

1 DAVID J. VAN HAVERMAAT, Cal. Bar No. 175761
Email: vanhavermaatd@sec.gov
2 LUCEE S. KIRKA, Cal. Bar No. 121685
Email: kirkal@sec.gov

3 Attorneys for Plaintiff
4 Securities and Exchange Commission
Michele Wein Layne, Regional Director
5 John W. Berry, Associate Regional Director
444 S. Flower Street, Suite 900
6 Los Angeles, California 90071
Telephone: (323) 965-3998
7 Facsimile: (213) 443-1904

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
10 **WESTERN DIVISION**

11 **SECURITIES AND EXCHANGE**
12 **COMMISSION,**

13 Plaintiff,

14 vs.

15 **MARCUS A. LUNA, NORRELL L.**
16 **WALKER, PAUL L. GOMEZ, and**
17 **DUSTIN S. SMITH,**

18 Defendants.

Case No.: CV-16-07333 BRO (SKx)

JUDGMENT AS TO DEFENDANT
DUSTIN S. SMITH

1 The Securities and Exchange Commission (“SEC” or “Commission”) having
2 filed a Complaint and Defendant Dustin S. Smith (“Defendant”) having entered a
3 general appearance; consented to the Court’s jurisdiction over Defendant and the
4 subject matter of this action; consented to entry of this Judgment without admitting or
5 denying the allegations of the Complaint (except as to jurisdiction and except as
6 otherwise provided herein in paragraph VI); waived findings of fact and conclusions
7 of law; and waived any right to appeal from this Judgment:

8 **I.**

9 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is
10 permanently restrained and enjoined from violating Section 5 of the Securities Act of
11 1933 (“Securities Act”) [15 U.S.C. § 77e] by, directly or indirectly, in the absence of
12 any applicable exemption:

- 13 (a) Unless a registration statement is in effect as to a security, making use of
14 any means or instruments of transportation or communication in
15 interstate commerce or of the mails to sell such security through the use
16 or medium of any prospectus or otherwise;
- 17 (b) Unless a registration statement is in effect as to a security, carrying or
18 causing to be carried through the mails or in interstate commerce, by any
19 means or instruments of transportation, any such security for the purpose
20 of sale or for delivery after sale; or
- 21 (c) Making use of any means or instruments of transportation or
22 communication in interstate commerce or of the mails to offer to sell or
23 offer to buy through the use or medium of any prospectus or otherwise
24 any security, unless a registration statement has been filed with the
25 Commission as to such security, or while the registration statement is the
26 subject of a refusal order or stop order or (prior to the effective date of
27
28

1 the registration statement) any public proceeding or examination under
2 Section 8 of the Securities Act [15 U.S.C. § 77h].

3 **II.**

4 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
5 Defendant is permanently restrained and enjoined from violating, directly or
6 indirectly, Section 15(a) of the Securities Exchange Act of 1934 (“Exchange Act”),
7 15 U.S.C. § 78o(a), which makes it unlawful for any broker or dealer which is either
8 a person other than a natural person or a natural person, to make use of the mails or
9 any means or instrumentality of interstate commerce to effect any transactions in, or
10 to induce or attempt to induce the purchase or sale of, any security (other than an
11 exempted security or commercial paper, bankers’ acceptances, or commercial bills)
12 unless such broker or dealer is registered in accordance with Section 15(b) of the
13 Exchange Act, 15 U.S.C. § 78o(b).

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as
15 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also
16 binds the following who receive actual notice of this Judgment by personal service or
17 otherwise: (a) Defendant’s officers, agents, servants, employees, and attorneys; and
18 (b) other persons in active concert or participation with Defendant or with anyone
19 described in (a).

20 **III.**

21 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
22 Defendant is permanently barred from participating in an offering of penny stock,
23 including engaging in activities with a broker, dealer, or issuer for purposes of
24 issuing, trading, or inducing or attempting to induce the purchase or sale of any penny
25
26
27
28

1 stock. A penny stock is any equity security that has a price of less than five dollars,
2 except as provided in Rule 3a51-1 under the Exchange Act [17 C.F.R. 240.3a51-1].

3 **IV.**

4 Upon motion of the SEC, the Court shall determine whether it is appropriate to
5 order disgorgement of ill-gotten gains and/or a civil penalty pursuant to Section 20(d)
6 of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d)(3) of the Exchange Act
7 [15 U.S.C. § 78u(d)(3)] and, if so, the amount(s) of the disgorgement and/or civil
8 penalty. If disgorgement is ordered, Defendant shall pay prejudgment interest
9 thereon, calculated from April 1, 2013, based on the rate of interest used by the
10 Internal Revenue Service for the underpayment of federal income tax as set forth in
11 26 U.S.C. § 6621(a)(2). In connection with the SEC's motion for disgorgement
12 and/or civil penalties, and at any hearing held on such a motion: (a) Defendant will be
13 precluded from arguing that he did not violate the federal securities laws as alleged in
14 the Complaint; (b) Defendant may not challenge the validity of the Consent or this
15 Judgment; (c) solely for the purposes of such motion, the allegations of the Complaint
16 shall be accepted as and deemed true by the Court; and (d) the Court may determine
17 the issues raised in the motion on the basis of affidavits, declarations, excerpts of
18 sworn deposition or investigative testimony, and documentary evidence, without
19 regard to the standards for summary judgment contained in Rule 56(c) of the Federal
20 Rules of Civil Procedure. In connection with the Commission's motion for
21 disgorgement and/or civil penalties, the parties may take discovery, including
22 discovery from appropriate non-parties.

23 **V.**

24 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the
25 Consent of Defendant Dustin S. Smith to Entry of Judgment is incorporated herein
26
27
28

1 with the same force and effect as if fully set forth herein, and that Defendant shall
2 comply with all of the undertakings and agreements set forth therein.

3 **VI.**

4 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, for
5 purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code,
6 11 U.S.C. § 523, the allegations in the complaint are true and admitted by Defendant,
7 and further, any debt for disgorgement, prejudgment interest, civil penalty or other
8 amounts due by Defendant under this Judgment or any other judgment, order, consent
9 order, decree or settlement agreement entered in connection with this proceeding, is a
10 debt for the violation by Defendant of the federal securities laws or any regulation or
11 order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy
12 Code, 11 U.S.C. §523(a)(19).

13 **VII.**


14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court
15 shall retain jurisdiction of this matter for the purposes of enforcing the terms of this
16 Judgment.

17 **VIII.**

18 There being no just reason for delay, pursuant to Rule 54(b) of the Federal
19 Rules of Civil Procedure, the Clerk is ordered to enter this Judgment forthwith and
20 without further notice.

21 IT IS SO ORDERED.

22 DATED: February 16, 2017

23
24 By: 
25 Honorable Beverly R. O'Connell
26 United States District Court Judge
27
28