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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

TROY J. FLOWERS, SEAN P. NEVETT,
and FRUITION, INC.,

Defendants.

Case No. 17-cv-01456-JAH-JLB

**FINAL JUDGMENT AS TO
DEFENDANT TROY J. FLOWERS**

1 This Court having entered its Order Granting in Part and Denying in Part
2 Plaintiff's Motion for Monetary Remedies (Dkt. No. 45), and plaintiff Securities and
3 Exchange Commission ("SEC") having requested entry of final judgment, and there
4 being no just reason for delay:

5 **I.**

6 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant
7 is permanently restrained and enjoined from violating, directly or indirectly, Section
8 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. §
9 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using
10 any means or instrumentality of interstate commerce, or of the mails, or of any facility
11 of any national securities exchange, in connection with the purchase or sale of any
12 security:

- 13 (a) to employ any device, scheme, or artifice to defraud;
- 14 (b) to make any untrue statement of a material fact or to omit to state a
15 material fact necessary in order to make the statements made, in the
16 light of the circumstances under which they were made, not
17 misleading; or
- 18 (c) to engage in any act, practice, or course of business which operates or
19 would operate as a fraud or deceit upon any person.

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

26 **II.**

27 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
28 Defendant is permanently restrained and enjoined from violating Section 17(a) of the

1 Securities Act of 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale
2 of any security by the use of any means or instruments of transportation or
3 communication in interstate commerce or by use of the mails, directly or indirectly:

- 4 (a) to employ any device, scheme, or artifice to defraud;
- 5 (b) to obtain money or property by means of any untrue statement of a
6 material fact or any omission of a material fact necessary in order to
7 make the statements made, in light of the circumstances under which
8 they were made, not misleading; or
- 9 (c) to engage in any transaction, practice, or course of business which
10 operates or would operate as a fraud or deceit upon the purchaser.

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

17 **III.**

18 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
19 Defendant is permanently restrained and enjoined from violating Section 9(a) of the
20 Exchange Act [15 U.S.C. § 78i(a)], directly or indirectly, by the use of the mails or
21 any means or instrumentality of interstate commerce, or of any facility of any
22 national securities exchange, or any member of a national securities exchange:

- 23 (a) For the purpose of creating a false or misleading appearance of active
24 trading in any security other than a government security, or a false or
25 misleading appearance with respect to the market for any such
26 security:
 - 27 1. Effecting any transaction in such security which involves no
28 change in the beneficial ownership thereof; or

1 2. Entering an order or orders for the purchase or sale of such
2 security with the knowledge that an order or orders of
3 substantially the same size, at substantially the same time, and
4 at substantially the same price, for the sale or purchase of any
5 such security, has been or will be entered by or for the same or
6 different parties; or

7 (b) Effecting, alone or with one or more other persons, a series of
8 transactions in any security creating actual or apparent active trading
9 in such security, or raising or depressing the price of such security, for
10 the purpose of inducing the purchase or sale of such security by
11 others.

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

18 **IV.**

19 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
20 Defendant is permanently barred from participating in an offering of penny stock,
21 including engaging in activities with a broker, dealer, or issuer for purposes of
22 issuing, trading, or inducing or attempting to induce the purchase or sale of any
23 penny stock. A penny stock is any equity security that has a price of less than five
24 dollars, except as provided in Rule 3a51-1 under the Exchange Act [17 C.F.R.
25 240.3a51-1].

26 **V.**

27 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
28 Defendant is liable, jointly and severally with Defendants Sean P. Nevett and

1 Fruition, Inc., for disgorgement of \$3,684,954, representing profits gained as a result
2 of the conduct alleged in the Complaint, together with prejudgment interest thereon
3 in the amount of \$194,443.31, for a total disgorgement amount of \$3,879,397.31. In
4 addition, Defendant is separately liable for a civil penalty in the amount of \$310,000
5 pursuant to Section 20(d) of the Securities Act [15 U.S.C. § 77t(d)], and Section
6 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

7 Defendant shall satisfy the disgorgement obligation by paying, jointly and
8 severally with Defendants Sean P. Nevett and Fruition, Inc., the amount of
9 \$3,879,397.31 to the Securities and Exchange Commission within 14 days after entry
10 of this Final Judgment, and by separately paying the amount of \$310,000 to the
11 Securities and Exchange Commission within 14 days after entry of this Final
12 Judgment.

13 Defendant may transmit payment electronically to the SEC, which will provide
14 detailed ACH transfer/Fedwire instructions upon request. Payment may also be made
15 directly from a bank account via Pay.gov through the SEC website at
16 <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified
17 check, bank cashier's check, or United States postal money order payable to the
18 Securities and Exchange Commission, which shall be delivered or mailed to:

19 Enterprise Services Center
20 Accounts Receivable Branch
21 6500 South MacArthur Boulevard
22 Oklahoma City, OK 73169

23 and shall be accompanied by a letter identifying the case title, civil action number,
24 and name of this Court; Troy J. Flowers as a defendant in this action; and specifying
25 that payment is made pursuant to this Final Judgment.

26 Defendant shall simultaneously transmit photocopies of evidence of payment
27 and case identifying information to the SEC's counsel in this action. By making this
28 payment, Defendant relinquishes all legal and equitable right, title, and interest in

1 such funds and no part of the funds shall be returned to Defendant. The SEC shall
2 send the funds paid pursuant to this Final Judgment to the United States Treasury.

3 The SEC may enforce the Court's judgment for disgorgement and prejudgment
4 interest by moving for civil contempt (and/or through other collection procedures
5 authorized by law) at any time after 14 days following entry of this Final Judgment.
6 Defendant shall pay post judgment interest on any delinquent amounts pursuant to 28
7 U.S.C. § 1961.

8 **VI.**

9 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the
10 Consent is incorporated herein with the same force and effect as if fully set forth
11 herein, and that Defendant shall comply with all of the undertakings and agreements
12 set forth therein.

13 **VII.**

14 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for
15 purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code,
16 11 U.S.C. §523, the allegations in the Complaint are true and admitted by Defendant,
17 and further, any debt for disgorgement, prejudgment interest, civil penalty or other
18 amounts due by Defendant under this Judgment or any other judgment, order, consent
19 order, decree or settlement agreement entered in connection with this proceeding, is
20 a debt for the violation by Defendant of the federal securities laws or any regulation
21 or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy
22 Code, 11 U.S.C. §523(a)(19)

23 **VIII.**

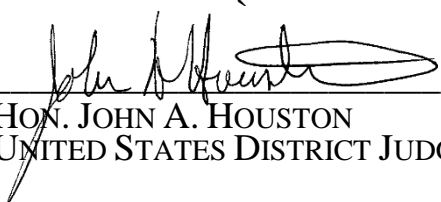
24 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court
25 shall retain jurisdiction of this matter for the purposes of enforcing the terms of this
26 Judgment.

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28 **IX.**

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

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6 DATED: January 9, 2019

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HON. JOHN A. HOUSTON
UNITED STATES DISTRICT JUDGE