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6 UNITED STATES DISTRICT COURT
7 NORTHERN DISTRICT OF CALIFORNIA
8 SAN FRANCISCO DIVISION
9

10 SECURITIES AND EXCHANGE COMMISSION,
11 Plaintiff,
12
13 vs.
14 LUCA INTERNATIONAL GROUP, LLC, ET AL.,
15
16 Defendants and Relief Defendants.

Case No. 3:15-CV-03101 CRB

**PLAINTIFF’S NOTICE, MOTION AND
MEMORANDUM FOR AN ORDER
APPROVING A DISTRIBUTION PLAN**

**Hearing Date: August 23, 2024
Time: 10:00 AM
Courtroom: 6, 17th Floor
Judge: Charles R. Breyer**

17
18 **NOTICE**

19 **PLEASE TAKE NOTICE**, that based upon the accompany Motion, Memorandum, and all
20 other papers and proceedings herein, Plaintiff Securities and Exchange Commission (the
21 “Commission” or “SEC”) will move this Court, the Honorable Charles R. Breyer, at the United States
22 Courthouse for the Northern District of California, in Courtroom 6 of the Phillip Burton Federal
23 Building, on the Seventeenth Floor, at 450 Golden Gate Avenue, San Francisco, California 94102 for
24 an order approving the Distribution Plan.

25 **MOTION**

26 The Commission respectfully moves this Court for an Order approving a plan to distribute
27 approximately \$1.9 million to compensate harmed investors for their losses from investments in
28 unregistered offerings from January 1, 2007 through December 31, 2014 (the “Distribution Plan”). In

1 support of this motion, the SEC relies on its Memorandum filed herewith and a proposed order
2 appending the Distribution Plan as Exhibit 1.

3 **MEMORANDUM**

4 **BACKGROUND**

5 On July 6, 2015, the SEC filed a Complaint against Luca International Group, LLC (“Luca
6 International”); Luca Resources Group, LLC; Luca Energy Fund, LLC; Entholpy EMC, Inc.
7 (“Entholpy”); Bingqing Yang (“Yang”); Lei (Lily) Lei (“Lei”); Anthony V. Pollace (“Pollace”); and
8 Yong (Michael) Chen (“Chen”) (collectively, the “Defendants”) and against Luca Operation, LLC;
9 Luca Barnett Shale Joint Venture; Luca To-Kalon Energy, LLC; Luca Oil, LLC; Luca I, Limited
10 Partnership; Luca Oil II Joint Venture; J&Q Int’l Trading, Inc.; Skyline Trading, LLC; and Xiang
11 Long Zhou (collectively, the “Relief Defendants”). *See* Dkt. No. 1. The Complaint alleges that Yang
12 through her wholly-owned management companies, defendants Luca International Group, LLC, Luca
13 Resources Group LLC, and Luca Energy Fund, LLC, orchestrated a \$68 million affinity fraud. *See*
14 *id.* at para. 1. Yang and Lee represented to investors that their money would be invested in oil and
15 gas drilling operations, that they could expect annual rates of return of 20-30%, and that their
16 investments were risk-free. *See id.* at para. 2. In reality, Yang and Lei deceived investors by
17 misrepresenting that their operations were successful while knowing that the operations were losing
18 millions of dollars. *See id.* at para. 3. While diverting millions of dollars for her personal use, Yang
19 comingled investor funds and used new investor money to make sham profit payments to earlier
20 investors to prevent the scheme from collapsing. *See id.* at para. 4. Pollace, Luca International’s
21 former CFO, continued to solicit investors even after he was aware that that the various Luca funds
22 were not properly accounting for their expenses, that Yang was comingling investor money and that
23 the wells were producing very little oil and gas. *See id.* Lei, Chen and Chen’s company, Entholpy,
24 received thousands of dollars in commissions for soliciting investments for the Luca funds without
25 being registered as broker-dealers. *See id.* at para. 9.

26 On June 20, 2016, the Court entered a final judgment as to Pollace. Without admitting or
27 denying the allegations, Pollace consented to violations of Sections 5(c) and 17(a)(3) of the Securities
28

1 Act of 1933 (the “Securities Act”) and was found liable for a civil penalty of \$25,500.¹ See Dkt. No.
2 173. On October 25, 2019, the Court entered a final judgment as to Lei. Lei consented, without
3 admitting or denying the allegations, to violations of Section 5(a) and 5(c) of the Securities Act,
4 Section 17(a) of the Securities Act and Section 15(a)(1) of the Securities Exchange Act of 1934 (the
5 “Exchange Act”). The court found her liable for disgorgement of \$464,190 together with
6 prejudgment interest of \$28,293 and a civil penalty of \$35,000. See Dkt. 291. On June 26, 2020, the
7 Court entered a final judgment as to Chen and Entholpy. Each consented, without admitting or
8 denying the allegations, to violating Section 15(a)(1) of the Exchange Act. The Court found them
9 jointly and severally liable for disgorgement of \$457,100 together with prejudgment interest of
10 \$27,775 and found Chen liable for a civil penalty of \$35,000. See Dkt. No. 307. On June 9, 2021,
11 the Court entered a final judgment as to Yang for violations of Sections 5 and 17(a) of the Securities
12 Act, Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, and Sections 206(1), (2) and (4)
13 of the Investment Advisers Act of 1940 (“Advisers Act”) and Rule 206(4)-8 thereunder. The Court
14 found her liable for disgorgement of \$209,672 together with prejudgment interest of \$64,579 and a
15 civil penalty of \$425,749. See Dkt. No. 325.

16 In a related Commission action, *In the Matter of Wisteria Global, Inc., et al.*, Admin. Proc.
17 File No. 3-16675, the Commission found Respondents in violation of Section 15(a) of the Exchange
18 Act and ordered them to pay \$1,793,783 in disgorgement. Prejudgment interest was waived along
19 with disgorgement except for \$1,138,985. Order Instituting Administrative and Cease-and-Desist
20 Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making
21 Findings, and Imposing Remedial Sanctions and Cease-and-Desist Orders, Exchange Act Rel. No.
22 75362 (July 6, 2015). The ordered amount was paid in full. Pursuant to that Order, the funds paid
23 may be added to or combined with any other fair fund created in a related civil injunctive action or
24 any proceeding arising from the same or substantially similar facts.

25 _____
26 ¹ On July 26, 2016, the Court entered final judgment as to Defendants Luca International Group, LLC; Luca Resources
27 Group, LLC; Luca Energy Fund, LLC; and Relief Defendant Luca Operation, LLC finding them each jointly and
28 severally liable for disgorgement in the amount of \$68.3 million. See Dkt. No. 177. In that pleading, the Court also
entered final judgment as to Relief Defendants Luca Barnett Shale Joint Venture, Luca Oil, LLC, Luca To-Kalon Energy,
LLC, Luca I, Limited Partnership, and Luca Oil II Joint Venture for disgorgement in varying amounts from \$2.4 million
to \$41 million. See *id.* To date, no payments have been received from these Defendants and Relief Defendants.

1 The Commission holds \$650,500 paid by the Defendants pursuant to the Final Judgments
 2 issued in this action and \$1,143,840.30 paid by the Respondents in the related administrative
 3 proceeding in an SEC-designated account at the United States Department of the Treasury
 4 (collectively, the “Funds”).

5 On February 27, 2023, the Court appointed Heffler, Radetich & Saitta, LLP as tax administrator
 6 (“Tax Administrator) to fulfill the tax obligation for all funds under the Court’s jurisdiction. See Dkt.
 7 No. 328.

8 On July 13, 2023, the Court established a Fair Fund to hold all funds collected from the
 9 Defendants plus any accrued interest and appointed KCC Class Action Services, LLC (“KCC”) as the
 10 Distribution Agent for the Fair Fund. See Dkt. No. 330. The Funds have been combined (the “Fair
 11 Fund”) and are deposited in a Commission-designated account at the United States Treasury, and any
 12 accrued interest will be added to the Fair Fund. The Fair Fund currently holds approximately
 13 \$1,990,496.29. The Commission staff has prepared a Distribution Plan for the Fair Fund, which the
 14 Commission now submits to this Court for its approval.²

15 Approval of the Distribution Plan for the Fair Fund

16 **I. The Applicable Standard**

17 Nearly every plan to distribute funds obtained in a Commission enforcement action requires
 18 choices to be made regarding the allocation of funds between and among potential claimants within
 19 the parameters of the amounts recovered. In recognition of the difficulty of this task, Courts
 20 historically have given the Commission significant discretion to design and set the parameters of a
 21 distribution plan. As the Court of Appeals in the Second Circuit has explained, “[t]his kind of line-
 22 drawing – which inevitably leaves out some potential claimants – is . . . appropriately left to the
 23 experience and expertise of the SEC in the first instance.” *SEC v. Wang*, 944 F.2d 80, 83-84, 88 (2d
 24 Cir. 1991); see *SEC v. Fischbach Corp.*, 133 F.3d 170, 175 (2d Cir. 1997); *SEC v. Levine*, 881 F.2d
 25 1165, 1182 (2d Cir. 1989).

26 The Court’s review of a Fair Fund distribution plan focuses on whether the plan is fair and
 27

28 ² The Distribution Plan for the Fair Fund is attached as Exhibit 1 to the Proposed Order.

1 reasonable. See *Official Committee of Unsecured Creditors of Worldcom, Inc. v. SEC*, 467 F.3d 73,
 2 81 (2d Cir. 2006) (“[u]nless the consent decree specifically provides otherwise[,] once the district
 3 court satisfies itself that the distribution of proceeds in a proposed SEC disgorgement plan is fair and
 4 reasonable, its review is at an end”), citing *Wang*, 944 F.2d at 85. For the reasons articulated below,
 5 the Commission submits that the Distribution Plan for the Fair Fund constitutes a fair and reasonable
 6 allocation of the funds available for distribution and should be approved.

7 **II. The Commission’s Distribution Plan Provides a Fair and Reasonable Allocation of the**
 8 **Fair Fund**

9 The Complaint alleges the Defendants illegally raised \$68 million from investors. The
 10 Distribution Plan will compensate U.S. investors who suffered losses arising from investments in the
 11 unregistered offerings in Luca Barnett Shale Joint Venture, Luca Oil LLC, Luca To-Kalon Energy
 12 LLC, Luca I Limited Partnership, and Luca Oil II Joint Venture (the “Securities”) that were
 13 purchased between January 1, 2007 and December 31, 2014 (the “Relevant Period”). Recognized
 14 Losses will be calculated as the sum of investment amounts made for purchases of the Securities
 15 minus any payments received in connection with the investments. U.S. Investors who did not
 16 purchase Securities during the Relevant Period or who are an Excluded Party³ are ineligible to
 17 recover under the Distribution Plan. The Fair Fund consists of a little less than \$2 million. In light of
 18 the limited funds in the Fair Fund, the Commission will only distribute to U.S. investors identified by
 19 the Distribution Agent based on its review and analysis of applicable records obtained by the
 20 Commission during its investigation and to any U.S. investor who contacts the Distribution Agent in
 21 accordance with Distribution Plan. Foreign investors will not be included in the distribution because
 22 the amount of money available for distribution is insufficient to provide a meaningful distribution to
 23 investors after the costs of administration of a Fair Fund. Even with the limitation of the distribution
 24 to U.S. Investors, the distribution will proceed on a *pro-rata* basis, because the sum of the
 25 Recognized Losses of the Eligible Claimants exceeds the Net Available Fair Fund. A \$10 *de minimis*
 26 will be applied.

27
 28 ³ All capitalized terms used herein but not defined shall have the same meaning ascribed to them in the Plan

1 If, after the distribution is complete and all Administrative Costs have been paid, funds
 2 remain in the Fair Fund, and the Distribution Agent, in consultation with the SEC staff, has
 3 determined further distributions to be infeasible, the Residual shall be transferred to the SEC, pending
 4 a final accounting. Upon completion of the final accounting, the SEC staff will file a motion with
 5 this Court to approve the final accounting, including a recommendation as to the final disposition of
 6 the Residual, consistent with Sections 21(d)(3), (5), and (7) of the Securities Exchange Act of 1934
 7 (“Exchange Act”)⁴ and *Liu v. SEC*, 140 S. Ct. 1936 (2020). If distribution of the Residual to
 8 investors is infeasible, the SEC staff may recommend the transfer of the Residual to the general fund
 9 of the U.S. Treasury subject to Section 21F(g)(3) of the Exchange Act.⁵ In moving this Court to
 10 approve the final accounting, the SEC staff will also seek from the Court an Order discharging the
 11 Distribution Agent and terminating the Fair Fund.

12 CONCLUSION

13 **WHEREFORE**, for all the foregoing reasons, the SEC respectfully requests that this Court enter
 14 the attached Proposed Order and grant such other relief as the Court deems just and proper.

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 16 Dated: July 3, 2024

Respectfully submitted,

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 18 /s/ Jennifer A. Cardello

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 25 ⁴ 15 U.S.C. § 78u(d)(3), (5), and (7). Section 21(d)(7) was added to the Exchange Act by Section 6501(a) of the
 26 National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant
 provisions of the NDAA apply “to any action or proceeding that is pending on, or commenced on or after, the date of” the
 NDAA’s enactment. NDAA, Section 6501(b).

27 ⁵ Section 21F(g)(3) of the Exchange Act, 15 U.S.C. § 78u-6(g)(3), provides, in relevant part, that any monetary sanction
 28 of \$200 million or less collected by the SEC in any judicial action brought by the SEC under the securities laws that is not
 added to a disgorgement fund or Distribution Fund or otherwise distributed to victims, plus investment income, shall be
 deposited or credited into the SEC Investor Protection Fund.

CERTIFICATE OF SERVICE

I, Jennifer A. Cardello, am a citizen of the United States, over 18 years of age and am a party to this action. I hereby certify that on July 3, 2024, I caused the foregoing document to be electronically filed with the clerk of the court for the U.S. District Court of Northern District of California, San Francisco Division, using the electronic case filing system of the court. The electronic case filing system sends a “Notice of Electronic Filing” to all attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Jennifer A. Cardello

Jennifer A. Cardello