

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
Southern Division**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

PATRICK S. CARTER,
808 RENEWABLE ENERGY
CORPORATION,
808 INVESTMENTS, LLC, MARTIN
J. KINCHLOE, PETER J.
KIRKBRIDE, WEST COAST
COMMODITIES, LLC, THOMAS A.
FLOWERS, and T.A. FLOWERS LLC,

Defendants.

Case No. 8:16-CV-02070-JVS-DFM

**JUDGMENT AS TO DEFENDANT
PATRICK S. CARTER**

1 The Securities and Exchange Commission having filed a Complaint and
2 defendant Patrick S. Carter (“Carter” or “Defendant”) having entered a general
3 appearance and consented to the Court’s jurisdiction over Defendant and the subject
4 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 X), waived findings of fact and conclusions
7 of law; and waived any right to appeal from this Judgment (except that Defendant has
8 not waived his right to appeal the Court’s determination of the amounts of
9 disgorgement and prejudgment interest that Defendant shall be ordered to pay
10 pursuant to paragraph VIII below):

11 **I.**

12 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is
13 permanently restrained and enjoined from violating, directly or indirectly, Section
14 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §
15 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using
16 any means or instrumentality of interstate commerce, or of the mails, or of any
17 facility of any national securities exchange, in connection with the purchase or sale of
18 any security:

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

25 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as
26 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also
27 binds the following who receive actual notice of this Judgment by personal service or
28 otherwise: (a) Defendant’s officers, agents, servants, employees, and attorneys; and

1 (b) other persons in active concert or participation with Defendant or with anyone
2 described in (a).

3 **II.**

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

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

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

22 **III.**

23 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
24 Defendant is permanently restrained and enjoined from violating Section 5 of the
25 Securities Act [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any
26 applicable exemption:

- 27 (a) Unless a registration statement is in effect as to a security, making use of
28 any means or instruments of transportation or communication in

1 interstate commerce or of the mails to sell such security through the use
2 or medium of any prospectus or otherwise;

3 (b) Unless a registration statement is in effect as to a security, carrying or
4 causing to be carried through the mails or in interstate commerce, by any
5 means or instruments of transportation, any such security for the purpose
6 of sale or for delivery after sale; or

7 (c) Making use of any means or instruments of transportation or
8 communication in interstate commerce or of the mails to offer to sell or
9 offer to buy through the use or medium of any prospectus or otherwise
10 any security, unless a registration statement has been filed with the SEC
11 as to such security, or while the registration statement is the subject of a
12 refusal order or stop order or (prior to the effective date of the
13 registration statement) any public proceeding or examination under
14 Section 8 of the Securities Act [15 U.S.C. § 77h].

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

21 **IV.**

22 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
23 Defendant is permanently restrained and enjoined from violating Section 15(a) of the
24 Exchange Act [15 U.S.C. § 78o(a)] by, directly or indirectly, in the absence of any
25 applicable exemption, making use of the mails or any means or instrumentality of
26 interstate commerce to effect any transactions in, or to induce or attempt to induce the
27 purchase or sale of, any security (other than an exempted security or commercial
28 paper, bankers' acceptances, or commercial bills) unless registered in accordance

1 with Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)].

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

8 **V.**

9 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
10 is permanently restrained and enjoined from soliciting, accepting, or depositing any
11 monies from actual or prospective investors in connection with any offering of
12 securities, provided, however, that such injunction shall not prevent Defendant from
13 purchasing or selling securities listed on a national securities exchange for
14 Defendant's own personal accounts.

15 **VI.**

16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, pursuant
17 to Section 21(d)(2) of the Exchange Act [15 U.S.C. § 78u(d)(2)] and Section 20(e) of
18 the Securities Act [15 U.S.C. § 77t(e)], Defendant is prohibited from acting as an
19 officer or director of any issuer that has a class of securities registered pursuant to
20 Section 12 of the Exchange Act [15 U.S.C. § 78l] or that is required to file reports
21 pursuant to Section 15(d) of the Exchange Act [15 U.S.C. § 78o(d)].

22 **VII.**

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

1 **VIII.**

2 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
3 Defendant shall pay disgorgement of ill-gotten gains plus prejudgment interest
4 thereon. The Court shall determine the amount of disgorgement at a hearing upon
5 motion of the SEC. Prejudgment interest shall be calculated from December 1, 2014,
6 based on the rate of interest used by the Internal Revenue Service for the
7 underpayment of federal income tax as set forth in 26 U.S.C. § 6621(a)(2). In
8 connection with the SEC's motion for disgorgement, and at any hearing held on such
9 a motion: (a) Defendant will be precluded from arguing that he did not violate the
10 federal securities laws as alleged in the Complaint; (b) Defendant may not challenge
11 the validity of the Consent or this Judgment; (c) solely for the purposes of such
12 motion, the allegations of the Complaint shall be accepted as and deemed true by the
13 Court; and (d) the Court may determine the issues raised in the motion on the basis of
14 affidavits, declarations, excerpts of sworn deposition or investigative testimony, and
15 documentary evidence, without regard to the standards for summary judgment
16 contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with
17 the SEC's motion for disgorgement, the parties may take discovery, including
18 discovery from appropriate non-parties.

19 **IX.**

20 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the
21 Consent of Defendant Patrick S. Carter to Entry of Judgment is incorporated herein
22 with the same force and effect as if fully set forth herein, and that Defendant shall
23 comply with all of the undertakings and agreements set forth therein.

24 **X.**

25 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for
26 purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code,
27 11 U.S.C. §523, the allegations in the complaint are true and admitted by Defendant,
28 and further, any debt for disgorgement, prejudgment interest, civil penalty or other

1 amounts due by Defendant under this Judgment or any other judgment, order, consent
2 order, decree, or settlement agreement entered in connection with this proceeding, is
3 a debt for the violation by Defendant of the federal securities laws or any regulation
4 or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy
5 Code, 11 U.S.C. §523(a)(19).


6 **XI.**

7 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court
8 shall retain jurisdiction of this matter for the purposes of enforcing the terms of this
9 Judgment.

10 **XII.**

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

14
15 Dated: November 21, 2018

16 
17 HON. JAMES V. SELNA
18 UNITED STATES DISTRICT JUDGE
19
20
21
22
23
24
25
26
27
28