

STATE OF ILLINOIS  
SECRETARY OF STATE  
SECURITIES DEPARTMENT

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IN THE MATTER OF:	)	
	)	
	)	
MODESTO SPIRITS, Inc., its managers,	)	
officers, affiliates, subsidiaries, representatives,	)	File No. 1500036
successors, and assigns; and,	)	
FRANCISCO TORO, an individual.	)	
	)	
	)	

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TO THE RESPONDENTS:

Modesto Spirits, Inc.  
2 Mid America Plaza  
Suite 800  
Oakbrook Terrace, IL 60181

Francisco Toro  
6325 W. 63<sup>rd</sup> Street, Apt. 2C  
Chicago, IL 60638

Modesto Spirits, Inc.  
Care of:  
P. Daniel Gillig  
1020 Midlane Drive  
Aurora, IL 60505

**CONSENT ORDER**

WHEREAS, Francisco Toro, and Paul Daniel Gillig on behalf of Modesto Spirits, Inc., on the 8th day of December, 2015 executed a certain Stipulation to Enter into this Consent Order (“the Stipulation”), which hereby is incorporated by reference herein.

WHEREAS, by means of the Stipulation, Respondents Francisco Toro and Modesto Spirits, Inc., have admitted to the jurisdiction of the Secretary of State, Securities Department, and have consented to the entry of this Consent Order.

**FACTS COMMON TO ALL COUNTS**

The grounds for such proposed actions are as follows:

1. Respondent Modesto Spirits, Inc., ("Modesto") is an Illinois Corporation which was incorporated on February 2, 2009, and its principal place of business and last known address is located at 2 Mid America Plaza, Suite 800, Oakbrook Terrace, IL 60181.
2. Since 2009, Respondent Modesto has been engaged in the design and production of Don Modesto Tequila.
3. Paul Daniel Gillig is listed as the President and Respondent Francisco Toro ("Toro"), who was a co-founder, is listed as the Secretary of Respondent Modesto.

**SALE OF UNREGISTERED SECURITIES**

4. In 2009, Respondent representatives, including Respondent Francisco Toro, began offering individuals shares of stock in Modesto Spirits, Inc.
5. During this period in 2009, Respondent Modesto issued at least 15 different certificates of stock to Illinois investors in varying amounts and shares.
6. In July 2009, Investor A, who was an acquaintance of Respondent Toro, invested \$10,000 into Respondent Modesto and was issued a stock certificate for 1000 shares of Modesto Spirits, Inc.
7. In or around January 28, 2010, Investor A entered into a shareholder agreement with the other shareholders of Respondent Modesto. The agreement was signed by all the shareholders including Respondent Toro who was listed as the President of Respondent Modesto.
8. Sometime in 2014, Investor A met with Respondent Toro to request the return on his investment of \$10,000 in Respondent Modesto, and was informed by Respondent Toro that at that time Respondent Modesto was unable to repurchase the shares.
9. Since his initial investment, Investor A has not received any dividends or payments as it relates to the stock in Respondent Modesto.
9. The offer or sale of investments in Respondent Modesto constitutes the offer and sale of a security as those terms are defined in Sections 2.1, 2.5, and 2.5a of the Act.
10. Section 5 of the Act requires the registration of a security being offered or sold in the State of Illinois unless an exemption applies.
11. To date, the securities offered by Respondents Toro and Modesto have not been registered as a security with the Secretary of State of Illinois.

12. Section 12.A of the Act states *inter alia* that it shall be a violation of this Act for any person to offer or sell any security except in accordance with the provisions of this Act.
13. Section 12.B of the Act states *inter alia* that it shall be a violation of the provisions of this Act for any person to deliver to a purchaser any security required to be registered under Section 5, Section 6, or Section 7 hereof unless accompanied or preceded by a prospectus that meets the requirements of the pertinent subsection of Section 5, Section 6, Section 7.
14. By virtue of the foregoing, Respondents Toro and Modesto each violated Sections 12.A and 12.B of the Act.

#### **FAILURE TO DISCLOSE**

15. Respondents Modesto and Toro never informed Investor A, before he purchased his shares in Respondent Modesto, that some of the invested funds would be used to pay officers of Modesto a salary.
16. Moreover, the shareholder agreement as referenced in paragraph 7 stated that the officers would be employees of Respondent Modesto, but did not disclose the terms or amounts of any salary to be paid.
17. Beginning in May 2009 and ending in August 2009, Respondent Toro received several checks drawn from Respondent Modesto's bank account representing reimbursement for expenses and salary.
18. Section 12.G of the Act states *inter alia* that it shall be a violation of this Act for any person to obtain money or property through the sale of securities by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.
19. By virtue of the foregoing, Respondents Toro and Modesto each violated Section 12.G of the Act.

#### **CONCLUSIONS OF LAW**

WHEREAS, by means of the Stipulation, Francisco Toro, and Paul Daniel Gillig on behalf of Respondent Modesto, have acknowledged that the following shall be adopted as the Secretary of State's Conclusions of Law:

1. Illinois has jurisdiction over this matter pursuant to the Illinois Securities Law of 1953 [815 ILCS 5] (the "Act");

2. Francisco Toro, and Paul Daniel Gillig on behalf of Respondent Modesto, acknowledge and agree that Respondents Toro and Modesto have each violated Sections 12.A, 12.B, and 12.G of the Act;

### UNDERTAKINGS

WHEREAS, by means of the Stipulation, Francisco Toro, and Paul Daniel Gillig on behalf of Respondent Modesto, have acknowledged the following undertakings:

By means of Stipulation, Francisco Toro, and Paul Daniel Gillig on behalf of Respondent Modesto, agree to the following undertakings:

1. Prior to offering or selling any securities in or from the State of Illinois, including any and all promissory notes, stocks, treasury stock, bond, debenture, evidence of indebtedness, or certificate of interest; Respondent Modesto shall make an offer of rescission and restitution to Investor A ("O.R."), who had previously requested the return of his investment;
2. Respondents Toro and Modesto acknowledge the liability to O.R. and that until an offer of rescission or restitution has been made to O.R., the outstanding balance shall accrue interest pursuant to Section 13 of the Act;
3. Prior to offering or selling any securities in or from the State of Illinois, including any and all promissory notes, stocks, treasury stock, bond, debenture, evidence of indebtedness, or certificate of interest; Respondent Modesto shall obtain a written opinion from a licensed attorney stating that the securities being offered or sold in or from the State of Illinois are in accordance with the Illinois Securities Law of 1953;
4. Respondents Toro and Modesto, by means of Stipulation, shall be barred from seeking relief from the obligations set forth in Paragraph 1 of the Undertakings identified in this Consent Order through any bankruptcy proceedings pursuant to 11 U.S.C. § 523(a) 19;
5. Respondents Toro and Modesto shall be prohibited from the offer or sale of securities in or from the State of Illinois, except in accordance with this Consent Order and the Illinois Securities Law of 1953.

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

1. **Respondent Modesto** shall make an offer of rescission and restitution to Investor A (O.R.) prior to offering or selling any securities in or from the State of Illinois, including any and all promissory notes, stocks, treasury stock, bond, debenture, evidence of indebtedness, or certificate of interest.


Consent Order  
-1500036-

2. The acknowledged outstanding balance shall continue to accrue interest pursuant to Section 13 of the Act, until **Respondents Toro or Modesto** makes an offer of rescission and Restitution to Investor A.
3. **Respondent Modesto** shall obtain a written opinion from a licensed attorney stating that the securities being offered or sold in or from the State of Illinois are in accordance with the Illinois Securities Law of 1953 prior to offering or selling any securities in or from the State of Illinois, including any and all promissory notes, stocks, treasury stock, bond, debenture, evidence of indebtedness, or certificate of interest.
4. **Respondents Toro and Modesto** shall be barred from seeking relief from the obligations set forth in this Consent Order through any bankruptcy proceedings pursuant to 11 U.S.C. § 523(a) 19.
5. **Respondents Toro and Modesto** shall be prohibited from the offer or sale of securities in or from the State of Illinois, except in accordance with this Consent Order and the Illinois Securities Law of 1953.

The Notice of Hearing dated November 9, 2015, as it relates to Respondents Toro and Modesto will be dismissed without further proceedings upon full satisfaction of all obligations set forth in this Order.

The entry of this Consent Order ends the Secretary of State, Securities Department's formal hearing of this matter.

Date of Mailing: 23rd day of December 2015



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JESSE WHITE  
Secretary of State  
State of Illinois

**NOTICE:** Failure to comply with the terms of this Order shall be a violation of Section 12.D of the Illinois Securities Law of 1953, as amended, 815 ILCS 5/1 et seq. (the "Act"). Any person or entity who fails to comply with the terms of this Order of the Secretary of State, having knowledge of the existence of this Order, shall be guilty of a Class 4 felony.

**This is a Final Order subject to judicial review pursuant to the Administrative Review Law, 735 ILCS 5/3-101 et seq. and the Rules and Regulations of the Act (14 Ill. Admin. Code, Ch. I, Sec. 130.1123. Any action for judicial review must be commenced within thirty-five (35) days from the date a copy of this Order is served upon the party seeking review. Mailing of this Order to the Respondent or representative of record constitutes service of the Order.**

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