

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDING
File No: 3-17545

In the Matter of
Fusion Pharm, Inc.;
Respondent.

**MOTION TO DISMISS
FURTHER PROCEEDINGS**

The Division of Enforcement moves the Commission to dismiss the further proceedings to determine disgorgement and penalties in this matter.*

Background of the Proceeding

This administrative proceeding was instituted on September 16, 2016. The Order Instituting the Proceeding noted that respondent had submitted an offer of settlement which the Securities and Exchange Commission had determined to accept. Accordingly, the Commission made certain findings and ordered respondent to cease and desist from committing or causing any violations and any future violations of Sections 5(a), 5(c), 17(a) of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and Rules 10b-5. The OIP also found that respondent agreed to additional proceedings to determine what, if any, disgorgement pursuant to Section 8A(e) of the Securities Act and Section 21C(e) of the Exchange Act and/or civil penalties pursuant to Section 8A(g) of the Securities Act and Section 21B(a) of the Exchange Act against it are

* The ALJ's May 1, 2020 Order stated: "The Division represented that it does not intend to seek further sanctions against those Respondents. The Division should therefore move the Commission to dismiss the further proceedings to determine civil penalties and disgorgement as to them." Order at 2.

in the public interest. OIP § IV. In connection with such additional proceedings respondent agreed that (a) it will be precluded from arguing that it did not violate the federal securities laws described in the OIP; (b) it may not challenge the validity of the OIP; (c) the findings of the OIP shall be accepted as and deemed true by the hearing officer; and (d) the hearing officer may determine the issues raised in the additional proceedings on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence. *Id.*

Motion to Dismiss Further Proceedings

The Division is moving to dismiss further proceedings against respondent to determine what disgorgement and penalties, if any, are in the public interest.

A. Factual Background

Respondent, Fusion Pharm, Inc. ("FSPM") was a Nevada corporation with its principal offices in Denver, Colorado. OIP § III. The company focused on the development, production and sales of the "patent pending PharmPods cultivation container system," which were refurbished shipping containers used primarily to grow cannabis. *Id.* FSPM never registered an offering of securities under the Securities Act or a class of securities under the Exchange Act. *Id.* FSPM stock traded on OTC Link. *Id.* The Commission's ordered a 10 business day trading suspension of FSPM stock in May 2014. *Id.* There is currently no market for FSPM stock.

Although FSPM was ostensibly in the business of selling PharmPods, it had almost no revenue to fund its operations. *Id.* Instead, from 2011 through 2013, FSPM was funded almost entirely through illegal sales of FSPM stock orchestrated by William J. Sears and Scott M. Dittman. *Id.* During the relevant period, Dittman was FSPM's CEO,

president, and sole director. *Id.* Dittman signed and certified FSPM's unaudited quarterly and annual financial statements posted on the OTC website. *Id.* Sears was a founder, de facto executive officer and undisclosed control person of FSPM. *Id.*

Sears and Dittman plead guilty to criminal conduct relating to the sale of FSPM stock. Specifically, in *United States v. William Sears and Scott Matthew Dittman*, 16-CR-301-WJM (D. Colo.), Sears and Dittman each plead guilty to conspiracy to commit violations of Section 5(a) of the Securities Act, violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, wire fraud, and mail fraud. Sears also plead guilty to filing a false federal individual income tax return for calendar year 2011.

On February 10, 2020, Judgments in a Criminal Case were entered against Sears and Dittman in *United States v. William Sears and Scott Matthew Dittman*, 16-CR-301-WJM (D. Colo.). Sears was sentenced to ninety-six months of imprisonment, ordered to forfeit \$8,896,867.42, and ordered to pay a money judgment in the amount of \$1,914,049.49. Dittman was sentenced to sixty months of imprisonment, ordered to forfeit \$921,094.29 to the United States, and ordered to pay a money judgment in the amount of \$1,160,160.81.

B. Further Relief

The Division is satisfied that all ill-gotten gains received by respondent have been attributed to Sears and Dittman. They have been ordered to pay those sums in the criminal case against them. Similarly, the Division will seek disgorgement of those amounts in related administrative proceedings against Sears and Dittman. Because Sears and Dittman are liable to pay all ill-gotten gains received by respondent, the Division request that further proceedings concerning disgorgement be dismissed.

The Division understands that respondent is defunct. It has no location, business, or assets that the Division has been able to identify. As a result, it appears to the Division that a civil penalty against respondent would serve no purpose and the Division requests that further proceedings concerning such a penalty be dismissed.

Conclusion

The Division of Enforcement respectfully requests that the Commission dismiss all further proceedings in this matter.

Dated: May 19, 2020,

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was served on the following on this 19th day of May, 2020, in the manner indicated below:

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Hon. Judge James E. Grimes
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Fusion Pharm, Inc.
c/o Scott M. Dittman- President



Minersville, PA 17954

s/ Nicole L. Nesvig
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