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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
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14 SECURITIES AND EXCHANGE COMMISSION,
15 Plaintiff,
16 v.
17 ENTHOLPY EMC, INC.; BINGQING
YANG; LEI (LILY) LEI; and YONG
18 (MICHAEL) CHEN,
19 Defendants.

Case No. 3:15-cv-03101 CRB

**FINAL JUDGMENT AS TO DEFENDANT
LEI (LILY) LEI**

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1 The Securities and Exchange Commission having filed a Complaint and Defendant Lei
2 (Lily) Lei having entered a general appearance; consented to the Court’s jurisdiction over
3 Defendant and the subject matter of this action; consented to entry of this Final Judgment without
4 admitting or denying the allegations of the Complaint (except as to jurisdiction, allegations in the
5 complaint in connection with violations of Sections 5(a) and 5(c) of the Securities Act of 1933
6 (the “Securities Act”) [15 U.S.C. § 77e(a) and (c)] and Section 15(a) of the Securities Exchange
7 Act of 1934 (the “Exchange Act”) [15 U.S.C. § 78p(a)] and except as otherwise provided herein in
8 paragraph VIII); waived findings of fact and conclusions of law; and waived any right to appeal
9 from this Final Judgment:

10 I.

11 It Is HEREBY Further Ordered, Adjudged, And Decreed that Defendant is
12 permanently restrained and enjoined from violating Section 17(a) of the Securities Act [15 U.S.C.
13 § 77q(a)] in the offer or sale of any security by the use of any means or instruments of
14 transportation or communication in interstate commerce or by use of the mails, directly or
15 indirectly:

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

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

II.

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

- (a) Unless a registration statement is in effect as to a security, making use of any means or instruments of transportation or communication in interstate commerce or of the mails to sell such security through the use or medium of any prospectus or otherwise;
- (b) Unless a registration statement is in effect as to a security, carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, any such security for the purpose of sale or for delivery after sale; or
- (c) Making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security, unless a registration statement has been filed with the Commission as to such security, or while the registration statement is the subject of a refusal order or stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act [15 U.S.C. § 77h].

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

III.

IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is permanently restrained and enjoined from violating Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78p(a)] by, through use of the mails or means or instrumentalities of interstate commerce, effecting transactions in, or inducing or attempting to induce the purchase or sale of, securities

1 (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills)
2 as a broker or dealer without being registered with the Commission in accordance with Section
3 15(b) of the Exchange Act [15 U.S.C. § 78o(b)].

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

9 IV.

10 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is
11 permanently restrained and enjoined from directly or indirectly: (1) participating in the issuance,
12 offer, or sale of any security of any entity controlled by, or under joint control with, Bingqing
13 Yang; and (2) soliciting any person or entity to purchase or sell any security.

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

19 V.

20 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant is
21 liable for disgorgement of \$464,190 representing profits gained as a result of the conduct alleged
22 in the Complaint, together with prejudgment interest thereon in the amount of \$28,293 for a total
23 of \$492,483, and a civil penalty in the amount of \$35,000 pursuant to Section 20(d) of the
24 Securities Act and Section 21(d)(3) of the Exchange Act, for a total due hereunder of \$527,483
25 (the "Payment Obligation"). Defendant shall satisfy the Payment Obligation by paying this
26 amount pursuant to the terms of the payment schedule set forth in paragraph VI below after entry
27 of this Final Judgment. No post judgment interest shall accrue on amounts ordered in this
28 paragraph.

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

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

23 VI.

24 Defendant Lei (Lily) Lei shall pay the Payment Obligation of \$527,483 to the Commission
25 through the sale of two parcels of real estate described below for fair market value to bona fide
26 purchasers. Prior to closing any property sale hereunder, Defendant must seek and obtain the
27 Commission’s consent to the proposed sale and provide to the Commission proposed closing
28 documents.

1 (1) Defendant shall sell the property located at 213 North Nicholson Avenue, Unit D,
2 Monterey Park, California within 180 days of entry of this Final Judgment. At the closing
3 of the sale of the property, the proceeds shall be distributed net appropriate closing costs,
4 mortgages, reasonable sale expenses and bona fide liens (the "Net Proceeds"): up to
5 \$200,000 to the Commission in partial satisfaction of the Payment Obligation; should the
6 Net Proceeds exceed \$200,000, up to \$76,000 shall then be payable to Xing Chun Lei;
7 should the Net Proceeds exceed \$276,000, any remaining Net Proceeds from the sale shall
8 be remitted to the Commission.

9 (2) Defendant shall sell the property located at 950 Chaparral Lane, Unit D, Azusa, California
10 within 270 days of entry of this Final Judgment. At the closing of the sale of the property,
11 the Net Proceeds shall be distributed: up to \$125,000 to the Commission in partial
12 satisfaction of the Payment Obligation; should the Net Proceeds exceed \$125,000, up to
13 \$32,701 shall then be payable to Xing Chun Lei; should the Net Proceeds exceed \$157,701,
14 any remaining Net Proceeds from the sale shall be remitted to the Commission.

15 (3) At the closings for the sales of these properties, the Commission shall release any liens on
16 the properties upon the receipt of the funds as set forth herein. The closing agent shall
17 obtain payment instructions from the Commission and Xing Chun Lei to complete the
18 transactions.

19 The Commission may enforce the Court's judgment for disgorgement and prejudgment
20 interest by moving for civil contempt (and/or through other collection procedures authorized by
21 law) at any time after Defendant becomes delinquent pursuant to the payment terms set forth
22 herein. If Lei fails to make any payment by the date agreed and/or in the amount agreed according
23 to the schedule set forth above, all outstanding payments under this Final Judgment, minus any
24 payments made, shall become due and payable immediately at the discretion of the staff of the
25 Commission without further application to the Court. Furthermore, if Lei fails to make any
26 payment by the date agreed and/or in the amount agreed according to the schedule set forth above,
27 the Commission may seek the appointment of a Liquidation Agent by the Court to sell the
28 properties specified above. Should a Liquidation Agent be appointed by the Court, all Net

1 Proceeds from the sales of both properties shall be paid to the Commission in partial satisfaction of
2 the Payment Obligation and no proceeds from the sale of either property shall be distributed to
3 Xing Chun Lei.

4 VII.

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

8 VIII.

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


17 IX.

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

20 X.

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

23 Dated: October 25, 2019

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26 CHARLES R. BREYER
27 UNITED STATES DISTRICT JUDGE
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