered with the  
14 Secretary of State; Respondent did not disclose the risks of the investments; and  
15 Respondent did not disclose that THCP was a sham company operating out of a mailbox.

16 In addition, Respondent was dishonest on Form D about BMP LLC being  
17 involved with THCP; Respondent was dishonest on Form D about THCP being  
18 incorporated; and Respondent misrepresented that THCP had been incorporated for five  
19 years.

20 I find that Respondent’s omissions, misrepresentations and untrue statements are  
21 material. I further find that any reasonable investor would want to know and rely on  
22 these matters in making an investment. Therefore, Respondent violated ORS 59.135(2).

### 23 Sanctions

24 10. Whether Respondent shall be ordered to Cease and Desist from offering and  
25 selling securities that are not registered, in violation of ORS 59.055; offering and selling  
26 securities in violation of the anti-fraud provisions of ORS 59.135; and from violating any  
provision of the Oregon Securities Law.

ORS 59.245 is titled “Investigations; publicity with respect to violations; cease  
and desist order” and provides, in part:

(4) If the director has reason to believe that any person has engaged, is  
engaging or is about to engage in any violation of the Oregon Securities Law,  
may issue an order, subject to ORS 59.295, directed to the person to cease  
and desist from the violation or threatened violation.

Pursuant to ORS 59.245, the Director has the authority to order any person to  
cease and desist from violating or threatening to violate the Oregon Securities Law.

The evidence in the record establishes that Respondent violated ORS 59.055,  
ORS 59.135, ORS 59.165, and provisions of the Oregon Securities Law.



1 As such, Respondent shall be ordered to cease and desist from offering and selling  
2 securities that are not registered, in violation of ORS 59.055; offering and selling  
3 securities in violation of the anti-fraud provisions of ORS 59.135; and from violating any  
4 provision of the Oregon Securities Law.

5 11. Whether, pursuant to ORS 59.045(2), Respondent shall be denied the use of  
6 the securities and transactions exemptions that would otherwise be available.

7 ORS 59.045 is titled “Authority of director to deny, withdraw or condition  
8 exemptions” and provides, in part:

9 (2) The director may by order withdraw, condition or deny the use of any  
10 exemption by a person if the director has reason to believe that the person has  
11 engaged in or is about to engage in an act or practice constituting a violation  
12 of the Oregon Securities Law or that the use of any exemption by that person  
13 would work a fraud or imposition on purchasers.

14 As indicated above, the Director may deny the use of any exemption by a person  
15 if the Director has reason to believe that the person has engaged in or is about to engage  
16 in an act or practice constituting a violation of the Oregon Securities Law or that the use  
17 of any exemption by that person would work a fraud or imposition on purchasers.

18 Respondent violated the Oregon Securities Law. Consequently, pursuant to ORS  
19 59.045(2), Respondent shall be denied the use of the securities and transactions  
20 exemptions that would otherwise be available.

21 12. Whether, pursuant to ORS 59.995, Respondent shall be assessed \$20,000 for  
22 violating ORS 59.055; \$20,000 for violating ORS 59.135(2); and \$20,000 for violating  
23 ORS 59.165(1).

24 ORS 59.995 is titled “Civil penalties for ORS 59.005 to 59.451 and 59.710 to  
25 59.830; exceptions” and provides, in part:

26 (1) In addition to all other penalties and enforcement provisions provided by  
law, any person who violates or who procures, aids or abets in the violation  
of ORS 59.005 to 59.451, 59.710 to 59.830, 59.991 and 59.995 or any rule or  
order of the Director of the Department of Consumer and Business Services  
shall be subject to a penalty of not more than \$20,000 for every violation,  
which shall be paid to the General Fund of the State Treasury.

(2) Every violation is a separate offense and, in the case of a continuing  
violation, each day’s continuance is a separate violation, but the maximum  
penalty for any continuing violation shall not exceed \$100,000.

Pursuant to ORS 59.995(1), any person who violates ORS 59.05 to 59.451,  
59.710 to 59.830, 59.991 and 59.995 or any rule or order of the director shall be subject  
to a penalty of not more than \$20,000 for every violation.



1 As determined previously, Respondent violated ORS 59.055, 59.135(2), and  
2 59.165(1). A review of the record establishes that imposing \$20,000 for each of these  
3 violations is appropriate in this matter. Respondent shall pay a total civil penalty in the  
4 amount of \$60,000.

5 **ORDER**

6 The foregoing is incorporated. The Director issues the following Orders:

7 1. The Director, pursuant to ORS 59.245(4), orders Respondent to cease and  
8 desist from:

9 a. Offering and selling securities that are not registered, in violation of ORS  
10 59.055;

11 b. Offering and selling securities in violation of the anti-fraud provisions of  
12 ORS 59.135;

13 c. Violating any provision of the Oregon Securities Law.

14 2. The Director, pursuant to ORS 59.045(2), denies Respondent the use of the  
15 securities and transactions exemptions that would otherwise be available.

16 3. The Director, pursuant to ORS 59.995, assesses the following civil penalties,  
17 against Respondent:

18 a. \$20,000 (twenty thousand dollars) for violating ORS 59.055;

19 b. \$20,000 (twenty thousand dollars) for violating ORS 59.135(2); and,

20 c. \$20,000 (twenty thousand dollars) for violating ORS 59.165(1).

21 This Order is a *Final Order* under ORS 183.310(6)(b). Subject to that provision,  
22 the entry of this Final Order does not limit other remedies that are available to the  
23 Director under Oregon law.

24 **IT IS SO ORDERED.**

25 Dated this 18th day of August, 2016, at Salem, Oregon.

26 PATRICK ALLEN, Director

Department of Consumer and Business Services

/s/ David Tatman

David C. Tatman, Chief of Enforcement

Division of Financial Regulation



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**NOTICE OF RIGHT TO JUDICIAL REVIEW**

You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service of this order. Judicial review is in accordance with ORS 183.482(1) to the Oregon Court of Appeals.

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