

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

**BEFORE THE DIVISION OF SECURITIES  
OF THE DEPARTMENT OF COMMERCE  
OF THE STATE OF UTAH**

**IN THE MATTER OF:**

**CRAIG ELDON TAYLOR,  
d.b.a. THE MALL HOP and  
SMOOTHIE BEACH,**

**Respondent.**

**ORDER TO SHOW CAUSE**

Docket No. SD-12-0028

It appears to the Director of the Utah Division of Securities (Director) that Craig Eldon Taylor (Respondent), doing business as The Mall Hop<sup>1</sup> and Smoothie Beach,<sup>2</sup> engaged in acts and practices that violate the Utah Uniform Securities Act, Utah Code Ann. § 61-1-1, *et seq.* (the Act). Those acts and practices 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.

<sup>1</sup> The Mall Hop was a Utah DBA that registered with the Division of Corporations on December 1, 2006. That registration expired on January 27, 2010 for failure to renew.

<sup>2</sup> Smoothie Beach is a Utah DBA that registered with the Division of Corporations on August 20, 2009. The DBA is currently listed as active on the Division of Corporation's online database.

## **STATEMENT OF JURISDICTION**

1. Jurisdiction over Respondent and the subject matter is appropriate because the Division alleges that he 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 RESPONDENT**

2. Craig Eldon Taylor (Respondent), doing business as The Mall Hop and Smoothie Beach, was, at all relevant times, a resident of the state of Utah. Respondent has never been licensed in the securities industry in any capacity.

### **GENERAL ALLEGATIONS**

3. Between April 2009 and December 2011, Respondent offered and sold securities to an investor, in or from Utah, and collected a total of \$5,800.
4. Respondent made material misstatements and omissions in connection with the offer and sale of securities to the investor identified below.

### **INVESTOR J.V.**

#### **First Offer of a Security**

5. J.V. initially contacted Respondent in response to an advertisement posted on KSL.com in April 2009. Through the advertisement, Respondent sought a partner to invest in a start-up smoothie company called Smoothie Beach.
6. Over a four-month period following the initial contact, J.V. and Respondent met multiple

times in Utah County, Utah to discuss a possible investment in the company.

7. During those meetings, and prior to J.V.'s investment, Respondent made the following statements:
  - a. J.V.'s investment would be in Respondent's start-up smoothie company, Smoothie Beach;
  - b. Smoothie Beach would be located inside The Mall Hop, a miniature mall that Respondent created;
  - c. The investment fee would be \$6,800;
  - d. In return for his investment, J.V. would receive 50% of the profits of the first two Smoothie Beach stores, as well as 10% of the profits of all future Smoothie Beach stores that Respondent expected to open and franchise;
  - e. J.V.'s role in the business would include: handling the accounting, creating the books, and managing the money;
  - f. J.V.'s investment was secure and protected, and Respondent would repay J.V. his principal plus interest upon request;
  - g. If the first Smoothie Beach store did not open within ninety days of August 21, 2009, Respondent would pay J.V. \$200 per month until the store opened; and
  - h. J.V. would not receive any ownership interests in the business.
8. After having decided to invest with Respondent, and while in Utah County, Utah, J.V. delivered to Respondent a Zions Bank personal check in the amount of \$5,800. J.V.

made the check payable to The Mall Hop for "Smoothie Beach Buy in."

9. At that time, J.V. and Respondent agreed that J.V. would invest an additional \$1,000 when the store opened. That money would be placed in the cash register for inventory and product purchases.
10. J.V. understood that some of his investment funds would be paid to Respondent personally, but the rest of his funds would go toward opening the Smoothie Beach store. Specifically, Respondent would use the funds to purchase products and other inventory items.<sup>3</sup>
11. At the time of investment, J.V. and Respondent executed a document entitled "*Investment/Partnership Contract Between Craig Taylor and [J.V.]*." The contract is dated August 21, 2009, contains both parties' signatures, and was notarized on that same date.
12. The terms of the contract memorialize the agreement and include the following provisions:
  - a. Investment description: "To invest in Smoothie Beach. Business will be in all future Mall Hop locations planned to open across country as investment is established;"

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<sup>3</sup> In an interview with an investigator from the Division, Respondent stated that he invested \$50,000 to \$60,000 of his own money into Smoothie Beach and used some of J.V.'s funds to "retrieve money that [Respondent] had already put in." Respondent also stated that he pooled J.V.'s investment funds with the money Respondent had invested, thereby combining the money in one "large pot." Bank records for Respondent show that from J.V.'s \$5,800 investment, \$4,135 went to Heather Taylor, \$1,565 went to Craig Taylor, and \$100 went to Brent Wheeler. Of the money given to Heather Taylor, \$3,500 was transferred through a check, written by and payable to Heather Taylor, that included "Trade Show" on the memo line.

- b. The stated investment amount is \$6,800;
  - c. In return for the investment, J.V. will receive “50% of net profits for 1<sup>st</sup> Orem Location and 50% of net profits of a 2<sup>nd</sup> location that will be in operation no later than August 21, 2010. Also promised with this investment are 10% of all net profits<sup>4</sup> of all future Smoothie Beach locations in the United States with no extra investment except time and talent in helping administer accounting and ideas to help the business to be profitable. 10% of the purchase price (buy in price) for all future locations in the United States will also be given to [J.V.];”
  - d. Additionally, “due to the 50% partnership in the 2<sup>nd</sup> store being delayed one year, [J.V.] will receive 20% on the net profits of the 2<sup>nd</sup> store in operation, instead of the contracted rate of 10%,” and
  - e. “If after nine months of the signature date on this contract, [J.V.] chooses to discontinue this agreement, he will receive a 10% return on his investment plus principal back.”
13. J.V. never performed any accounting or other work-related duties for Smoothie Beach, as provided for in the arrangement, because the project never progressed to that point.
14. Furthermore, Respondent failed to provide J.V. with any substantive information related to the operation of company after his investment.

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<sup>4</sup> The contract provides a footnote in connection with the term “net profits,” in which it states “According to this agreement, net income is defined as follows: Total Sales Revenue minus (-) COGS(Food and Beverage Costs) minus (-) Labor expense minus (-) Rent/utilities = [J.V.’s] 10% Payments. All other expense accounts listed on the Income Statement will not be included as deductions to total sales revenue when figuring [J.V.’s] 10% payments.”

15. Instead, on April 17, 2010, J.V. and Respondent entered into an amendment to the original contract that clarified the “Protections” section of their agreement.
16. Both parties signed this amendment, entitled “*Investment/Partnership Contract Amendment 1 Between Craig Taylor and [J.V.]*,” while in Utah County, Utah.
17. The amendment includes the following provisions:
  - a. Due to delays in opening the first store, Respondent would forgive J.V.’s remaining \$1,000 investment;
  - b. For every month that the first store remains unopened, Respondent will pay J.V. \$200 on the eighteenth day of the month; and
  - c. The first payment will be due on May 18, 2010.
18. Respondent did not make the \$200 payment to J.V. on May 18, 2010, or any time thereafter, despite their arrangement.

#### **Second Offer of a Security**

19. On or about September 1, 2011, while in Utah County, Utah, J.V. told Respondent that he did not want to continue the partnership, and he asked for a complete return of his investment, plus interest.
20. Respondent agreed to repay the \$5,800 investment, plus an additional \$2,200 in interest.
21. On December 22, 2011, J.V. and Respondent formalized their agreement by executing a document entitled “*Promissory Note*.”
22. Both parties executed the document, with J.V. listed as lender and Respondent as

borrower.

23. The promissory note includes the following provision: For value received, Respondent will pay J.V. \$6,000 in principal by January 10, 2012 and \$2,000 in interest by February 5, 2012.
24. The value received, as contemplated by the terms of the promissory note, includes J.V.'s forfeiture of his rights to the net profits in Smoothie Beach, as described in the original agreement.
25. J.V. agreed to these terms because Respondent had told him on several occasions that he had no pre-existing debt.
26. J.V. then received two checks from Respondent, dated February 16, 2012, in the amounts of \$6,000 and \$2,000.
27. However, at that time, Respondent told J.V. that he could not cash either check due to lack of funds. Respondent would notify J.V. when the funds became available.
28. On April 23, 2012, Respondent deposited \$6,000 into J.V.'s bank account. Respondent told J.V. that he had borrowed the money from a family member.

#### **CAUSE OF ACTION**

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

29. The Division incorporates and re-alleges paragraphs 1 through 28.
30. The investment opportunities offered and sold by Respondent are securities under § 61-1-13 of the Act.

### **First Offer of a Security**

31. In connection with the offer and sale of a security to the investor, Respondent, 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. On April 7, 2008, a \$15,429.42 judgment was rendered against Respondent in a debt collection case;<sup>5</sup>
  - b. On September 17, 1990, Respondent was arrested in Utah by the Alpine Police Department for theft;
  - c. On October 16, 1989, Respondent was arrested in Utah by the South Salt Lake Police Department for issuing a bad check. Respondent was later convicted;
  - d. On September 29, 1988, Respondent was arrested in Utah by the Woods Cross Police Department for issuing a bad check. Respondent later pled guilty. As a result of the guilty plea, Respondent was fined \$1,500 and sentenced to one year in prison, of which he served 245 days;
  - e. Respondent was on felony probation from June 27, 1989 until October 16, 1991, was a prison inmate from October 16, 1991 until December 10, 1992, and was on parole from December 10, 1992 until January 9, 1995; and
  - f. Some or all of the information typically provided in an offering circular or prospectus regarding Respondent, The Mall Hop, and Smoothie Beach, such as:

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<sup>5</sup> *Collection Services Bureau UT v. Best Price Utah LLC*, Fourth Judicial District of Utah, Case No. 070200879 (2007).

- i. Financial statements;
- ii. Risk factors;
- iii. The number of investors;
- iv. Suitability factors for the investment;
- v. Business experience and operating history;
- vi. Whether the investment was a registered security or exempt from registration; and
- vii. Whether Respondent was licensed to sell securities in Utah.

#### **Second Offer of a Security**

32. In connection with the offer and sale of securities to the investor, Respondent, directly or indirectly, made false statements, including, but not limited to, the following:
- a. Respondent told J.V. that he did not have any pre-existing debt, when in fact, Respondent had a \$15,429.42 judgment against him in April 2008.<sup>6</sup>
33. In connection with the offer and sale of a security to the investor, Respondent, 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. How Respondent used J.V.'s original investment of \$5,800;
  - b. On September 17, 1990, Respondent was arrested in Utah by the Alpine Police Department for theft;

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<sup>6</sup> *Collection Services Bureau UT v. Best Price Utah LLC*, Fourth Judicial District of Utah, Case No. 070200879 (2007).

- c. On October 16, 1989, Respondent was arrested in Utah by the South Salt Lake Police Department for issuing a bad check. Respondent was later convicted;
- d. On September 29, 1988, Respondent was arrested in Utah by the Woods Cross Police Department for issuing a bad check. Respondent later pled guilty. As a result of the guilty plea, Respondent was fined \$1,500 and sentenced to one year in prison, of which he served 245 days;
- e. Respondent was on felony probation from June 27, 1989 until October 16, 1991, was a prison inmate from October 16, 1991 until December 10, 1992, and was on parole from December 10, 1992 until January 9, 1995; and
- f. Some or all of the information typically provided in an offering circular or prospectus regarding Respondent, The Mall Hop, and Smoothie Beach, such as:
  - i. Financial statements;
  - ii. Risk factors;
  - iii. The number of investors;
  - iv. Suitability factors for the investment;
  - v. Business experience and operating history;
  - vi. Whether the investment was a registered security or exempt from registration; and
  - vii. Whether Respondent was licensed to sell securities in Utah.

## ORDER

The Director, pursuant to § 61-1-20 of the Act, hereby orders Respondent 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 **Wednesday, August 1, 2012, 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 Respondent fails to file an answer and appear at the hearing, the Division of Securities may hold Respondent 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, Respondent may show cause, if any he has:

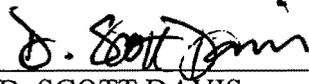
- g. Why Respondent should not be found to have engaged in the violations alleged by the Division in this Order to Show Cause;
- h. Why Respondent should not be ordered to cease and desist from engaging in any further conduct in violation of Utah Code Ann. § 61-1-1, or any other section of the Act; and
- i. Why Respondent should not be ordered to pay to the Division a fine amount to be determined by the Utah Securities Commission after a hearing in accordance with the provisions of Utah Admin. Rule R164-31-1, which may be reduced by restitution paid to the investor.

DATED this 25<sup>th</sup> day of June, 2012.

  
KEITH WOOD  
Director, Utah Division of Securities



Approved:

  
D. SCOTT DAVIS  
Assistant Attorney General  
A.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  
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**IN THE MATTER OF:**

**CRAIG ELDON TAYLOR,  
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SMOOTHIE BEACH,**

**Respondent.**

**NOTICE OF AGENCY ACTION**

Docket No. SD-12-0038

THE DIVISION OF SECURITIES TO THE ABOVE-NAMED RESPONDENT:

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 R151-4-101, *et seq.* The facts on which this action is based are set forth in the accompanying Order to Show Cause. 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 R151-4-110.

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:**

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

An initial hearing in this matter is set for **Wednesday, August 1, 2012** at the Division of

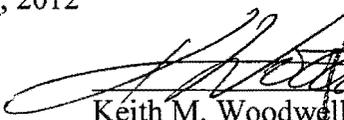
Securities, 2<sup>nd</sup> Floor, 160 E. 300 S., Salt Lake City, Utah, at **9:00 A.M.** The purpose of the initial hearing is to enter a scheduling order addressing discovery, disclosure, and other deadlines, including pre-hearing motions, and to set a hearing date to adjudicate the matter alleged in the Order to Show Cause.

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 R151-4-710(2). 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). In the alternative, the Division may proceed with a hearing under § 63G-4-208.

The Administrative Law Judge will be Angela Hendricks, Utah Department of Commerce, 160 East 300 South, P.O. Box 146701, Salt Lake City, UT 84114-6701, telephone (801) 530-6035. This adjudicative proceeding will be heard by Ms. Hendricks 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 Attorney General's Office. Questions regarding the Order to Show Cause should be directed to D. Scott Davis, Assistant Attorney General, 160 E. 300 South, 5th Floor, Box 140872, Salt Lake City, UT 84114-0872, Tel. No. (801) 366-0358.

Dated this 25<sup>th</sup> day of June, 2012

  
Keith M. Woodwell  
Director, Division of Securities

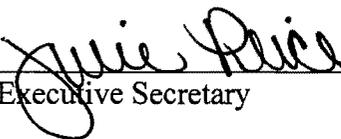


**Certificate of Mailing**

I certify that on the 20th day of June, 2012, I mailed, by regular and certified mail, a true and correct copy of the Notice of Agency Action and Order to Show Cause to:

Craig Eldon Taylor  
524 West 440 South  
Orem, UT 84058

Certified Mail # 7007 0220 0001 0004 7574

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