

**David Rosenfeld**  
**Associate Regional Director**

**Attorney for Plaintiff**  
**SECURITIES AND EXCHANGE COMMISSION**  
**New York Regional Office**  
**3 World Financial Center, Suite 400**  
**New York, New York 10281**  
**(212) 336-0153**

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF NEW YORK**

**CV 08 3900**

**SECURITIES AND EXCHANGE COMMISSION,**

**Plaintiff,**

**-against-**

**KENNETH SUAREZ, KEVIN KING,**  
**RONALD GARCIA, GILBERT BEITAL,**  
**INDEPENDENT INVESTOR SERVICES, INC., and**  
**GILCAR SECURITIES OF FLORIDA, INC.,**

**Defendants.**

**GLEESON, J.**  
**LEVY, M.J.**

**Civil Action No.**

**COMPLAINT**

**BROOKLYN OFFICE**

Plaintiff Securities and Exchange Commission (“Commission”), for its complaint against defendants Kenneth Suarez (“Suarez”), Kevin King (“King”), Ronald Garcia (“Garcia”), Gilbert Beital (“Beital”), Independent Investor Services, Inc. (“Independent Investor”), and Gilcar Securities of Florida, Inc. (“Gilcar”) (the “Defendants”), alleges as follows:

**SUMMARY OF ALLEGATIONS**

1. This action involves securities fraud committed by four individuals and two corporate entities involved in the securities lending, or “stock loan,” business. Over a period of nearly four years from 2000 through 2004, the Defendants defrauded Schonfeld Securities, LLC

("Schonfeld"), a registered broker-dealer, out of a total of at least \$1.66 million through the payment of sham finder fees and undisclosed kickbacks that ultimately came out of Schonfeld's pocket.

2. Suarez, the head of Schonfeld's stock loan trading desk, caused Schonfeld to enter into stock loan transactions on terms that were deliberately unfavorable to Schonfeld in order to enable the counterparty to pay sham finder fees to either Garcia or Beital. A portion of those fees were then kicked back to Suarez: Garcia paid kickbacks to King -- a stock loan trader at Van der Moolen Specialists USA, LLC ("VDM") who arranged the loans with Suarez and caused VDM to pay the sham finder fee to Garcia -- and King then paid kickbacks to Suarez, while Beital paid kickbacks directly to Suarez. The Defendants sometimes took steps to conceal the kickback payments by, among other things, exchanging cash-filled envelopes at public restaurants, having the finder pay the trader's credit card and mortgage bills, and making payments to a shell company.

3. From January 2004 to December 2004, King caused VDM to pay Garcia's firm, Independent Investor, a total of approximately \$200,000 in sham finder fees on over two thousand stock loan transactions involving Schonfeld. Neither Garcia nor anyone else associated with Independent Investor performed any services in connection with those transactions. The sham finder fees were paid at Schonfeld's expense because Suarez caused Schonfeld to enter into the stock loans on terms that were less favorable than Schonfeld would have otherwise obtained, thus enabling VDM to pay the fees to Independent Investor. Garcia then paid a portion of the sham finder fees to King, who, in turn, paid a portion of the fees to Suarez.

4. From March 2000 to December 2004, Beital engaged in similar fraudulent conduct with Suarez and Suarez's predecessor as head of Schonfeld's stock loan trading desk (the "Second Schonfeld Trader"). Pursuant to this kickback arrangement, Beital's firm, Gilcar, received approximately \$1.46 million in stock loan finder fees at Schonfeld's expense. Suarez

caused Schonfeld to enter into stock loans on terms that were less favorable than Schonfeld would have otherwise obtained, thus enabling the counterparties to pay finder fees to Gilcar, in exchange for which Beital paid kickbacks to Suarez and the Second Schonfeld Trader. Suarez received approximately \$90,000 in kickbacks from Beital.

5. By virtue of the foregoing conduct, each of the Defendants, directly or indirectly, singly or in concert, violated Section 17(a) of the Securities Act of 1933 (“Securities Act”) [15 U.S.C. § 77q(a)], Section 10(b) of the Securities Exchange Act of 1934 (“Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5]; and each of them is also liable in the alternative, pursuant to Section 20(e) of the Exchange Act [15 U.S.C. § 78t(e)], for aiding and abetting the violations of Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5] committed by those Defendants with whom they schemed. Unless each of the Defendants is permanently restrained and enjoined, they will again engage in the acts, practices, transactions and courses of business set forth in this complaint and in acts, practices, transactions and courses of business of similar type and object.

#### **JURISDICTION AND VENUE**

6. The Commission brings this action pursuant to the authority conferred by Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)] and Section 21(d) of the Exchange Act [15 U.S.C. § 78u(d)], and seeks to restrain and enjoin the Defendants permanently from engaging in the acts, practices, transactions and courses of business alleged herein. The Commission also seeks a final judgment ordering the Defendants to disgorge their ill-gotten gains and pay prejudgment interest thereon, and ordering the Defendants to pay civil money penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

7. This Court has jurisdiction over this action, and venue lies in this District, pursuant to Sections 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(d) and 77v(a)] and Sections 21(d) and 27 of the Exchange Act [15 U.S.C. §§ 78u(d) and 78aa]. The Defendants, directly and indirectly, have made use of the means or instrumentalities of, or the means or instruments of transportation or communication in, interstate commerce, or of the mails, or of the facilities of a national securities exchange, in connection with the transactions, acts, practices and courses of business alleged herein. Some of these transactions, acts, practices and courses of business occurred in the Eastern District of New York, where some of the Defendants transacted business, and where one of the Defendants resides. For example, many of the stock loan transactions at issue here were arranged and entered into at Schonfeld's principal place of business in Jericho, New York.

#### **THE DEFENDANTS**

8. **Suarez**, age 57, resides in Staten Island, New York. He is currently employed as a securities lending representative at Wedbush Morgan Securities, Inc., a registered broker-dealer and investment adviser. From September 2003 through May 2007, Suarez was employed as a securities lending representative with Schonfeld, where he was head of the stock loan trading desk from January 2004 to May 2007.

9. **King**, age 54, resides in Freehold, New Jersey. He is currently employed as a securities lending representative with two unaffiliated registered broker-dealers, KDC Merger Arbitrage Fund, LP ("KDC") and Strong City Securities, LLC ("Strong City"). KDC is also a registered investment adviser. From May 1997 through January 2005, King was employed as a securities lending representative at VDM.

10. **Garcia**, age 61, resides in Hudson, New York. He is currently employed as a securities lending representative at Strong City. From January 2000 through May 2005, Garcia operated Independent Investor, a purported stock loan finder firm.

11. **Beital**, age 68, resides in Tampa, Florida. He is currently self-employed as an ice cream vendor. From January 2000 through May 2005, Beital operated Gilcar, a purported stock loan finder firm.

12. **Independent Investor** is a New York corporation with a business address in Iselin, New Jersey. Independent Investor is controlled by Garcia, who is its only officer.

13. **Gilcar** is a Florida corporation with a business address in Tampa, Florida. Gilcar is controlled by Beital, whose wife is its only officer.

#### **RELEVANT ENTITIES**

14. **Schonfeld** is registered with the Commission as a broker-dealer and maintains its principal place of business in Jericho, New York.

15. **VDM** is registered with the Commission as a broker-dealer and maintains its principal place of business in New York, New York.

16. **Janney Montgomery Scott, LLC** (“Janney”) is registered with the Commission as a broker-dealer and maintains its principal place of business in Philadelphia, Pennsylvania.

#### **BACKGROUND**

##### **Structure Of Stock Loan Transactions**

17. A securities loan is a collateralized, temporary exchange of securities. The collateral is usually cash or other securities. Under the terms of the standard loan agreements that govern these transactions and as a matter of industry practice, borrowers are free to re-lend, sell or otherwise do as they please with the stock, subject only to satisfying the obligation to return

the same number of shares at the end of the loan term. Financial institutions borrow securities for different purposes. For example, a broker-dealer may need to borrow securities to cover short sales or a bank may wish to lend securities to gain short-term access to cash. If the security is liquid (*i.e.* readily available and thus called “easy-to-borrow”), the financial institution borrowing the security receives interest for the duration of the loan on the cash collateral it makes available to the lender. The interest payment is called a “rebate.” If the security is in limited supply (*i.e.* “hard-to-borrow”), the borrower generally pays interest to the lender for the right to borrow the security. This interest payment is called a “negative rebate.” The rebates and negative rebates are a percentage of the total market value of the securities and are quoted as annual percentage rates. Stock loan transactions may stay open for as little as one trading day or as long as several months or even a year.

### **Role And Compensation Of Finders**

18. In the past, stock loan traders typically employed the services of finders to locate hard-to-borrow stock. In today’s securities market, however, traders rarely need the services of finders. Technological advances and other improvements have made it easier and faster for traders to locate hard-to-borrow securities on their own. On April 29, 2005, the New York Stock Exchange issued an advisory opinion cautioning all member firms about continuing to do business with finders and stating: “We have seen only limited instances where a finder is actually providing services that an effective stock loan department could not provide.”

19. The stock loan finder’s fee would typically be negotiated by the lender and borrower as part of the terms of the stock loan and, like the rebate rate, would be expressed as a percentage of the total market value of the stock.

20. The rebates and finder fees are calculated and paid on a daily basis, and the brokerage firms and finders continue to receive payments until the borrowed stock is returned or recalled. Accordingly, loans that remain open for extended periods generate substantial profits for both broker-dealers and finders.

21. Although some broker-dealers permitted the use of, and payments to, finders during the relevant period, many broker-dealers, including Schonfeld, had policies prohibiting its stock loan traders from using or paying finders.

### **THE DEFENDANTS' FRAUDULENT SCHEME**

22. Each of the Defendants engaged in one or more aspects of a fraudulent kickback scheme involving stock loan transactions that defrauded Schonfeld. Although the Defendants' roles differed, each Defendant had the same goal -- to enrich himself at Schonfeld's expense. In one part of the scheme, Suarez and King orchestrated stock loan transactions that artificially generated approximately \$200,000 in inflated stock loan profits at Schonfeld's expense, and then diverted those profits to themselves in the form of sham finder fees paid to Independent Investor, a finder firm controlled by their mutual friend Garcia. In another part of the scheme, Suarez, Beital and the Second Schonfeld Trader similarly generated approximately \$1.46 million in finder fees at Schonfeld's expense for Gilcar, a portion of which Beital then kicked back to Suarez and the Second Schonfeld Trader. Although Beital played a role in arranging the stock loan transactions, Suarez and the Second Schonfeld Trader manipulated the payment terms to Schonfeld's disadvantage in order to generate finder fees for Beital and kickback payments for themselves.

### **King's Arrangement With Suarez And Garcia**

23. From January 2004 through December 2004, Suarez and King arranged for Schonfeld to borrow securities from, and loan securities to, VDM at rates that were unfavorable to Schonfeld in order to generate an artificially high profit for VDM. King then used the inflated profit to cause VDM to pay finder fees to Garcia's firm (Independent Investor) even though King knew that neither Garcia nor anyone on behalf of Independent Investor performed any services on the transactions. Because Schonfeld did not have a securities lending agreement with VDM at the time, Suarez and King had another brokerage firm, usually Janney, serve as a conduit between Schonfeld and VDM.

24. For example, in cases involving an "easy-to-borrow" stock, King had VDM borrow the stock from another broker-dealer at the market rate and then "ran" the stock through Janney at an artificially low rate (*i.e.* Janney received a below-market positive rebate, or interest payment, from VDM). The spread between the artificially low positive rebate that VDM paid Janney and the higher market-rate rebate that VDM received when it borrowed the stock enabled King to have VDM pay a finder fee to Independent Investor even though neither Garcia nor anyone on behalf of Independent Investor performed any services. Janney accepted the below-market rebate rate from VDM because Suarez had already arranged for Schonfeld to borrow the same stock from Janney at an even lower positive rebate rate, thereby guaranteeing Janney a risk-free profit. The profits for Janney and VDM and the sham finder fee paid to Garcia's firm came at Schonfeld's expense, because Schonfeld could have borrowed the stock at a better rate directly from another broker-dealer.

25. The following transaction illustrates how the scheme operated and how it harmed Schonfeld. On April 19, 2004, Suarez called King and identified several stocks that Schonfeld

was seeking to borrow, including Allergen, Inc. ("AGN"). That day, VDM borrowed 129,500 shares of AGN from other broker-dealers at a positive rebate rate of 0.90% (*i.e.* the other broker-dealers paid interest at that rate to VDM). VDM then loaned the 129,500 shares of AGN stock to Janney at a positive rebate of only 0.50% (*i.e.* VDM paid interest at that lower rate to Janney). The 0.40% spread between VDM's borrowing and lending rates enabled King to cause VDM to pay a sham finder fee of 0.30% to Independent Investor and still record a small profit of 0.10% for VDM. King caused VDM to pay the finder fee by falsely marking the order ticket to indicate that Independent Investor acted as a finder on the transaction and should be paid a finder fee at the stated rate. To complete the transaction, Janney then loaned the same amount of AGN stock to Schonfeld at an even lower positive rebate rate of 0.375% (*i.e.* Janney paid interest at that rate to Schonfeld), leaving Janney with a profit of 0.125%.

26. Although VDM was also defrauded to the extent that King caused VDM to pay Independent Investor for finder services that were never provided, Schonfeld was the ultimate victim of the fraud. Had Suarez acted in Schonfeld's best interests and borrowed the stock in an arms-length transaction, Schonfeld could have received the 0.90% rebate rate that VDM received for borrowing the stock. Instead, Suarez arranged for Schonfeld to receive the much lower rate of 0.375%, with Suarez, King and Garcia pocketing the majority of the difference. These loan contracts were open for 12 days and, due to the defendants' scheme, resulted in VDM paying Independent Investor a total of \$1,017 in sham finder fees, which were shared among Garcia, King and Suarez. Neither King nor Suarez nor anyone else at VDM or Schonfeld communicated with Garcia or anyone else at Independent Investor -- or any other finder -- when arranging these transactions.

27. By arranging thousands of similar stock loan transactions over the course of one year (2004), Suarez and King were able to divert approximately \$200,000 in profits generated by those transactions to Garcia's firm, Independent Investor. In exchange, Garcia paid kickbacks to King, who in turn paid kickbacks to Suarez. On several occasions in 2004, King met Suarez in a public place and gave Suarez tens of thousands of dollars in cash stuffed in envelopes.

28. Suarez did not disclose anything about his arrangement with King and Garcia to Suarez's supervisory or compliance personnel at Schonfeld. Schonfeld had a policy prohibiting its stock loan traders from dealing with or paying finders, and Suarez did not disclose, among other relevant facts, that he was giving Schonfeld's stock loan orders to VDM at rates that were unfavorable to Schonfeld in order to generate sham finder fee payments or that Suarez was taking kickback payments in connection with those transactions. Despite receiving kickbacks from King, Suarez falsely certified in annual submissions required by Schonfeld's Code of Conduct that he had not received any gifts or special favors from any person in connection with his employment.

29. King did not disclose anything about his arrangement with Suarez and Garcia to King's supervisory or compliance personnel at VDM. Among other relevant facts, King did not disclose that he was: (i) receiving Schonfeld stock loan orders from Suarez in order to generate sham finder fee payments from VDM to Garcia's firm; and (ii) taking kickback payments from Garcia and making kickback payments to Suarez in connection with those transactions.

#### **Beital's Arrangement With Suarez And The Second Schonfeld Trader**

30. Suarez also had a fraudulent kickback arrangement with Beital in 2004. Suarez's fraudulent arrangement with Beital resulted from an earlier kickback arrangement between Beital and the Second Schonfeld Trader. From March 2000 through December 2003, Beital and the

Second Schonfeld Trader split a total of approximately \$1.28 million in fraudulent finder fees paid to Beital's finder firm (Gilcar) at Schonfeld's expense.

31. Pursuant to their arrangement, the Second Schonfeld Trader regularly told Beital which stocks Schonfeld needed to borrow or wanted to loan. Because Schonfeld had a policy prohibiting its traders from dealing with or paying finders, Beital then contacted other brokerage firms that were able to pay finder fees to Gilcar and arranged for them to borrow or lend the stocks identified by the Second Schonfeld Trader. Beital and the Second Schonfeld Trader agreed that Schonfeld would enter into the loan with the other firms at rates that were unfavorable to Schonfeld in order to enable the other firms to pay finder fees to Gilcar.

32. For example, when the Second Schonfeld Trader made an "easy-to-borrow" stock available to Beital, the Second Schonfeld Trader had Schonfeld pay a higher positive rebate (*i.e.* interest) rate to the counterparty than he would have agreed to pay in an arms-length transaction. The counterparty then loaned the same stock to another firm in an arms-length transaction at a lower positive rebate rate than the rate paid by Schonfeld. In so doing, Beital and the Second Schonfeld Trader guaranteed a sufficient interest rate spread for the counterparty to enable it to make a small profit and pay a substantial finder fee to Gilcar without, in effect, having to reach into its own pocket to do so. As a result, the finder fees paid to Gilcar effectively came at Schonfeld's expense.

33. Beital transferred all of the fees received by Gilcar on these transactions to a shell company controlled by the Second Schonfeld Trader. Beital and the Second Schonfeld Trader agreed on how much of the money the Second Schonfeld Trader would keep as a kickback, and then the Second Schonfeld Trader sent the balance back to Beital or to one of Beital's relatives. During the relevant period, Beital transferred a total of approximately \$1.28 million in finder

fees from Gilcar's bank account to the Second Schonfeld Trader's shell company. Of this amount, the Second Schonfeld Trader had his shell company transfer a total of approximately \$780,000 back to Beital or to Beital's relatives, and the Second Schonfeld Trader kept the rest for himself.

34. When Suarez replaced the Second Schonfeld Trader as the head of Schonfeld's stock loan desk in January 2004, Suarez and Beital continued the kickback arrangement for at least another year. Like his predecessor, Suarez told Beital which stocks Schonfeld needed to borrow or wanted to loan. Suarez and Beital also agreed that Schonfeld would borrow or loan the stocks at rates that were unfavorable to Schonfeld in order to create a large enough spread for Gilcar to receive a finder fee payment from the counterparty. Beital then contacted other broker-dealer firms that were able to pay finder fees to Gilcar and arranged the transactions. Beital and Suarez agreed on roughly an even split of the finder fees paid to Gilcar under their fraudulent arrangement, which amounted to approximately \$180,000. Beital paid the kickbacks to Suarez by writing him personal checks and money orders and, on a few occasions, by directly paying Suarez's credit card and mortgage bills. Beital made a total of approximately \$90,000 in direct and indirect kickback payments to Suarez in 2004.

35. Suarez did not disclose anything about his arrangement with Beital to Suarez's supervisory or compliance personnel at Schonfeld, which had a policy prohibiting its stock loan traders from dealing with or paying finders. Among other relevant facts, Suarez did not disclose that he was giving Schonfeld's stock loan orders to Beital at rates that were unfavorable to Schonfeld in order to generate finder fee payments to Gilcar or that Suarez was taking kickback payments in connection with those transactions. Despite receiving kickbacks from Beital, Suarez

falsely certified in annual submissions required by Schonfeld's Code of Conduct that he had not received any gifts or special favors from any person in connection with his employment.

### **CLAIMS FOR RELIEF**

#### **Violations of Section 17(a) of the Securities Act, Section 10(b) of the Exchange Act and Rule 10b-5**

36. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 35.

37. The Defendants directly or indirectly, singly or in concert, by use of the means or instruments of transportation or communication in, or the means or instrumentalities of, interstate commerce, or by the use of the mails, or of the facilities of a national securities exchange, in the offer or sale and in connection with the purchase or sale of securities, knowingly or recklessly, have: (a) employed devices, schemes and artifices to defraud; (b) obtained money or property by means of, or otherwise made, untrue statements of material fact, or have omitted to state material facts necessary in order to make statements made, in light of the circumstances under which they were made, not misleading; and/or (c) engaged in acts, transactions, practices and courses of business which operated or would have operated as a fraud or deceit upon purchasers of securities and upon other persons.

38. As part and in furtherance of the fraudulent scheme and other violative conduct described above, each of the Defendants, directly or indirectly, singly or in concert, employed the deceptive devices, schemes, artifices, contrivances, acts, transactions, practices and courses of business and/or made the misrepresentations and/or omitted to state the facts alleged above in paragraphs 1-4 and 22-35.

39. The false and misleading statements and omissions made by the Defendants, more fully described above in paragraphs 1-4 and 22-35, were material.

40. The Defendants knew, or were reckless in not knowing, that these material misrepresentations and omissions, more fully described above in paragraphs 1-4 and 22-35, were false or misleading, and the Defendants otherwise acted with the requisite scienter by knowingly or recklessly engaging in the fraudulent scheme described above in paragraphs 1-4 and 22-35.

41. By reason of the acts, statements, omissions, practices, and courses of business alleged herein, the Defendants, singly or in concert, directly or indirectly, have violated, and unless enjoined will again violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

42. By reason of the foregoing and pursuant to Section 20(e) of the Exchange Act, each of the Defendants, singly or in concert, directly or indirectly, also aided and abetted each other's primary violations by knowingly providing substantial assistance to the other defendants' violations of, and unless enjoined will again aid and abet violations of, Section 10(b) of the Exchange Act [15 U.S.C. § 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

### **PRAYER FOR RELIEF**

**WHEREFORE**, the Commission respectfully requests that this Court enter a Final Judgment:

#### **I.**

Permanently enjoining and restraining each of the Defendants, their agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the injunction by personal service or otherwise, and each of them, from violating, directly or indirectly, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Section 10(b) of the Exchange Act [15 U.S.C. §§ 78j(b)] and Rule 10b-5 thereunder [17 C.F.R. § 240.10b-5].

**II.**

Ordering each of the Defendants to disgorge the ill-gotten gains they received from the violations alleged herein, and to pay prejudgment interest thereon.

**III.**

Ordering each of the Defendants to pay civil monetary penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

**IV.**

Granting such other and further relief as the Court deems just and proper.

Dated: New York, New York  
September 24, 2008



---

David Rosenfeld  
Associate Regional Director

Attorney for Plaintiff  
SECURITIES AND EXCHANGE COMMISSION  
New York Regional Office  
3 World Financial Center, Suite 400  
New York, New York 10281  
(212) 336-0153

Of Counsel:

George N. Stepaniuk  
Joseph Dever  
Burk Burnett  
Kenneth V. Byrne  
Karen Lee