

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:**

FLANNEL DAMAGE HOLDINGS LLC,

**RICHARD REX BALDWIN,**

RICHARD JUSTIN PUPUNU,

**Respondents.**

**STIPULATION AND CONSENT  
ORDER**

Docket No. SD-19-0004

**Docket No. SD-19-0005**

Docket No. SD-19-0006

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The Utah Division of Securities (“Division”), by and through its Director of Enforcement, Dave Hermansen, and Respondent Richard Rex Baldwin (“Baldwin”) hereby stipulate and agree as follows:

1. Baldwin 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 January 22, 2019, the Division initiated an administrative action against Baldwin, Richard Justin Pupunu (“Pupunu”), and Flannel Damage Holdings, LLC (“Flannel Damage”) (collectively referred to herein as “Respondents”) by filing an Order to Show Cause.

3. Baldwin 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 Baldwin pertaining to the Order to Show Cause.
4. Baldwin admits that the Division has jurisdiction over him and over the subject matter of this action.
5. Baldwin hereby waives any right to a hearing to challenge the Division’s evidence and present evidence on his behalf.
6. Baldwin 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 Baldwin to enter into this Order, other than as described in this Order.
7. Baldwin is represented by attorney Mark Pugsley, from Ray Quinney & Nebeker P.C., and is satisfied with the legal representation he has received.

#### **FINDINGS OF FACTS**

8. Flannel Damage is a defunct Utah limited liability company registered with the Utah Division of Corporations and Commercial Code on March 29, 2016. Pupunu is listed as the manager and registered agent of the entity.<sup>1</sup> Members listed for Flannel Damage include: Malohi Capital Enterprises LLC, a Utah limited liability company established by Pupunu on March 18, 2016; and Blue Danube LC, a Utah company established by Rex Baldwin on November 12, 2015.<sup>2</sup> The purported purpose of Flannel Damage was to

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<sup>1</sup>While Pupunu is listed as the registered agent and manager of Flannel Damage, Baldwin acknowledged during the Division’s interview, that he registered Flannel Damage with the Utah Division of Corporations and Commercial Code, not Pupunu. Flannel Damage’s entity documents list a principal address as 1243 E. Brickyard Road, Unit 450, Salt Lake City, UT 84106. The Utah Division of Corporations and Commercial Code lists the entity’s registration as expired as of June 28, 2017.

<sup>2</sup>Rex Baldwin is Richard Baldwin’s father.

develop and “flip” residential real estate. Flannel Damage has never been licensed with the Division, and has never recorded a securities registration, exemption from registration, or notice filing with the Division.

9. Baldwin was at all relevant times a resident of Utah, and was licensed as an investment adviser representative from 1997 through 2006 (examination series 6, 63, 65, and 7). Baldwin has not been licensed in the securities industry since 2006. Respondents established a bank account with signatory authority for Flannel Damage, and Baldwin was issued the sole debit card for electronic access to the funds in the account.
10. Pupunu was at all relevant times a resident of Utah, and has never been licensed in the securities industry. Pupunu is the manager and registered agent for Flannel Damage, and has signatory authority for the Flannel Damage bank account.
11. The Division’s investigation of this matter revealed that from approximately March 2016 to December 2016, while conducting business in or from the state of Utah, Respondents offered and sold an investment opportunity to at least one investor, and raised approximately \$50,000 in connection therewith.
12. The investment opportunity offered and sold by Respondents is an investment contract and/or promissory note.
13. Investment contracts and promissory notes are securities under §61-1-13 of the Act.
14. In connection with the offer and/or sale of securities, Respondents, either directly or indirectly, made material omissions and/or misrepresentations of material facts.
15. Baldwin, primarily through the use of Flannel Damage’s sole bank debit card, utilized investor funds in a manner inconsistent with the representations Baldwin made to the investor including, but not limited to paying personal expenses, and making substantial

cash withdrawals without maintaining accurate accounting records supporting a legitimate business purpose.

16. In connection with the offer and/or sale of securities, Respondents drafted and signed a revenue sharing agreement between Flannel Damage and the investor.
17. In a separate civil matter, Pupunu paid investor M.E. \$10,000 in a settlement agreement. As a result, investor M.E. is owed approximately \$38,492 in principal to date.

### **REHAB HOUSE FLIP INVESTMENT**

#### **THE SOLICITATION**

18. In or about 2014, Baldwin became friends with investor M.E. after meeting at a casino in Las Vegas, Nevada.
19. In or about March 2016, Baldwin solicited M.E. to invest in his rehab house flipping opportunity through Flannel Damage.
20. During the solicitation, Baldwin made numerous statements and representations to M.E. regarding the investment opportunity in Flannel Damage, including, but not limited to, the following:
  - a. That Baldwin and Pupunu co-owned Flannel Damage;
  - b. That Baldwin and Pupunu were experienced in flipping houses and Flannel Damage had previously purchased and sold residential real estate;
  - c. That flipping houses had been very lucrative for Flannel Damage;
  - d. That Flannel Damage had several relationships with general contractors who were “anxious to get back to steady work”;
  - e. That Flannel Damage needed funds to purchase properties to rehabilitate;
  - f. That Baldwin and Pupunu anticipated they would be able to resell the rehabilitated

properties within a few months for a substantial profit;

- g. That M.E. would receive monthly interest payments of 1% for three months, and an additional 35% of the profits from the sale of the property; and
- h. That Baldwin and Pupunu would personally guarantee M.E.'s principal investment.

21. Based on Baldwin's statements and representations, as set forth in paragraph 20, M.E. wrote a check to Flannel Damage totaling \$50,000, as he was instructed to do by Baldwin.

#### **THE INVESTMENT AGREEMENT**

- 22. In exchange for M.E.'s investment in Flannel Damage, he received a document entitled "Flannel Damage Holdings LC Revenue Sharing Agreement" dated March 28, 2016, and signed by M.E., Baldwin, and Pupunu.
- 23. In the agreement, M.E. agreed to invest \$50,000 in exchange for monthly interest payments of 1% to begin April 20, 2016, and 35% of the net profits after resell of the property.
- 24. Baldwin also signed an agreement, personally guaranteeing M.E.'s principal investment.<sup>3</sup>

#### **FRAUDULENT CONDUCT: USE OF INVESTOR FUNDS**

- 25. An analysis of Flannel Damage's bank records revealed that Baldwin used investor funds in a manner inconsistent with what Baldwin represented at the time of solicitation.
- 26. During the Division's interview with Baldwin, Baldwin acknowledged that he obtained a

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<sup>3</sup> The personal guarantee document includes three signatures which purportedly belong to Pupunu, Baldwin, and a third-party witness. During the Division's interview with Pupunu, Pupunu stated that he never signed a personal guarantee, would not have agreed to sign a personal guarantee, and believes Baldwin forged his signature. During the Division's interview with Baldwin, Baldwin stated that he did not witness Pupunu signing the personal guarantee and could not remember Pupunu signing the personal guarantee. Baldwin also stated that his son, Mark Baldwin, was the witness signature on the personal guarantee, although M.E. stated Baldwin informed M.E. that Baldwin's father (Rex Baldwin) signed the personal guarantee as the witness. Baldwin does not deny that he signed the personal guarantee. Further, during the Division's interview with Mark Baldwin, Mark Baldwin stated that he did not witness Pupunu signing the personal guarantee.

bank debit card for the Flannel Damage bank account, and used the investor's funds for personal expenses not related to the investment opportunity.

27. Baldwin used investor funds in a manner including, but not limited to the following:
  - a. To make cash withdrawals totaling approximately \$26,521 without producing receipts or other supporting documents to account for a legitimate business purpose for the cash withdrawals;
  - b. To spend approximately \$1,290 for a personal rent payment;
  - c. To pay over \$2,000 in food and dining expenses;
  - d. To spend over \$4,000 in personal travel expenses;
  - e. To spend over \$7,000 in Las Vegas; and
  - f. To pay thousands of dollars towards shopping, entertainment, utilities, phone bills, the Blue Man Group tickets, and other personal expenditures.
28. Baldwin spent investor funds within three and a half months of receipt of funds.

#### **MISSTATEMENTS AND OMISSIONS**

29. In connection with the offer and/or sale of securities, Baldwin made the following material misstatements to M.E. including, but not limited to, the following:
  - a. That all investor funds would be used for costs associated with flipping houses through Flannel Damage, when in fact, this representation was false and Baldwin used the majority of investor funds on entertainment in Las Vegas, travel expenses, dining expenses, and other personal expenditures;
  - b. That Baldwin and Pupunu were experienced in flipping houses and Flannel Damage had previously purchased and sold residential real estate, when in fact, this claim was false, Pupunu's only experience in residential real estate projects was renovating his

- home, and Flannel Damage had never purchased or sold residential real estate;
- c. That flipping houses had been very lucrative for Flannel Damage, when in fact, this claim was false and Flannel Damage had never flipped any houses or produced any profit from residential real estate investments;
  - d. That Baldwin and Pupunu anticipated they would be able to resell the rehabilitated property within a few months for a substantial profit, when in fact, this claim was false, and Flannel Damage never purchased a property to sell or receive a profit;
  - e. That Baldwin and Pupunu would personally guarantee M.E.'s principal investment, when in fact, this claim was false, and M.E.'s investment was not personally guaranteed; and
  - f. That M.E. would receive monthly interest payments of 1% and 35% of the net profits received from the sale of the properties, when in fact, M.E. never received any profits, and lost the majority of his investment.
30. In connection with the offer and/or sale of securities, Respondents failed to disclose material information to the investor including, but not limited to, the following:
- a. That Baldwin would use M.E.'s investment to fund his personal lifestyle;
  - b. That M.E.'s investment was not secured in any way or personally guaranteed;
  - c. That Flannel Damage would pay M.E.'s monthly interest payments from M.E.'s initial investment;
  - d. That Flannel Damage would not keep accurate accounting records of how M.E.'s investment would be used;
  - e. That Baldwin and Pupunu were not licensed to sell securities;
  - f. That Baldwin filed for bankruptcy in 1997;

- g. That Baldwin had over 25 outstanding judgments and liens entered against him totaling over \$4.6 million;
  - h. That Pupunu had at least three outstanding judgments entered against him totaling approximately \$16,763; and
  - i. Some or all of the information typically provided in an offering circular or prospectus concerning Respondents 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.
31. To date, M.E. is owed at least \$38,492 in principal alone on his investment in Flannel Damage.

#### **BALDWIN'S PARALLEL CRIMINAL PROCEEDING**

32. On July 9, 2019, Baldwin was charged in a parallel criminal action in Utah's Third District Court, Salt Lake County, Utah, Case Number 191906801 (the "Criminal Action").
33. On January 22, 2021, Baldwin entered into a plea agreement with the state, and pleaded guilty to Securities Fraud, a 3rd degree felony.
34. In the Criminal Action, Baldwin was ordered by the court to pay restitution to investor M.E. in the amount of \$38,492 (plus interest).



35. Baldwin was also ordered to complete 40 hours of community service, and was placed on probation for 36 months.
35. Lastly, Baldwin was ordered to comply with the financial crimes registry requirements, and was sentenced to an indeterminate prison term not to exceed five years in the Utah State Prison. Baldwin's prison term was suspended.

### CONCLUSIONS OF LAW

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

36. Based upon the Division's investigative findings, the Division concludes that the investment opportunity offered and sold by Baldwin is an investment contract and/or a promissory note.
37. Investment contracts and promissory notes are securities under §61-1-13 of the Act.
38. In violation of § 61-1-1(2) of the Act, and in connection with the offer and/or sale of a security, Baldwin, directly or indirectly misrepresented material facts including, but not limited to, the following:
  - a. That all investor funds would be used for costs associated with flipping houses through Flannel Damage, when in fact, this representation was false and Baldwin used the majority of investor funds on entertainment in Las Vegas, travel expenses, dining expenses, and other personal expenditures;
  - b. That Baldwin and Pupunu were experienced in flipping houses and Flannel Damage had previously purchased and sold residential real estate, when in fact, this claim was false, Pupunu's only experience in residential real estate projects was renovating his home, and Flannel Damage had never purchased or sold residential real estate;
  - c. That flipping houses had been very lucrative for Flannel Damage, when in fact, this

claim was false and Flannel Damage had never flipped any houses or produced any profit from residential real estate investments;

- d. That Baldwin and Pupunu anticipated they would be able to resell the rehabilitated property within a few months for a substantial profit, when in fact, this claim was false, and Flannel Damage never purchased a property to sell or receive a profit;
- e. That Baldwin and Pupunu would personally guarantee M.E.'s principal investment, when in fact, this claim was false, and M.E.'s investment was not personally guaranteed; and
- f. That M.E. would receive monthly interest payments of 1% and 35% of the net profits received from the sale of the properties, when in fact, M.E. never received any profits, and lost the majority of his investment.

39. In violation of § 61-1-1(2) of the Act, and in connection with the offer and/or sale of a security, Baldwin 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 Baldwin would use M.E.'s investment to fund his personal lifestyle;
- b. That M.E.'s investment was not secured in any way or personally guaranteed;
- c. That Flannel Damage would pay M.E.'s monthly interest payments from M.E.'s initial investment;
- d. That Flannel Damage would not keep accurate accounting records of how M.E.'s investment would be used;
- e. That Baldwin was not licensed to sell securities;
- f. That Baldwin had over 25 outstanding judgments and liens entered against him

totaling over \$4.6 million; and

- g. Some or all of the information typically provided in an offering circular or prospectus concerning Respondents 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.

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

- 40. In violation of § 61-1-1(3) of the Act, and in connection with the offer and/or sale of a security, Baldwin directly or indirectly engaged in an act, practice, or course of business which operated as a fraud or deceit on investors when he misused M.E.'s funds. That conduct includes but is not limited to the conversion and misuse of M.E.'s funds for purposes not disclosed to or authorized by M.E., including Baldwin's personal use of the investor's funds.

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

- 41. In violation of § 61-1-3(1) of the Act, Baldwin was not licensed in the securities industry in any capacity when he offered and sold securities on behalf of Flannel Damage to M.E., and received compensation in connection therewith.

### REMEDIAL ACTIONS/SANCTIONS

42. Baldwin admits to the Division's Findings of Fact and Conclusions of Law, and consents to the below sanctions being imposed by the Division.
43. Baldwin represents that the information he has provided to the Division as part of its investigation is accurate and complete.
44. Baldwin 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.
45. Baldwin agrees to be barred from associating with any broker-dealer or investment adviser licensed in 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 Utah.
46. Baldwin agrees to pay restitution directly to investor M.E. in the total amount of \$38,492 pursuant to the Criminal Action.
47. 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 total fine amount of \$63,500 against Baldwin. Baldwin agrees to pay \$5,000 of the fine to the Division within 30 days of entry of this Order. If Baldwin timely pays restitution of \$38,492 to investor M.E. within 24 months of entry of this Order, the Division will offset the fine amount dollar-for-dollar by restitution paid and the Division will waive \$10,000 of the remaining fine. The remaining fine is due to the Division within 30 days after the 24-month period has ended (i.e. by the end of the 25<sup>th</sup> month).

### FINAL RESOLUTION

48. Baldwin acknowledges that this Order, upon approval by the Utah Securities Commission (“Commission”), shall be the final compromise and settlement of this matter. Baldwin 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, Baldwin expressly waives any claims of bias or prejudgment of the Commission, and such waiver shall survive any nullification.
49. If Baldwin 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, Baldwin consents to entry of an order in which the remaining fine amount is increased by 20% and becomes immediately due and payable. Notice of the violation will be provided to Baldwin at his last known address, and to his counsel if he has one. If Baldwin 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.
- In addition, the Division may institute judicial proceedings against Baldwin 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 Baldwin or to otherwise enforce the terms of this Order. Baldwin 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. Baldwin 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. Baldwin 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 Baldwin are canceled. The Order may be docketed in a court of competent jurisdiction.

Dated this 28th day of July, 2021

*Dave R. Hermansen*

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Dave R. Hermansen  
Director of Enforcement  
Utah Division of Securities

Dated this 11 day of May, 2021

*Richard Rex Baldwin*

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Richard Rex Baldwin

Approved:

*Jennifer Korb*

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Jennifer Korb  
Assistant Attorney General  
Counsel for Division

Approved:

*Mark Pugsley*

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Mark Pugsley  
Counsel for Respondent Baldwin

## ORDER

### **IT IS HEREBY ORDERED THAT:**

1. The Division's Findings and Conclusions, which Baldwin admits, are hereby entered.
2. Baldwin 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. Baldwin shall be barred from associating with any broker-dealer or investment adviser licensed in 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 Utah.
4. Baldwin shall pay restitution directly to investor M.E. in the total amount of \$38,492, pursuant to the Criminal Action.
5. Pursuant to Utah Code Ann. §61-1-20, and in consideration of the factors set forth in Utah Code Ann. §61-1-31, Baldwin shall pay a fine of \$63,500 to the Division pursuant to the terms set forth in paragraph 47.

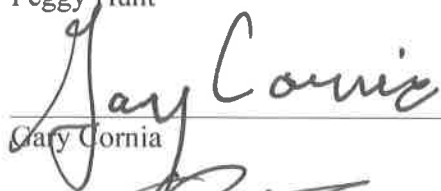
**BY THE UTAH SECURITIES COMMISSION:**

DATED this 5 day of August, 2021

  
Lyndon Ricks

  
Lyle White

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Peggy Hunt

  
Gary Cornia

  
Brent Cochran