

1 ERIN E. SCHNEIDER (Cal. Bar No. 216114)
 schneidere@sec.gov
 2 JEREMY E. PENDREY (Cal. Bar No. 187075)
 pendreyj@sec.gov
 3 SUSAN F. LAMARCA (Cal. Bar No. 215231)
 lamarcas@sec.gov
 4 ANDREW J. HEFTY (Cal. Bar No. 220450)
 heftya@sec.gov
 5 RUTH L. HAWLEY (Cal. Bar No. 253112)
 hawleyr@sec.gov

6
 7
 8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA**
 10 **SAN JOSE DIVISION**

11 SECURITIES AND EXCHANGE COMMISSION,
 12
 Plaintiff,
 13
 vs.
 14 DANIEL MATTES,
 15
 Defendant.

Case No.

**FINAL JUDGMENT AS TO
DEFENDANT DANIEL MATTES**

16
 17
 18 The Securities and Exchange Commission having filed a Complaint and Defendant
 19 Daniel Mattes having entered a general appearance; consented to the Court’s jurisdiction over
 20 Defendant and the subject matter of this action; consented to entry of this Final Judgment
 21 without admitting or denying the allegations of the Complaint (except as to jurisdiction and
 22 except as otherwise provided herein in paragraph VII); waived findings of fact and
 23 conclusions of law; and waived any right to appeal from this Final Judgment:

24 I.

25 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is
 26 permanently restrained and enjoined from violating, directly or indirectly, Section 10(b) of the
 27 Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78j(b)] and Rule 10b-5
 28 promulgated thereunder [17 C.F.R. § 240.10b-5], by using any means or instrumentality of

1 interstate commerce, or of the mails, or of any facility of any national securities exchange, in
2 connection with the purchase or sale of any security:

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

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

14 II.

15 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
16 Defendant is permanently restrained and enjoined from violating Section 17(a) of the
17 Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)] in the offer or sale of any
18 security by the use of any means or instruments of transportation or communication in
19 interstate commerce or by use of the mails, directly or indirectly:

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

26 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided in
27 Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following
28

1 | who receive actual notice of this Final Judgment by personal service or otherwise: (a)
2 | Defendant's officers, agents, servants, employees, and attorneys; and (b) other persons in
3 | active concert or participation with Defendant or with anyone described in (a).

4 | III.

5 | IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant to
6 | Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] and Section 20(e) of the
7 | Securities Act [15 U.S.C. § 77t(e)], Defendant is permanently prohibited from acting as an
8 | officer or director of any issuer that has a class of securities registered pursuant to Section 12
9 | of the Exchange Act [15 U.S.C. § 78j] or that is required to file reports pursuant to Section
10 | 15(d) of the Exchange Act [15 U.S.C. § 78o(d)] or pursuant to Section 21(d)(2) of the
11 | Exchange Act [15 U.S.C. § 78u(d)(2)].

12 | IV.

13 | IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
14 | Defendant is liable for disgorgement of \$14,617,922, representing profits gained as a result of
15 | the conduct alleged in the Complaint, together with prejudgment interest thereon in the
16 | amount of \$2,145,112, and a civil penalty in the amount of \$640,000 pursuant to Section
17 | 20(d) of the Securities Act [15 U.S.C. § 77t(d)] and Section 21(d) of the Exchange Act [15
18 | U.S.C. § 78u(d)]. Defendant shall satisfy this obligation by paying \$640,000 to the Securities
19 | and Exchange Commission within 3 days after entry of this Final Judgment, and \$16,763,034
20 | to the Securities and Exchange Commission within 90 days after entry of this Final Judgment;
21 | however, any money that Defendant pays in any settlement of In Re JMO Wind Down Inc.
22 | (f/k/a Jumio, Inc.), No. 16-10682 (US Bankruptcy Ct, D. Del.), that has actually been
23 |
24 |
25 |
26 |
27 |
28 |

1 distributed to any of investors on the list in footnote 1¹ by 90 days after the entry of this Final
2 Judgment, may be subtracted from the \$16,763,034 payment.

3 Defendant may transmit payment electronically to the Commission, which will
4 provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made
5 directly from a bank account via Pay.gov through the SEC website at
6 <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified check, bank
7 cashier's check, or United States postal money order payable to the Securities and Exchange
8 Commission, which shall be delivered or mailed to
9

10 Enterprise Services Center
11 Accounts Receivable Branch
12 6500 South MacArthur Boulevard
13 Oklahoma City, OK 73169

14 and shall be accompanied by a letter identifying the case title, civil action number, and name
15 of this Court; Daniel Mattes as a defendant in this action; and specifying that payment is made
16 pursuant to this Final Judgment.

17 Defendant shall simultaneously transmit photocopies of evidence of payment and case
18 identifying information to the Commission's counsel in this action. By making this payment,
19 Defendant relinquishes all legal and equitable right, title, and interest in such funds and no
20 part of the funds shall be returned to Defendant.

21 The Commission may enforce the Court's judgment for disgorgement and
22 prejudgment interest by moving for civil contempt (and/or through other collection
23 procedures authorized by law) at any time after 14 days following entry of this Final
24 Judgment. Defendant shall pay post judgment interest on any delinquent amounts pursuant to

25 _____
26 ¹ Buttonwood Alpha Fund LLC, Buttonwood Alpha QP Fund LLC, Celadon Technology
27 Fund II, Turner Investment Fund XI, LLC, Jacqueline Fox, J Tech Holdings LLC, Allure
28 Investments LP, Artar International Limited, MokkaGold International Limited, and
Amberbrook VI, LLC.

1 28 U.S.C. § 1961. The Commission shall hold the funds, together with any interest and
2 income earned thereon (collectively, the “Fund”), pending further order of the Court.

3 The Commission may propose a plan to distribute the Fund subject to the Court’s
4 approval. Such a plan may provide that the Fund shall be distributed pursuant to the Fair
5 Fund provisions of Section 308(a) of the Sarbanes-Oxley Act of 2002. The Court shall retain
6 jurisdiction over the administration of any distribution of the Fund. If the Commission staff
7 determines that the Fund will not be distributed, the Commission shall send the funds paid
8 pursuant to this Final Judgment to the United States Treasury.
9

10 Regardless of whether any such Fair Fund distribution is made, amounts ordered to be
11 paid as civil penalties pursuant to this Judgment shall be treated as penalties paid to the
12 government for all purposes, including all tax purposes. To preserve the deterrent effect of
13 the civil penalty, Defendant shall not, after offset or reduction of any award of compensatory
14 damages in any Related Investor Action based on Defendant’s payment of disgorgement in
15 this action, argue that he is entitled to, nor shall he further benefit by, offset or reduction of
16 such compensatory damages award by the amount of any part of Defendant’s payment of a
17 civil penalty in this action (“Penalty Offset”). If the court in any Related Investor Action
18 grants such a Penalty Offset, Defendant shall, within 30 days after entry of a final order
19 granting the Penalty Offset, notify the Commission’s counsel in this action and pay the
20 amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the
21 Commission directs. Such a payment shall not be deemed an additional civil penalty and
22 shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For
23 purposes of this paragraph, a “Related Investor Action” means a private damages action
24 brought against Defendant by or on behalf of one or more investors based on substantially the
25 same facts as alleged in the Complaint in this action.
26
27
28

V.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that within 3 days after being served with a copy of this Final Judgment, Wells Fargo Bank, (“Escrow Agent”) shall transfer \$640,000 of money received from Defendant Daniel Mattes, or held for the benefit of Daniel Mattes, to the Commission; and within 90 days after being served with a copy of this Final Judgment, Escrow Agent shall transfer the entire balance of any and all moneys received from Defendant Daniel Mattes, or held for the benefit of Daniel Mattes to the Commission; however, any money that Defendant pays in any settlement of In Re JMO Wind Down Inc. (f/k/a Jumio, Inc.), No. 16-10682 (US Bankruptcy Ct, D. Del.), that has actually been distributed to any of investors on the list in footnote 2 by 90 days after the entry of this Final Judgment, may be subtracted from the \$16,763,034 payment. Escrow Agent may transmit payment electronically to the Commission, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at <http://www.sec.gov/about/offices/ofm.htm>. Escrow Agent also may transfer these funds by certified check, bank cashier’s check, or United States postal money order payable to the Securities and Exchange Commission, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; and specifying that payment is made pursuant to this Final Judgment.

² Buttonwood Alpha Fund LLC, Buttonwood Alpha QP Fund LLC, Celadon Technology Fund II, Turner Investment Fund XI, LLC, Jacqueline Fox, J Tech Holdings LLC, Allure Investments LP, Artar International Limited, MokkaGold International Limited, and Amberbrook VI, LLC.

1 VI.

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


5 VII.

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

14 VIII.

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

18
19 Dated: __ May 15, 2019, _____

20 

21 UNITED STATES DISTRICT JUDGE
22
23
24
25
26
27
28