

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

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**IN THE MATTER OF:**

**SILVERLEAF CAPITAL PARTNERS 1, LLC  
DWIGHT SHANE BALDWIN,**

**Respondents.**

**STIPULATION AND CONSENT  
ORDER**

**Docket No. SD 08-0102  
Docket No. SD 08-0103**

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The Utah Division of Securities (the Division), by and through its Director of Enforcement, Michael Hines, and Silverleaf Capital Partners 1, LLC (Silverleaf) and Dwight Shane Baldwin (Baldwin), by and through their attorneys Bryan T. Allen and Timothy B. Smith of Parr Brown Gee & Loveless, hereby stipulate and agree as follows:

1. Silverleaf and Baldwin were the subjects of an investigation conducted by the Division into allegations that they violated certain provisions of the Utah Uniform Securities Act (the Act), Utah Code Ann. § 61-1-1, *et seq.*, as amended. Based on its investigation, the Division issued an order to show cause (OSC) against Respondents alleging violations of

securities fraud and the sale of unregistered securities on December 11, 2009.

2. Respondents filed an answer, and Baldwin was subsequently charged with securities fraud in a related criminal action in the Utah Third Judicial District Court on March 18, 2010, Case No. 101902032.<sup>1</sup>
3. Respondents and the Division have agreed to settle this matter by way of this Stipulation and Consent Order.
4. Respondents admit the jurisdiction of the Division over them and over the subject matter of this action.
5. Respondents waive any right to a hearing to challenge the Division's evidence and present evidence on their behalf.

## **I. THE DIVISION'S FINDINGS OF FACT**

### **THE RESPONDENTS**

6. Silver Leaf Capital Partners 1, LLC (Silver Leaf Capital) was registered as a Utah limited liability company on February 22, 2007, and its entity status is currently "active." Silverleaf Companies, LLC (Silverleaf Companies) is the sole manager and member of Silver Leaf Capital. Shane Baldwin, Robert Corcoran, Brad Esty, and Jody Rasmussen are the members of Silverleaf Companies.
7. Dwight Shane Baldwin (Baldwin) is a resident of Salt Lake County, Utah. Baldwin is one of four members of Silverleaf Companies, LLC, which manages Silver Leaf Capital

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<sup>1</sup>Baldwin entered into a plea in abeyance on April 8, 2010.

and three other limited liability companies, including Silver Leaf Development LLC, Silverleaf Ventures LLC, and Silverleaf Financial, LLC.

#### **GENERAL ALLEGATIONS**

8. In January 2008, in Salt Lake County, Utah, Baldwin solicited a total of \$200,000 from two Utah investors.
9. Baldwin told the investors that Baldwin and Silver Leaf Capital would use their money to invest in a California company called GarageCo, Inc. (GarageCo) GarageCo manufactures a plastic toy called “Yo Baby” that is similar to a skateboard (minus the wheels) and is intended to be used on carpet.
10. Baldwin told investors they would receive a return of their principal plus a profit in about three to five months. One of the investors recalled Baldwin saying the profit would be around approximately \$300,000. Baldwin also promised the investors they would receive an equity interest in GarageCo and Silver Leaf Capital.
11. Baldwin personally guaranteed the investment to one investor, and gave both investors a written guaranty from Silverleaf Companies.
12. On April 8, 2010, the investors have received a return of their investment from the Respondents, plus an amount toward attorneys’ fees.

#### Investor NL

13. On or about January, 2008, NL, ML (the other investor), and JP (a licensed real estate

agent for Silver Leaf Realty, PLLC<sup>2</sup>), met with Baldwin and one other employee of Silverleaf Companies at Silverleaf Companies' office in Salt Lake City, to discuss an investment opportunity with Silver Leaf Capital.

14. Baldwin told NL the following about the investment opportunity:
  - a. Baldwin had a shell company called Silver Leaf Capital Partners 1, LLC, that could be used to invest in GarageCo, Inc. and its product, Yo Baby;
  - b. If NL invested \$100,000, NL would own 16.66% of Silver Leaf Capital, ML would own 16.66% of Silver Leaf Capital in return for ML's \$100,000, and Silverleaf Companies would fund the remaining 66.67% of Silver Leaf Capital;
  - c. Silver Leaf Capital would invest in GarageCo, and become a 60% owner in the corporation;
  - d. Through this process, NL and ML would each have a 10% equity interest in GarageCo;
  - e. A bank account would be set up for Silver Leaf Capital, and GarageCo's expenses and profits would be split pro-rata amongst NL, ML, and Silverleaf Companies;
  - f. NL's money would be invested for three to five months at the most, at which time NL would receive a return of her principal, plus a profit of about \$300,000;

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<sup>2</sup> Silver Leaf Realty, PLLC, is a Utah professional limited liability company located in Salt Lake City, Utah, and managed by Jody Rasmussen.

- g. Silverleaf Companies had a relationship with a company called DC Shoes who agreed to put Yo Baby in all of its stores across the country;
  - h. Baldwin knew a manufacturer who could produce Yo Baby for less than the current manufacturer;
  - i. Baldwin would personally guarantee NL's principal investment;
  - j. \$100,000 was a lot of money for NL, but it was "no big deal" to Baldwin.
15. On January 11, 2008, NL invested \$100,000 with Silver Leaf Capital, via personal check, made payable to Silver Leaf Capital Partners.
  16. In return for NL's investment, on January 11, 2008, NL received a Letter of Intent, Commercial Guarantee, and a draft Operating Agreement, via e-mail, from Jake Reid, Director of Operations of Silverleaf Companies. The e-mail states "[h]ere is the Commercial Guaranty document for your investment in Yo Baby / GarageCo Toys, Inc. We also plan on getting you the Equity Ownership Agreement by the end of the day."
  17. NL never received the Equity Ownership Agreement.
  18. Pursuant to the terms of the Letter of Intent, dated January 11, 2008 and signed by Baldwin and NL, Silverleaf Companies agreed to form a new entity called Silver Leaf Capital Partners 1, LLC to act as the majority shareholder of GarageCo, and NL agreed to provide Silver Leaf Capital with a capital contribution of \$100,000.
  19. The Commercial Guaranty, dated January 11, 2008 and signed by Baldwin, states that

Baldwin and Silverleaf Companies “absolutely and unconditionally guarantee satisfaction of the agreement” and that NL will “either be refunded by Guarantor or, alternatively, that the funding sought by [Silver Leaf Capital] will be realized and [NL] will be repaid in cash and equity as agreed under the Equity Ownership Agreement between Investor and [Silver Leaf Capital].

20. In the Spring of 2008, NL became concerned about her investment when the monthly meetings and weekly updates she was promised did not occur, and Baldwin did not return her telephone calls.
21. In May 2008, ML told NL that he went to the offices of Silver Leaf Capital to view its books and records. ML told NL that according to the books and records their funds were commingled with funds from other Silver Leaf companies and used to pay expenses for the various companies.
22. According to records obtained from Silverleaf Companies’ accountant, at least \$20,000 of NL’s investment was used to pay for a party at Harry O’s in Park City, Utah; at least \$16,500 of NL’s investment was used to pay Silverleaf Companies’ American Express bill; at least \$20,000 was used to pay Silverleaf Companies’ payroll and commissions; at least \$3,300 was used to pay the company’s February 2008 health insurance premium; and at least \$17,000 was used for unidentified purposes.
23. On June 4, 2008, NL went to the offices of Silverleaf Companies to demand a return of

her investment funds.

24. On April 8, 2010, NL received \$100,000 from the Respondents, plus an amount toward attorneys' fees.

Investor ML

25. On or about January 2008, ML, NL (the above investor), and JP (a licensed real estate agent for Silver Leaf Realty, PLLC), met with Baldwin and one other employee of Silverleaf Companies at Silverleaf Companies' offices in Salt Lake City, to discuss an investment opportunity with Silver Leaf Capital.
26. Baldwin told ML the following about the investment opportunity:
- a. Silverleaf Companies would provide a one million dollar line of credit to GarageCo for a 60% ownership interest in the company;
  - b. Of the one million dollars, ML and investor NL would each invest \$100,000;
  - c. In return for their investment, ML and investor NL would receive a profit in a short amount of time;
  - d. Baldwin would give ML a commercial guaranty for ML's investment;
  - e. Silverleaf Companies would provide the remaining \$800,000 and "refinance the deal" in four months, changing the equity to debt, repaying ML and NL, and also allowing them to keep an ownership interest in Silver Leaf Capital;
  - f. ML would have one half of a seat on Silver Leaf Capital's board but would have

- no specific role or duty in the company;
- g. Baldwin's uncle would manufacture the Yo Baby product in Mexico for less money than the current arrangement;
  - h. DC Shoes would partner with GarageCo and sell the Yo Baby product in its stores;
  - i. Baldwin had completed other funding deals that were very successful;
  - j. Baldwin was investing \$300,000 - 500,000 of his own money in GarageCo;
  - k. Because of Baldwin's prior experience working for Merrill Lynch, Baldwin had relationships with banks and could get loans for his companies;
  - l. Baldwin held a Series 7 securities license; and
  - m. A separate bank account would be opened for Silver Leaf Capital's investment funds.
27. On January 29, 2008, ML invested \$60,000 in Silver Leaf Capital, via a Washington Mutual official check, made payable to Silverleaf Companies. On February 7, 2008, ML made a second investment of \$40,000 in Silver Leaf Capital, via a Washington Mutual official check, made payable to Silver Leaf Capital.
28. On February 7, 2008, ML received an invoice from Silver Leaf Capital regarding ML's investment. The invoice states that it is for a "GarageCo Investment," and under "Description" it states "10% Equity Ownership investment in GarageCo" for \$100,000.

29. On January 11, 2008, ML received the promised Commercial Guaranty from Jake Reid. The Commercial Guaranty was signed by Baldwin and states that Silver Leaf Capital Partners, LLC “absolutely and unconditionally guarantee (sic) satisfaction of the agreement between [ML] and Silver Leaf Capital Partners (“SLCP”) with respect to a proposed investment in GarageCo Inc. This Guaranty is executed to provide additional security to [ML] that [his] investment of \$100,000 into SLCP as one of the ‘investors’ will either be refunded by Guarantor or, alternatively, that the funding sought by SLCP will be realized and [ML] will be repaid in cash and equity.”
30. ML did not like the form of the Commercial Guaranty he received from Baldwin, so ML had his attorney draft a new guaranty which included Baldwin’s verbal representations made before ML invested.
31. ML asked Baldwin to sign the new guaranty, but Baldwin refused.
32. In mid-May 2008, ML went to the offices of Silverleaf Companies in Salt Lake City and demanded to see the books and records for Silver Leaf Capital.
33. The books and records for Silver Leaf Capital reveal that a separate account was opened for Silver Leaf Capital, but ML’s and NL’s investments were not deposited into the account.

34. Baldwin deposited both ML's and NL's checks into Silverleaf Companies' bank account, where the funds for the various entities managed by Silverleaf Companies were co-mingled. Additionally, there was no record of a deposit for \$300,000 - 500,000 made by Baldwin.
35. On April 14, 2008, ML sent an e-mail to Baldwin and Jack Reid, Silverleaf Companies' Director of Operations, asking for the return of ML's investment.
36. Baldwin responded via an e-mail dated April 15, 2008 stating, "I will let you know if [a return of ML's principal] is possible and if so when that would be."
37. On April 8, 2010, ML received \$100,000 from the Respondents, plus an amount toward attorneys' fees.

#### **MATERIAL MISREPRESENTATIONS AND OMISSIONS**

38. In connection with the offer and sale of securities to investors, the Respondents, directly or indirectly, made false statements, including, but not limited to, the following:
  - a. Investors money would be deposited into a separate bank account created for Silver Leaf Capital, and Baldwin would invest \$300,000 - 500,000 of his own money into the account;
  - b. Baldwin told NL he would personally guarantee NL's investment;

- c. NL's money would be invested for three to five months at the most, at which time NL would receive a return of her principal, plus a profit of about \$300,000;
  - d. ML would receive a return of his principal plus a profit in a short amount of time in return for an investment;
  - e. NL's and ML's money would be invested in GarageCo, and they would receive an equity interest in GarageCo; and
  - f. Baldwin told ML that Baldwin held a Series 7 securities license, when in fact, Baldwin had passed his Series 7 exam, but had not been licensed as a broker-dealer agent or an investment adviser representative since April 2007.
39. In connection with the offer and sale of securities to investors, the Respondents, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make representations made not misleading:
- a. On September 25, 2007, Silver Leaf Development, LLC (a real estate company managed by Silverleaf Companies) and Jody Rasmussen (a member of Silverleaf Companies) were sued in civil court and the action was still pending when NL and ML invested;
  - b. On September 25, 2007, Silver Leaf Capital applied for a license as an investment

advisor in Utah, and the Division raised numerous concerns with the application, which was still pending when NL and ML invested;

- c. As early as November 2007, the Division informed Baldwin that in order to syndicate private placement investments with other accredited investors or institutions, Silver Leaf Capital would have to be licensed as a broker-dealer or issuer agent;
- d. Some or all of the information typically provided in an offering circular or prospectus regarding Silver Leaf Capital and GarageCo (the Companies), such as:
  - i. the Companies' business and operating history;
  - ii. The principals' experience with buying, developing, and selling real estate;
  - iii. the Companies' financial statements;
  - iv. The market for the Companies' service(s) or product(s);
  - v. The nature of the competition for the service(s) or product(s);
  - vi. the Companies' current capitalization;
  - vii. The track record of the Companies to other investors;
  - viii. The number of other investors;
  - ix. The minimum capitalization needed to participate in the investment;

- x. The disposition of any investments received if the minimum capitalization were not achieved;
- xi. Discussion of pertinent suitability factors for the investment;
- xii. Any conflicts of interest the issuer, the principals, or the agents may have with regard to the investment;
- xiii. Agent commissions or compensation for selling the investment;
- xiv. Whether the investment is a registered security or exempt from registration; and
- xv. Whether the person selling the investment is licensed.

## **II. THE DIVISION'S CONCLUSIONS OF LAW**

40. Based on the Division's investigative findings, the Division concludes that:
- a. The investment opportunities offered and sold by Respondents are securities under § 61-1-13 of the Act;
  - b. Respondents violated § 61-1-1 of the Act by making misrepresentations of material facts and by omitting to state material facts in connection with the offer and sale of a security.

## **III. REMEDIAL ACTIONS/SANCTIONS**

41. Respondents neither admit nor deny the substance of the Division's findings and conclusions but consent to the Division's entering the Order set forth below.
42. Respondents represent that any information they provided to the Division as part of the Division's investigation of this matter is accurate.
43. Respondents agree to the imposition of a cease and desist order, prohibiting them from any conduct that violates the Act.
44. Pursuant to Utah Code Ann. § 61-1-6(1)(d) and in consideration of the guidelines set forth in Utah Admin. Code Rule R164-31-1, Respondents agree to pay a \$250,000 fine imposed by the Division. Respondents shall be credited for each dollar paid to the investors up to \$200,000 of the fine. The remaining \$50,000 portion of the fine will be waived contingent on no securities laws violations between the date of the entry of the Order and October 8, 2011. If Respondents do not timely make the payments to investors or materially violate any of the terms of the Order, after notice and opportunity to be heard before an administrative officer, the entire fine shall become immediately due.
45. Respondents agree to cooperate with the Division, the State of Utah, and the Federal Government in any future investigations and/or prosecutions with respect to the subject matter of this Order.

#### **IV. FINAL RESOLUTION**

46. Respondents acknowledge that this Order, upon approval by the Securities Commission shall be the final compromise and settlement of this matter.
47. Respondents further acknowledge that, if the Securities Commission does not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.
48. 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 their conduct referenced herein.
49. The Stipulation and Consent Order constitute 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 the Order in any way.

Utah Division of Securities

Date: 6/3/10

By: [Signature]

Michael Hines  
Director of Enforcement

Respondent Baldwin

Date: 5/25/10

By: [Signature]

Dwight Shane Baldwin  
Silverleaf Capital Partners 1, LLC

Approved:

[Signature]

Jeff Buckner  
Assistant Attorney General  
D.P.

Approved:

[Signature]

Bryan Allen  
Attorney for Respondents

**ORDER**

IT IS HEREBY ORDERED THAT:

1. The Division has made a sufficient showing of Findings of Fact and Conclusions of Law to form a basis for this settlement.
2. Respondents cease and desist from violating the Utah Uniform Securities Act.
3. Respondents shall pay a fine of \$250,000 off-set by restitution payments to investors up to \$200,000 in the criminal action. The remaining \$50,000 shall be waived on condition that Respondents violate no securities laws between the entry of this Order and October 8, 2011.
4. If Respondents materially violate any of the terms of this Order the full fine amount shall be imposed against the Respondents, jointly and severally, and become due immediately.
5. Respondents cooperate with the Division in any future investigations related to the subject matter of this Order.

**BY THE UTAH SECURITIES COMMISSION:**

DATED this 24<sup>th</sup> day of June, 2010.



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Tim Bangerter

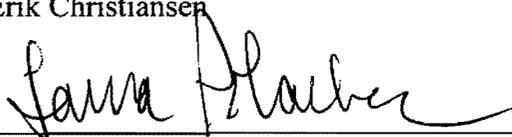


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Jane Cameron

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Erik Christiansen



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Laura Polacheck



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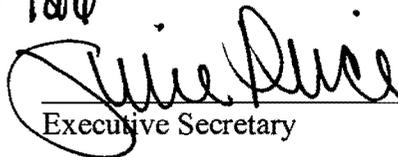
Michael O'Brien

**Certificate of Mailing**

I certify that on the 29th day of June, 2010, I mailed, by certified mail, a true and correct copy of the Stipulation and Consent Order to:

Bryan T. Allen  
Parr Brown Gee & Loveless  
c/o Dwight Shane Baldwin  
185 South State Street Suite 800  
Salt Lake City, UT 84111

Certified Mailing # 7009 2820 0001 2595 4800

  
Executive Secretary