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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:**

**NEWPORT FINANCIAL SERVICES, LLC,  
MICHAEL KAY SMITH,  
QUINTIN FULLMER SMITH,**

**Respondents.**

**ORDER TO SHOW CAUSE**

Docket No. 00-11-0027

Docket No. 00-11-0028

Docket No. 00-11-0029

It appears to the Director of the Utah Division of Securities (Director) that Newport Financial Services, LLC, Michael Kay Smith, and Quintin Fullmer Smith have engaged in acts and practices that violate the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, et seq. (the Act). Those acts are more fully described herein. Based upon information discovered in the course of the Utah Division of Securities' (Division) investigation of this matter, the Director issues this Order to Show Cause in accordance with the provisions of § 61-1-20(1) of the Act.

**STATEMENT OF JURISDICTION**

1. Jurisdiction over Respondents and the subject matter is appropriate because the Division alleges that they violated § 61-1-1 (securities fraud) of the Act while engaged in the offer

and sale of securities in or from Utah.

## **STATEMENT OF FACTS**

### **THE RESPONDENTS**

2. Newport Financial Services, LLC (Newport) is a Utah limited liability company, registered on April 5, 2005. Michael K. Smith and Quintin F. Msith [sic] are members of Newport. Newport's status as a business entity is expired. Newport has never been licensed by the Division as a broker/dealer agent or as an issuer/agent to sell securities.
3. Michael Kay Smith (M. Smith) was, at all relevant times, a resident of the state of Utah. Smith has never been licensed as a broker/dealer, agent, or as an investment adviser representative in Utah.
4. Quintin Fullmer Smith (Q. Smith) was, at all relevant times, a resident of the state of Utah. Smith has never been licensed as a broker/dealer, agent, or as an investment adviser representative in Utah.

### **GENERAL ALLEGATIONS**

5. From May 2006 to March 2009, Respondents offered and sold securities to a group of investors, in or from Utah, and collected a total of \$1,060,224.
6. Smith made material misstatements and omissions in connection with the offer and sale of securities to the investors below.
7. The investors lost approximately \$417,500 of their investment funds.

INVESTOR D.C.

8. In 2005, D.C. knew Q. Smith as a family friend and knew that Q. Smith worked with furniture finance contracts.
9. Later that year, Q. Smith approached D.C. stating that he had started his own company, Newport, and that D.C. should “get in on this.”
10. D.C. met with the principals of Newport, Q. Smith, M. Smith, and Barney Carlson (Carlson) to discuss a potential investment in Newport.
11. During the meeting, Q. Smith and M. Smith made the following statements about a potential investment in Newport:
  - a. D.C. would earn 18% return on his investment in Newport;
  - b. Q. Smith and M. Smith were “making money hand over fist;”
  - c. Q. Smith and M. Smith made 100% on every dime they invested;
  - d. The business model for Newport would work even if the default rate rose to 40%;
  - e. The worst case scenario would be that D.C. would receive his principal investment back;
  - f. Q. Smith and M. Smith had “so much money out there” that they could both retire already;
  - g. Newport was based on the RC Willey<sup>1</sup> model - they don’t sell furniture. they sell

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<sup>1</sup>RC Willey is a popular furniture chain in Utah.

financing.

12. During the meeting, Q. Smith made the following statements about Newport:
  - a. He was busy making money;
  - b. That he could not keep up with demand from all of the customers; and
  - c. The default rate was staying below 20%.
13. M. Smith stated to D.C. that the default rate of Newport had consistently been around 10-18% for the past several years.
14. Based on Respondents' statements, D.C. invested at least \$170,400 in Newport.
15. D.C. gave Newport checks for the following amounts:
  - a. \$20,500 on or about June 22, 2006;
  - b. \$15,000 and \$5,000 on or about January 3, 2007; and
  - c. \$129,900 on or about March 16, 2007.
16. D.C. received two interest payments from Newport totaling \$24,245.13:
  - a. \$17,245.13 on August 13, 2007;
  - b. \$7,000 on March 1, 2008.
17. Newport still owes D.C. at least \$146,155 in principal alone.

INVESTORS S.C. AND HIS WIFE

18. In January 2007, S.C. and his wife were introduced to Q. Smith through their son, D.C.
19. D.C. arranged the meeting of S.C. and his wife with Q. Smith in Newport's office in Salt

Lake County, Utah to discuss an investment opportunity in Newport.

20. During the meeting, Q. Smith made the following statements about a potential investment in Newport:

- a. The company was just getting started;
- b. The company model was based on a previous company where Q. Smith had worked;<sup>2</sup>
- c. Newport's business model was to raise money from investors and then use that money to fund furniture store loans in the Midwest;
- d. Investors would earn a guaranteed 18% return on their investment in Newport;
- e. Investors would receive monthly statements;
- f. If investors needed a small amount of money they could request it and receive it within ten days;
- g. If investors wanted their investment funds returned they could request it and receive it within thirty days;
- h. Investors could choose to have regular interest payments if they wanted; and
- i. If the business was operated correctly, the amount in fees and interest earned on the loans would cover the interest owed to investors and leave enough for the

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<sup>2</sup>Q. Smith's former employer told the Division that Q. Smith worked there from May 2002 to May 2004. He stated that Q. Smith worked in collections and then "did some sales." According to this employer, Q. Smith did not have the experience or knowledge necessary to leave and start up a similar company and have it be successful.

operators to make a reasonable profit.

21. Immediately following the meeting with Q. Smith, S.C. and his wife entered M. Smith's office to further discuss the investment.
22. During the meeting, M. Smith made the following statements about Newport:
  - a. Everything was great;
  - b. Business was doing well; and
  - c. Newport was looking for investors because companies were calling all the time to get on the loan list.
23. Based on Respondents' statements, S.C. and his wife invested \$90,000 in Newport.
24. S.C. gave Newport checks for the following amounts:
  - a. \$40,000 on or about January 3, 2007;
  - b. \$20,000 on or about January 12, 2007; and
  - c. \$30,000 on or about March 20, 2009.
25. On March 31, 2009, S.C. and his wife received an unsecured promissory note for all of their investments plus interest totaling \$99,681.
26. S.C. and his wife did not receive any payments from the investment. When confronted, Q. Smith stated that Newport was so busy "making [them] money" that he overlooked sending them payments.
27. Newport sent Investor Statements to S.C. and his wife from September 2007 through May

2009. S.C. and his wife relied on the majority of these statements before their investment on March 20, 2009.

28. Newport still owes S.C. and his wife \$90,000 in principal alone.

INVESTOR D.P.

29. In 2006, D.P. was introduced to M. Smith through Carlson, a principal of Newport.
30. Carlson had told D.P. about Newport. Carlson said that Newport was doing so well that they needed more money because the demand was so high.
31. Carlson stated that Newport purchased furniture at a 20-25% discount.<sup>3</sup>
32. Carlson also stated that investors were making 18% per annum on their money.
33. Carlson arranged the meeting of D.P. and M. Smith in Salt Lake County, Utah.
34. Shortly after this meeting, D.P. was assigned to the same church where M. Smith attended and served as a leader. M. Smith spoke with D.P. while at church many times about a potential investment in Newport.
35. During the conversations, M. Smith reiterated what Carlson had told D.P. and further made the following statements about a potential investment in Newport:
- a. Everything was great with Newport;
  - b. Newport was making 60-80% on other people's money;
  - c. Newport was growing and moving into new markets; and

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<sup>3</sup>According to records provided by Newport, Newport has never received discounts at or above 20%.

- d. Many companies were approaching Newport because of their success.
36. Based on M. Smith's statements, D.P. invested \$225,000 in Newport.
37. D.P. wired to Newport the following amounts:
- a. \$50,000 on or about January 29, 2007;
  - b. \$50,000 on or about February 2, 2007;
  - c. \$50,000 on or about March 2, 2007;
  - d. \$50,000 on or about March 6, 2007; and
  - e. \$25,000 some time after March 6, 2007.
38. Newport sent Investor Statements to D.P. from March 1, 2007 to February 16, 2009.
39. Following the last investment, D.P. attended a lunch with Carlson, M. Smith, and Q. Smith. During the lunch M. Smith and Q. Smith stated that if Newport's business ended that day they would be able to pay back all of the investors and still have \$2 million left over.
40. One month later, D.P. requested his investment funds back, but M. Smith and Q. Smith said that all the money was gone.
41. Newport still owes D.P. \$225,000 in principal alone.

INVESTOR M.M.

42. M.M. was a childhood friend with Q. Smith and knew Q. Smith's father, M. Smith.
43. In July 2007, M.M. encountered Q. Smith in Salt Lake County, Utah.

44. Q. Smith told M.M. that he had started a company with his father and another owner, Carlson.
45. Q. Smith invited M.M. to an investor meeting about a potential investment in Newport.
46. In July 2007, M.M. attended two meetings at Newport's office in Salt Lake County, Utah. Q. Smith and M. Smith were the only other people present.
47. During the meetings, Q. Smith and M. Smith made the following statements about a potential investment in Newport:
- a. They guaranteed an 18% return per annum on any money invested in Newport, but made contradicting statements that while the rate was not guaranteed, that would be the rate of return on M.M.'s investment;
  - b. Newport's primary activity was to purchase financing contracts from furniture stores around the country;
  - c. Due to Q. Smith's past employment relationship, Newport did not do business in the state of Utah;
  - d. Newport's business model was taken from the company where Q. Smith previously worked;
  - e. Q. Smith left his previous company to start his own company doing the same thing;
  - f. Newport typically purchases contracts of customers who could not qualify for traditional financing options;

- g. They could “turn 80% of credit rejections into sales;”
- h. Newport requires no credit check and only requires customers to have a checking account and stable employment income;
- i. Customers were required to pay a \$25 fee and sign a financing contract;
- j. A typical purchase contract was for \$1,000 and required twelve payments of \$150;
- k. Newport made a profit with the \$25 fee, purchasing contracts at a discount of 20% from retailers, and from payments received being over the amount of the contract purchase amount;
- l. A \$1,000 contract would be purchased for \$800 and at maturity would yield a total of \$1,825;
- m. The default rate was approximately 18% and has been so for the past seven years, including the time Q. Smith was employed at another company;<sup>4</sup>
- n. The investment instrument issued to investors was a promissory note;
- o. The annual returns on the furniture loans exceeded 100% per year, which took into account the 18% default rate;
- p. If defaults rise to 40%, in a worst case scenario, Newport still had enough cash flow for all operating expenses, overhead, employee salaries, and all interest payments to

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<sup>4</sup>According to Q. Smith’s former employer, default rates were separated into two categories. The default rate for customers under the 90 Days Same As Cash plan was 14-15%. The default rate for the rest of the customers was 23-24%.

investors;

- q. Newport had a dedicated collection staff of three employees and in addition to that, Q. Smith and M. Smith aided in collections; and
  - r. The principals of Newport had over \$1 million of their own funds invested in Newport and in a worst case scenario, that \$1 million would be taken as a loss before any investors lost their own funds.
48. Based on Respondents' statements, M.M. invested \$286,379 in Newport.
49. M.M. gave checks to Newport in the following amounts:
- a. \$40,000 on or about August 6, 2007;
  - b. \$40,000 on or about August 8, 2007;
  - c. \$70,000 on or about August 31, 2007;
  - d. \$85,000 on or about September 19, 2007; and
  - e. \$51,379 on or about September 10, 2008.<sup>5</sup>
50. In exchange for the investment funds, M.M. received promissory notes.
51. From July 2008 to May 27, 2009, M.M. received ten interest payments from Newport totaling \$33,415.
52. In June 2009, M.M. attended an investor meeting at Newport's office where Q. Smith and M. Smith announced "enormous amounts of bad debt losses" that they had written off as tax

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<sup>5</sup>These investment funds were taken from M.M.'s Investment Retirement Account (IRA) and invested through American Pension Service.

losses instead of being pursued by collection effort.

53. Q. Smith and M. Smith admitted that there had never been formal collection efforts to go after defaulted contracts.
54. Newport still owes M.M. \$252,964 in principal alone.

INVESTOR S.B.

55. In 2007, S.B.'s son introduced S.B. to Q. Smith.
56. In September 2007, S.B. made an appointment with Newport to learn about investment opportunities.
57. At the appointment, S.B. met with Q. Smith and M. Smith at Newport's office in Salt Lake County, Utah.
58. During the meetings, Q. Smith and M. Smith made the following statements about a potential investment in Newport:
  - a. Newport's primary activity was to purchase financing contracts from furniture stores around the country;
  - b. Due to Q. Smith's past employment relationship, Newport did not do business in the state of Utah;
  - c. Newport typically purchases contracts of customers who could not qualify for traditional financing options;
  - d. They could "turn 80% of credit rejections into sales;"

- e. Newport requires no credit check and only requires customers to have a checking account and stable employment income;
  - f. Customers were required to pay a \$25 fee and sign a financing contract;
  - g. A typical purchase contract was for \$1,000 and required twelve payments of \$150;
  - h. Newport made a profit with the \$25 fee, purchasing contracts at a discount of 20% from retailers, and from payments received being over the amount of the contract purchase amount;
  - i. A \$1,000 contract would be purchased for \$800 and at maturity would yield a total of \$1,825;
  - j. The default rate was approximately 10% and was a cost of doing business;
  - k. With such high returns, no efforts were made to collect or repossess on past due accounts;
  - l. Newport was doing really well and they were trying to grow it slowly so it did not get out of control;
  - m. The investment instrument issued to investors was a promissory note; and
  - n. Investors could receive their principal back at any time with sixty or ninety days advance notice.
59. Following the meeting, S.B. requested financial statements from Newport which were delivered to S.B. shortly after September 17, 2007.

60. Based on Respondents' statements, S.B. invested \$148,296 in Newport.
61. S.B. gave checks to Newport in the following amounts:
  - a. \$30,000 on or about November 6, 2007; and
  - b. \$118,296 on or about May 10, 2008.
62. In exchange for the investment funds, S.B. received an unsecured promissory note dated March 10, 2008 in the amount of \$149,953.
63. On August 26, 2008, S.B. withdrew \$60,000 from his account with Newport, only to reinvest it with Newport in a separate promissory note.
64. All of S.B.'s investments funds came from his IRA. S.B. informed Q. Smith and M. Smith of this fact before investing.
65. On May 25, 2009, M. Smith called S.B. to inform him that investors would not receive their accumulated interest, but he was confident that investment principal would be returned.
66. S.B. received interest payments from Newport totaling \$3,336.
67. Newport still owes S.B. \$144,960 in principal alone.

INVESTOR J.B.

68. In May 2008, J.B.'s cousin, M.M., introduced him to Q. Smith and M. Smith. J.B. asked to arrange an appointment with Newport to discuss an investment opportunity.
69. On May 31, 2008, J.B. received an e-mail from Q. Smith in which Q. Smith said, "to give

you some comfort I have been involved with this [business] for 9 years.”

70. In May 2008, J.B. met with Q. Smith and M. Smith at Newport’s office in Salt Lake County, Utah.
71. During the meetings, Q. Smith and M. Smith made the following statements about a potential investment in Newport:
  - a. J.B. would receive 18% per annum on his investment funds;
  - b. The 18 % interest rate was guaranteed;
  - c. Newport never had a default rate over 22% and that included the time Q. Smith had worked for another company that had the same business model;
  - d. The worst case scenario would be that investors only receive their principal back;
  - e. Newport makes over 100% on their money;
  - f. J.B. could get his money out at any time with thirty days notice.
72. M. Smith told J.B. that he goes to sleep at night knowing that money was coming in and a measly 18% per year was nothing compared to what they were making.
73. J.B. said that the only money that he could invest was from his 401k. Q. Smith and M. Smith told him about American Pension Services, a company that would allow him to invest his 401k with Newport.
74. Based on Respondents’ statements, J.B. invested \$85,650 in Newport.
75. On June 9, 2008, J.B. wired \$85,650 to Newport through American Pension Services.

76. In exchange for the investment funds, J.B. received an unsecured promissory note dated May 29, 2008.
77. On September 5, 2008, e-mailed Q. Smith requesting J.B.'s investment funds be returned. Q. Smith agreed, but said that he needed ninety days.
78. In March or April 2009, Newport held a meeting at their office and told the investors, including J.B., that the money was all gone. Q. Smith and M. Smith admitted they had spent all the money and money was easy to spend.
79. Newport still owes J.B. \$85,650 in principal alone.

#### **CAUSES OF ACTION**

#### **COUNT I Securities Fraud under § 61-1-1 of the Act (Investor D.C.)**

80. The Division incorporates and re-alleges paragraphs 1 through 79.
81. The investment opportunities offered and sold by Respondents are securities under § 61-1-13 of the Act.
82. In connection with the offer and sale of a security to the investors, Respondents, directly or indirectly, made false statements, including, but not limited to, the following:
  - a. The worst case scenario would be that D.C. would receive his principal investment back. when in fact. Respondents had no reasonable basis for making such a statement.

83. In connection with the offer and sale of a security to the investors, Respondents, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make statements made not misleading:
- a. In 2004, M. Smith had tax lien on his home for \$22,639;<sup>6</sup>
  - b. In 2005, M. Smith had tax lien on his home for \$132,998;<sup>7</sup>
  - c. In 2001, M. Smith had filed for Chapter 13 bankruptcy;<sup>8</sup>
  - d. How Newport could guarantee a return of 18% per annum;
  - e. That Newport did not make formal collection efforts to recuperate defaulted contracts;
  - f. Some or all of the information typically provided in an offering circular or prospectus regarding Smith, such as:
    - i. Financial statements;
    - ii. Risk factors;
    - iii. Suitability factors for the investment;
    - iv. Track record to investors;
    - v. Respondents' business experience and operating history;

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<sup>6</sup>*Internal Revenue Service v. Michael Kay Smith*, Case #9147774 (Utah 2004)

<sup>7</sup>*Internal Revenue Service v. Michael Kay Smith*, Case #9333986 (Utah 2005)

<sup>8</sup>*United States Trustee v. Michael Kay Smith*, Case #01-30758 (Utah 2001)

- vi. Nature of competition;
- vii. Whether the investment was a registered security or exempt from registration;  
and
- viii. Whether Respondents were licensed to sell securities.

**COUNT II**  
**Securities Fraud under § 61-1-1 of the Act**  
**(Investors S.C. and his wife)**

- 84. The Division incorporates and re-alleges paragraphs 1 through 79.
- 85. The investment opportunities offered and sold by Respondents are securities under § 61-1-13 of the Act.
- 86. In connection with the offer and sale of a security to the investors, Respondents, directly or indirectly, made false statements, including, but not limited to, the following:
  - a. Investors would earn a guaranteed 18% return on their investment in Newport, when in fact, Respondents had no reasonable basis for making such a statement.
- 87. In connection with the offer and sale of a security to the investors, Respondents, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make statements made not misleading:
  - a. In 2004, M. Smith had tax lien on his home for \$22.639:<sup>9</sup>

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<sup>9</sup>*Internal Revenue Service v. Michael Kay Smith*. Case #9147774 (Utah 2004)

- b. In 2005, M. Smith had tax lien on his home for \$132,998;<sup>10</sup>
- c. In 2001, M. Smith had filed for Chapter 13 bankruptcy;<sup>11</sup>
- d. How Newport could guarantee a return of 18% per annum;
- e. That Newport did not make formal collection efforts to recuperate defaulted contracts;
- f. Some or all of the information typically provided in an offering circular or prospectus regarding Smith, such as:
  - i. Financial statements;
  - ii. Risk factors;
  - iii. Suitability factors for the investment;
  - iv. Track record to investors;
  - v. Respondents' business experience and operating history;
  - vi. Nature of competition;
  - vii. Whether the investment was a registered security or exempt from registration; and
  - viii. Whether Respondents were licensed to sell securities.

**COUNT III**  
**Securities Fraud under § 61-1-1 of the Act**

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<sup>10</sup>*Internal Revenue Service v. Michael Kay Smith*, Case #9333986 (Utah 2005)

<sup>11</sup>*United States Trustee v. Michael Kay Smith*, Case #01-30758 (Utah 2001)

**(Investor D.P)**

88. The Division incorporates and re-alleges paragraphs 1 through 79.
89. The investment opportunities offered and sold by Respondents are securities under § 61-1-13 of the Act.
90. In connection with the offer and sale of a security to the investors, Respondents, directly or indirectly, made false statements, including, but not limited to, the following:
- a. Newport was purchasing furniture at a discount of 20-25%, when in fact, this was never the case.
91. In connection with the offer and sale of a security to the investors, Respondents, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make statements made not misleading:
- a. In 2004, M. Smith had tax lien on his home for \$22,639;<sup>12</sup>
  - b. In 2005, M. Smith had tax lien on his home for \$132,998;<sup>13</sup>
  - c. In 2001, M. Smith had filed for Chapter 13 bankruptcy;<sup>14</sup>
  - d. That Newport did not make formal collection efforts to recuperate defaulted contracts;

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<sup>12</sup>*Internal Revenue Service v. Michael Kay Smith*, Case #9147774 (Utah 2004)

<sup>13</sup>*Internal Revenue Service v. Michael Kay Smith*, Case #9333986 (Utah 2005)

<sup>14</sup>*United States Trustee v. Michael Kay Smith*. Case #01-30758 (Utah 2001)

- e. Some or all of the information typically provided in an offering circular or prospectus regarding Smith, such as:
- i. Financial statements;
  - ii. Risk factors;
  - iii. Suitability factors for the investment;
  - iv. Track record to investors;
  - v. Respondents' business experience and operating history;
  - vi. Nature of competition;
  - vii. Whether the investment was a registered security or exempt from registration; and
  - viii. Whether Respondents were licensed to sell securities.

**COUNT IV**  
**Securities Fraud under § 61-1-1 of the Act**  
**(Investor M.M.)**

92. The Division incorporates and re-alleges paragraphs 1 through 79.
93. The investment opportunities offered and sold by Respondents are securities under § 61-1-13 of the Act.
94. In connection with the offer and sale of a security to the investors, Respondents, directly or indirectly, made false statements, including, but not limited to, the following:
- a. They could guarantee the 18% return, then said that they really cannot guarantee

the return, but that they can;

- b. Newport was purchasing furniture at a discount of 20-25%, when in fact, this was never the case.
  - c. Newport had a dedicated collection staff of three employees and in addition to that, Q. Smith and M. Smith aided in collections, when in fact, Respondents later admitted that there had never been formal collection efforts.
95. In connection with the offer and sale of a security to the investors, Respondents, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make statements made not misleading:
- a. In 2004, M. Smith had tax lien on his home for \$22,639;<sup>15</sup>
  - b. In 2005, M. Smith had tax lien on his home for \$132,998;<sup>16</sup>
  - c. In 2001, M. Smith had filed for Chapter 13 bankruptcy;<sup>17</sup>
  - d. How Newport could guarantee a return of 18% per annum;
  - e. Some or all of the information typically provided in an offering circular or prospectus regarding Smith, such as:
    - i. Financial statements;

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<sup>15</sup>*Internal Revenue Service v. Michael Kay Smith*, Case #9147774 (Utah 2004)

<sup>16</sup>*Internal Revenue Service v. Michael Kay Smith*, Case #9333986 (Utah 2005)

<sup>17</sup>*United States Trustee v. Michael Kay Smith*, Case #01-30758 (Utah 2001)

- ii. Risk factors;
- iii. Suitability factors for the investment;
- iv. Track record to investors;
- v. Respondents' business experience and operating history;
- vi. Nature of competition;
- vii. Whether the investment was a registered security or exempt from registration; and
- viii. Whether Respondents were licensed to sell securities.

**COUNT V**  
**Securities Fraud under § 61-1-1 of the Act**  
**(Investor S.B.)**

- 96. The Division incorporates and re-alleges paragraphs 1 through 79.
- 97. The investment opportunities offered and sold by Respondents are securities under § 61-1-13 of the Act.
- 98. In connection with the offer and sale of a security to the investors, Respondents, directly or indirectly, made false statements, including, but not limited to, the following:
  - a. M. Smith said the default rate was approximately 10% and was a cost of doing business, when in fact, the default rate for 90 Day Same As Cash customers was 14-15% and the default rate for the other customers was 23-24%; and
  - b. Newport was purchasing furniture at a discount of 20-25%, when in fact, this was

never the case.

99. In connection with the offer and sale of a security to the investors, Respondents, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make statements made not misleading:
- a. In 2004, M. Smith had tax lien on his home for \$22,639;<sup>18</sup>
  - b. In 2005, M. Smith had tax lien on his home for \$132,998;<sup>19</sup>
  - c. In 2001, M. Smith had filed for Chapter 13 bankruptcy;<sup>20</sup>
  - d. How Newport could guarantee a return of 18% per annum;
  - e. Some or all of the information typically provided in an offering circular or prospectus regarding Smith, such as:
    - i. Risk factors;
    - ii. Suitability factors for the investment;
    - iii. Track record to investors;
    - iv. Respondents' business experience and operating history;
    - v. Nature of competition;
    - vi. Whether the investment was a registered security or exempt from

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<sup>18</sup>*Internal Revenue Service v. Michael Kay Smith*, Case #9147774 (Utah 2004)

<sup>19</sup>*Internal Revenue Service v. Michael Kay Smith*, Case #9333986 (Utah 2005)

<sup>20</sup>*United States Trustee v. Michael Kay Smith*, Case #01-30758 (Utah 2001)

registration; and

- vii. Whether Respondents were licensed to sell securities.

**COUNT VI**  
**Securities Fraud under § 61-1-1 of the Act**  
**(Investor J.B.)**

- 100. The Division incorporates and re-alleges paragraphs 1 through 79.
- 101. The investment opportunities offered and sold by Respondents are securities under § 61-1-13 of the Act.
- 102. In connection with the offer and sale of a security to the investors, Respondents, directly or indirectly, made false statements, including, but not limited to, the following:
  - a. The 18 % interest rate was guaranteed, when in fact, Respondents had no reasonable basis for making such a statement;
  - b. Newport never had a default rate over 22% and that included the time Q. Smith had worked for another company that had the same business model, when in fact, the default rate for customers not on the 90 Days Same As Cash plan was 23-24%;
  - c. The worst case scenario would be that investors only receive their principal back, when in fact, Respondents had no basis for making such a statement;
  - d. Q. Smith said "I have been involved with this [business] for 9 years," when in fact, Q. Smith began working with his previous employer in the industry only six years before making this statement.

103. In connection with the offer and sale of a security to the investors, Respondents, directly or indirectly, failed to disclose material information, including, but not limited to, the following, which was necessary in order to make statements made not misleading:
- a. In 2004, M. Smith had tax lien on his home for \$22,639;<sup>21</sup>
  - b. In 2005, M. Smith had tax lien on his home for \$132,998;<sup>22</sup>
  - c. In 2001, M. Smith had filed for Chapter 13 bankruptcy;<sup>23</sup>
  - d. How Newport could guarantee a return of 18% per annum;
  - e. That Newport did not make formal collection efforts to recuperate defaulted contracts;
  - f. Some or all of the information typically provided in an offering circular or prospectus regarding Smith, such as:
    - i. Financial statements;
    - ii. Risk factors;
    - iii. Suitability factors for the investment;
    - iv. Track record to investors;
    - v. Respondents' business experience and operating history;

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<sup>21</sup>*Internal Revenue Service v. Michael Kay Smith*, Case #9147774 (Utah 2004)

<sup>22</sup>*Internal Revenue Service v. Michael Kay Smith*, Case #9333986 (Utah 2005)

<sup>23</sup>*United States Trustee v. Michael Kay Smith*, Case #01-30758 (Utah 2001)

- vi. Nature of competition;
- vii. Whether the investment was a registered security or exempt from registration; and
- viii. Whether Respondents were licensed to sell securities.

**ORDER**

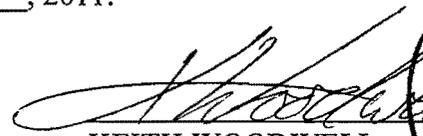
The Director, pursuant to § 61-1-20 of the Act, hereby orders Respondents to appear at a formal hearing to be conducted in accordance with Utah Code Ann. §§ 63G-4-202, -204 through -208, and held before the Utah Division of Securities. The hearing will occur on Tuesday, June 7, 2011, at 9:00 a.m., at the office of the Utah Division of Securities, located in the Heber Wells Building, 160 East 300 South, 2<sup>nd</sup> Floor, Salt Lake City, Utah. The purpose of the hearing is to establish a scheduling order and address any preliminary matters. If Respondents fail to file an answer and appear at the hearing, the Division of Securities may hold Respondents in default, and a fine may be imposed in accordance with Utah Code Ann. § 63G-4-209. In lieu of default, the Division may decide to proceed with the hearing under § 63G-4-208. At the hearing, Respondents may show cause, if any they have:

- a. Why Respondents should not be found to have engaged in the violations alleged by the Division in this Order to Show Cause;
- b. Why Respondents should not be ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1, or any other section of the

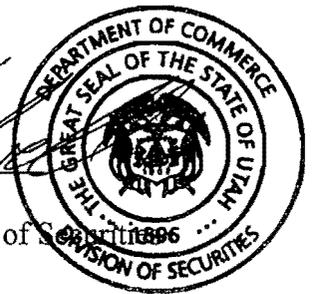
Act;

- c. Why Respondents should not be barred from (i) associating with any broker-dealer or investment adviser licensed in Utah; (ii) acting as an agent for any issuer soliciting investor funds in Utah, and (iii) from being licensed in any capacity in the securities industry in Utah; and
- d. Why Respondents should not be ordered to pay to the Division a fine amount to be determined by stipulation or by the presiding officer after a hearing in accordance with the provisions of Utah Admin. Rule R164-31-1, which may be reduced by restitution paid to the investors.

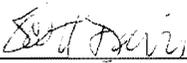
DATED this 25<sup>th</sup> day of April, 2011.



KEITH WOODWELL  
Director, Utah Division of Securities



Approved:

  
\_\_\_\_\_  
SCOTT DAVIS  
Assistant Attorney General  
J.S.

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

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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:**

**NEWPORT FINANCIAL SERVICES, LLC,  
MICHAEL KAY SMITH,  
QUINTIN FULLMER SMITH,**

**Respondents.**

**NOTICE OF AGENCY ACTION**

Docket No. ~~SD-11-0027~~  
Docket No. ~~SD-11-0028~~  
Docket No. ~~SD-11-0029~~

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THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENTS:

You are hereby notified that agency action in the form of an adjudicative proceeding has been commenced against you by the Utah Division of Securities (Division). The adjudicative proceeding is to be formal and will be conducted according to statute and rule. See Utah Code Ann. §§ 63G-4-201 and 63G-4-204 through 209; see also Utah Admin. Code R151-46b-1, *et seq.* The legal authority under which this formal adjudicative proceeding is to be maintained is Utah Code Ann. § 61-1-20. You may be represented by counsel or you may represent yourself in this proceeding. Utah Admin. Code R151-46b-6.

You must file a written response with the Division within thirty (30) days of the mailing date of this Notice. Your response must be in writing and signed by you or your representative. Your

response must include the file number and name of the adjudicative proceeding, your version of the facts, a statement of what relief you seek, and a statement summarizing why the relief you seek should be granted. Utah Code Ann. § 63G-4-204(1). In addition, pursuant to Utah Code Ann. § 63G-4-204(3), the presiding officer requires that your response:

- (a) admit or deny the allegations in each numbered paragraph of the Order to Show Cause, including a detailed explanation for any response other than an unqualified admission. Allegations in the Order to Show Cause not specifically denied are deemed admitted;
- (b) identify any additional facts or documents which you assert are relevant in light of the allegations made; and
- (c) state in short and plain terms your defenses to each allegation in the Order to Show Cause, including affirmative defenses, that were applicable at the time of the conduct (including exemptions or exceptions contained within the Utah Uniform Securities Act).

Your response, and any future pleadings or filings that should be part of the official files in this matter, should be sent to the following:

**Signed originals to:**

Administrative Court Clerk  
c/o Julie Price  
Utah Division of Securities  
160 E. 300 South, 2<sup>nd</sup> Floor  
Box 146760  
Salt Lake City, UT 84114-6760  
(801) 530-6600

**A copy to:**

Scott Davis  
Assistant Attorney General  
160 East 300 South, 5<sup>th</sup> Floor  
Salt Lake City, UT 84114-0872  
(801) 366-0358

An initial hearing in this matter has been set for June 7, 2011 at the Division of Securities.

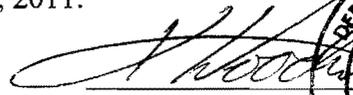
2<sup>nd</sup> Floor, 160 East 300 South, Salt Lake City, Utah, at 9:00 A.M.

If you fail to file a response, as described above, or fail to appear at any hearing that is set, the presiding officer may enter a default order against you without any further notice. Utah Code Ann. § 63G-4-209; Utah Admin. Code R151-46b-10(11). After issuing the default order, the presiding officer may grant the relief sought against you in the Order to Show Cause, and will conduct any further proceedings necessary to complete the adjudicative proceeding without your participation and will determine all issues in the proceeding. Utah Code Ann. § 63G-4-209(4); Utah Admin. Code R151-46b-10(11)(b). In the alternative, the Division may proceed with a hearing under § 63G-4-208.

The Administrative Law Judge will be Steven Eklund, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6648. This adjudicative proceeding will be heard by Mr. Eklund and the Utah Securities Commission. You may appear and be heard and present evidence on your behalf at any such hearings.

You may attempt to negotiate a settlement of the matter without filing a response or proceeding to hearing. To do so, please contact the Utah Securities Division. Questions regarding the Order to Show Cause should be directed to the Division's attorney, Scott Davis, at (801) 366-0358.

Dated this 25<sup>th</sup> day of April, 2011.

  
KEITH WOODWELL  
Director, Division of Securities



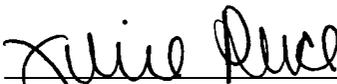
**Evidence of Mailing**

I certify that on the 25th day of April, 2011, I mailed a true and correct copy of the Notice of Agency Action and Order to Show Cause to:

Newport Financial Services, LLC  
Quintin Fullmer Smith  
2295 S. 2000 E.  
Salt Lake City, UT 84106

Newport Financial Services, LLC  
Michael K. Smith  
1963 E. 3000 S.  
Salt Lake City, UT 84106

Certificate # 7008 1140 0004 1142 2574  
7008 1140 0004 1142 2582

  
\_\_\_\_\_  
Executive Secretary