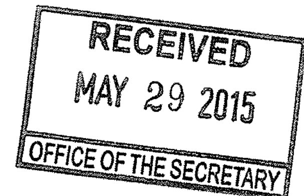
UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

ADMINISTRATIVE PROCEEDING
File No. 3-15815



In the Matter of

L&L ENERGY, INC.
and DICKSON LEE

Respondents.

DIVISION OF ENFORCEMENT'S BRIEF IN SUPPORT OF MOTION FOR DEFAULT AND SANCTIONS AGAINST L&L ENERGY, INC.

The Division of Enforcement of the Securities and Exchange Commission (the "Division") submits this Brief in Support of its Motion for Default and Sanctions as to Respondent L&L Energy, Inc. ("L&L"). The Division asks the Court to enter an order finding L&L to be in default and ordering: (1) disgorgement of $750,000, plus prejudgment interest of $160,772, for a total amount of $910,772; (2) a third-tier civil penalty of $2,250,000; and (3) a cease-and-desist order for each of the violations alleged by the Division. In support of its motion, the Division respectfully states the following:

PROCEDURAL HISTORY

A. The Filing of the Proceeding and the Stay

On March 27, 2014, the Securities and Exchange Commission issued an Order Instituting Administrative and Cease-and-Desist Proceedings ("OIP") against Respondents, L&L and Dickson

Lee. On April 3, 2014, the Court stayed the proceeding pending resolution of the criminal case against Respondents in *United States v. Lee, et al.*, 14-cr-24 (W.D. Wash.). *See L&L Energy, Inc.*, Admin. Proc. Rulings Release No. 1360, 2014 SEC LEXIS 1188. On April 28, 2015, the Court lifted the stay as the criminal case had been resolved through the entry of guilty pleas by L&L and Lee. *See L&L Energy, Inc.*, Admin. Proc. Rulings Release No. 2599, 2015 SEC LEXIS 1601; Exhibit A, Plea Agreement of L&L; Exhibit B, Plea Agreement of Dickson Lee.

B. L&L's Default

L&L was served by United States mail with the OIP no later than April 4, 2014. *See L&L Energy, Inc.*, Admin. Proc. Rulings Release No. 2636; Declaration of Cheryl L. Crumpton to Assist Secretary with Record of Service, filed on April 30, 2015. On May 5, 2015, the Court held a telephonic prehearing conference. No one appeared on behalf of L&L at the conference. At the conference, the Court directed that L&L's Answer to the OIP's allegations was due May 26, 2015. That date has passed, and L&L has failed to file an answer in this proceeding. L&L is now in default. 17 C.F.R. §§ 201.155(a), .220(f), .221(f). Accordingly, the Division moves for an order, pursuant to SEC Rule of Practice 155(a)(2), finding L&L to be in default in this proceeding. 17 C.F.R. § 201.155(a)(2).

FACTUAL BACKGROUND

As alleged in the OIP and deemed true for purposes of this motion, this action arises out of a fraudulent scheme by L&L and its CEO, Dickson Lee, to create the appearance that L&L was run by a professional management team and conceal Lee's single-handed control of the company. At the time of the fraud, L&L was a Seattle-headquartered coal company with all of its operations in China and Taiwan. At all relevant times, it was led by its Chairman of the Board and Chief

Executive Officer, Dickson Lee. From approximately August 2008 to June 2009, L&L repeatedly and fraudulently misrepresented to the public that it had certain persons serving in critical executive management roles at the company when, in reality, those persons served in no such roles.

First, in its Form 10-K for the fiscal year 2008, L&L falsely represented that Lee's brother served as the company's CEO when, in reality, Lee served in that role and ran the day to day operations of the company. In that same filing, L&L represented that a former company employee (hereinafter "the purported Acting CFO") had served as the company's Acting Chief Financial Officer when, in reality, the purported Acting CFO had emailed Lee a month prior to the 2008 Form 10-K and rejected the Acting CFO position. In the company's next three quarterly report filings for 2009, L&L continued to misrepresent that the purported Acting CFO was in fact the company's Acting CFO. For example, L&L's public filings contained certifications required under the Sarbanes-Oxley Act of 2002 ("Sarbanes-Oxley) that ostensibly bore the purported Acting CFO's electronic signature when, in reality, (1) the purported Acting CFO had not signed any L&L public filings during this period; (2) did not provide authorization for her signature to be placed on any L&L public filings; and (3) did not perform any of the reviews necessary to have a basis for any of the attestations contained on the Sarbanes-Oxley certifications.

In approximately May 2009, the purported Acting CFO learned that L&L had been falsely representing her as the company's Acting CFO and confronted Lee and the chair of L&L's Audit Committee. In response, Lee admitted to the purported Acting CFO and the Audit Committee Chair that the purported Acting CFO had not performed the duties of L&L's Acting CFO, but then directed the Audit Committee Chair to conceal this fact from both the company's Board and the public. Lee maintained his fraudulent scheme by continuing to falsely represent to L&L's Board of

Directors and external auditors that the purported Acting CFO had served as the Acting CFO. Lastly, during the fall of 2009, in connection with an application for L&L to gain listing on NASDAQ, L&L, through Lee, falsely represented that the company had made all of the required Sarbanes-Oxley certifications – including during the period of the purported Acting CFO – and as a result, L&L became listed on the NASDAQ.

PROPOSED FINDINGS OF FACT AGAINST L&L ENERGY[1]

As of the date of the filing of the OIP in this proceeding:

1. L&L is a Seattle, Washington headquartered coal company with all of its operations in China and Taiwan. The company became public through a reverse merger in August 2001. L&L's common stock is registered with the Commission pursuant to Exchange Act Section 12(b), and its stock is currently listed on NASDAQ.

2. Dickson Lee, age ■ is the company's founder and has been L&L's Chairman of the Board and Chief Executive Officer since August 2008. Lee previously served as CEO from 1995 through July 2007 and Chairman at various periods. He previously held CPA licenses in Washington and New York (both licenses have lapsed, with the Washington license lapsing in June 2012) and previously audited public companies. Lee obtained his Series 7 license in 1998 and his Series 24 and 27 licenses in 2000. Lee was an associated person with a number of broker dealers until about 2005.

[1] The Proposed Findings of Fact are identical to the allegations of the OIP, which are deemed true as to L&L by virtue of its default. *See* 17 C.F.R. §§ 201.155(a), 201.220(f), 201.221(f), and 201.310.

A. The Purported Acting CFO Rejects Acting CFO Position

3. In August 2007, L&L publicly announced that Lee had resigned his position as L&L's Chairman of the Board and CEO. Lee resigned those positions shortly after he was disciplined by the National Association of Securities Dealers, Inc. ("NASD") and received a one-year suspension for conducting private placement offerings of L&L securities in which the private placement memoranda contained false statements. Lee believed that, if he was an L&L officer, his suspension would impede L&L from becoming listed on a stock exchange.

4. At that time, Lee installed his brother as the CEO of L&L (hereinafter "Lee's brother"). During the one-year period (August 2007 – August 2008) in which Lee's brother held the title of L&L's CEO, however, Lee continued to run the company as he had when he held the title of CEO.

5. In January 2008, L&L's stock became quoted on the Over-The-Counter Bulletin Board ("OTCBB"). In order to gain listing on a larger trading venue, such as NASDAQ, Lee sought to hire a Chief Financial Officer ("CFO").

6. L&L hired a CFO in February 2008, but within two months that person resigned. As L&L sought a replacement CFO, Lee proposed the name of a former employee and L&L director (hereinafter, "the purported Acting CFO") as a candidate for L&L's Acting CFO position.

7. In approximately June 2008, Lee, on L&L's behalf, engaged a U.S.-based placement agent (the "placement agent") to assist L&L in raising money from investors. This placement agent encouraged L&L to hire a CFO. In a June 18, 2008 email, Lee referred to the purported Acting CFO as a member of the management team that had been requested by the placement agent. In

another June 2008 email, Lee wrote that the purported Acting CFO could become L&L's Acting CFO in order to meet the placement agent's "requirement."

8. On June 23, 2008, members of L&L's board and Lee held a meeting. At that meeting, Lee communicated that the purported Acting CFO would be appointed as the company's Acting CFO because the placement agent "suggested that L&L needs to have [an] Acting CFO (a Non-Officer position) as one of the conditions to move L&L's funding forward."

9. On that same day, at Lee's instruction, Lee's assistant sent the purported Acting CFO an email thanking her for becoming L&L's Acting CFO. The purported Acting CFO, however, had never accepted the Acting CFO position.

10. On July 14, 2008, the purported Acting CFO forwarded to Lee the June 23, 2008 email she received from his assistant regarding the Acting CFO position and informed Lee that she was "unable to become L&L Acting CFO as I don't have time to make any contribution to L&L. I need to take care of my own job and my kids as well . . . I wish you could find a more suitable CFO soon."

B. L&L Falsely Represents Lee's Brother and the Purported Acting CFO as the Company's CEO and Acting CFO

11. On August 12, 2008, L&L filed its Form 10-K with the Commission for its fiscal year ended April 30, 2008 (the "2008 Form 10-K"). Lee reviewed the filing before it was made public.

12. L&L, in its 2008 Form 10-K, falsely represented that Lee's brother had performed the functions of the company's CEO when, in reality, Lee continued to perform the functions of the company's CEO.

13. Moreover, in that same filing, L&L reported for the first time that the purported Acting CFO had been named as the company's Acting CFO, disclosing that "she is a CPA with experience of both U.S. and China accounting practices. She was a senior auditing manager for a New York CPA firm with PCAOB qualification, and conducted US GAAP audits for US public listed companies." These representations were false because the purported Acting CFO had rejected the Acting CFO position.

14. L&L's 2008 Form 10-K contained certifications required under Sarbanes-Oxley for the company's principal executive officer and principal financial officer, namely, its CEO and CFO. These certifications contained the electronic signatures of both Lee's brother and the purported Acting CFO by which each of them attested to, among other things, the fact that the 2008 Form 10-K contained no untrue statements of material fact.

15. Neither Lee's brother nor the purported Acting CFO, however, provided any such attestation and neither Lee's brother nor the purported Acting CFO provided any authorization to have their electronic signatures placed on their respective Sarbanes-Oxley certifications.

16. L&L, in its 2008 Form 10-K, also falsely represented that it had – with the participation of its CEO (Lee's brother) and CFO (the purported Acting CFO) – evaluated the effectiveness of the design and operation of its disclosure controls and procedures, and based on such evaluation, the company, its CEO (Lee's brother), and CFO (the purported Acting CFO) concluded that the disclosure controls and procedures were effective.

C. L&L and Lee Continue their Scheme to Falsely Represent the Purported Acting CFO as the Acting CFO

17. On August 25, 2008, after his one-year NASD suspension was over, Lee officially returned to the position of L&L's CEO and Chairman of the Board.

18. On September 15, 2008, L&L filed with the Commission its Form 10-Q for the period ended July 31, 2009 (the "First Quarter 2009 Form 10-Q"). Lee signed the filing. Like the 2008 Form 10-K, the First Quarter 2009 Form 10-Q contained a Sarbanes-Oxley certification that was ostensibly electronically signed by the purported Acting CFO. Moreover, the First Quarter 2009 Form 10-K also contained the representation that the CEO (Lee) and the purported Acting CFO had evaluated the effectiveness of the design and operation of the company's disclosure controls and procedures and those controls and procedures were effective.

19. The purported Acting CFO, however, did not serve as the company's Acting CFO in any capacity; did not authorize her electronic signature to be placed on the Sarbanes-Oxley certifications; did not perform any of the reviews or functions enumerated on the Sarbanes-Oxley certifications; and did not evaluate the effectiveness of the company's disclosure controls and procedures.

20. The First Quarter 2009 Form 10-Q also contained a Sarbanes-Oxley certification for Lee. In his Sarbanes-Oxley certification, Lee falsely certified that, to his knowledge, L&L's First Quarter 2009 Form 10-Q contained no untrue statements of material fact.

21. In approximately December 2008, L&L retained a U.S.-based investment research firm to write a research report concerning L&L. In late December 2008, the research firm emailed Lee a draft research report for his review. The research report contained a prominent section on L&L's management team, listed the purported Acting CFO as the company's CFO and stated that the purported Acting CFO "coordinates all accounting for L&L." Lee sent a revised version of the research report to the research firm with some "minor changes," but did not correct the false

statements regarding the purported Acting CFO. This report was published in approximately April 2009 and included the false statements regarding the role of the purported Acting CFO.

22. On December 22, 2008, L&L filed with the Commission its Form 10-Q for the period ended October 31, 2008, and on March 23, 2009, L&L filed with the Commission its Form 10-Q for the period ended January 31, 2009. Lee signed both of these filings. These two public filings again contained false, electronically signed, Sarbanes-Oxley certifications by the purported Acting CFO. Moreover, these two filings contained the false statements concerning the purported Acting CFO's evaluation of the effectiveness of the company's disclosure controls and procedures.

23. These two public filings also contained Lee's own Sarbanes-Oxley certification in which he again falsely certified that, to his knowledge, the Form 10-Qs contained no untrue statements of material fact.

24. As noted above, L&L placed electronic signatures on the public filings to reflect that the purported Acting CFO had signed the requisite Sarbanes-Oxley certifications. The Commission staff requested from L&L, but never received, the actual signature pages bearing the purported Acting CFO's signature for each of the requisite Sarbanes-Oxley certifications.

25. On August 12, 2009, L&L filed its 2009 Form 10-K, which contained Lee's Sarbanes-Oxley certification that, based on his and the CFO's most recent evaluation of the company's internal control over financial reporting, all fraud involving management had been disclosed to the company's auditors and to the company's Audit Committee. This certification was false because Lee had not disclosed to the company's external auditors or the company's entire Audit Committee that the purported Acting CFO was misrepresented in L&L's previous filings as its Acting CFO.

D. Lee Admits to Purported Acting CFO that She Did Not Perform the Work of the Acting CFO

26. In approximately May 2009, the purported Acting CFO became aware that L&L had falsely represented her as the company's Acting CFO in the company's public filings and, on May 6, 2009, sent Lee an email that included her July 14, 2008 email in which she rejected the Acting CFO position. In the email, the purported Acting CFO wrote that she "clearly indicated that [she] would not accept the offer of being the Acting CFO of L&L," and asked Lee for an immediate explanation.

27. On May 13, 2009, Lee emailed the purported Acting CFO and wrote, "[t]here is a misunderstanding of the Acting CFO role . . . Based on your input, your name is removed to please you." The purported Acting CFO replied that – just because she and Lee had known each other for ten years – it did not mean "that you could use my name, without authorisation, to the file 10K to the U.S. SEC." In response, on May 19, 2009, Lee emailed the purported Acting CFO and separately admitted, "[y]ou did not actually conduct the work as Acting [CFO]."

E. Lee Admits to L&L's Audit Committee Chair That Purported Acting CFO Did Not Serve as Acting CFO

28. On May 21, 2009, the purported Acting CFO emailed Shirley Kiang, who was then the Chair of L&L's Audit Committee and member of its Board of Directors. In the email, the purported Acting CFO told Kiang that she had a "serious and urgent" matter related to L&L's public information made without her knowledge and asked Kiang to investigate.

29. Kiang subsequently contacted Lee and asked whether the purported Acting CFO had actually served as the company's Acting CFO. Lee initially informed Kiang that the purported

Acting CFO had served as the company's Acting CFO and was making false allegations in an attempt to obtain money from the company.

30. Kiang asked Lee for evidence to support his assertion that the purported Acting CFO had served as the company's Acting CFO. In response, Lee provided Kiang with a letter that appeared to be addressed to the purported Acting CFO, dated May 28, 2008, and purported to be signed by Lee's brother as the company's CEO. The letter asked the purported Acting CFO to confirm that she had agreed to accept the Acting CFO position and stated that if the company did not receive a response to the letter within ten days, the company would treat her lack of response as her acceptance of the position.

31. This letter, however, was not created on May 28, 2008; was not signed by Lee's brother; and was never sent to the purported Acting CFO. Rather, this letter was created on May 26, 2009 – almost one year after the purported Acting CFO had rejected the Acting CFO position – and was stored in Lee's L&L computer network folder.

32. On June 4, 2009 – after receiving no response from Kiang – the purported Acting CFO emailed Kiang again. The purported Acting CFO again asked Kiang to investigate her allegations, specifically that she was misrepresented in L&L's filings as the company's Acting CFO, and included her July 14, 2008 email to Dickson Lee rejecting the Acting CFO position.

33. After receiving the June 4 email, Kiang again asked Dickson Lee for an explanation. Lee then admitted to Kiang that the purported Acting CFO had not actually served as the company's Acting CFO and that he had used the purported Acting CFO's name on L&L's public filings without the purported Acting CFO's permission. Lee directed Kiang to not disclose this

information to anyone, including the company's Board of Directors or the public, and told her that if this information became publicly known, L&L's stock price would drop.

34. After this, Lee continued to falsely represent to the company's Board of Directors that the purported Acting CFO had served as the company's Acting CFO.

35. During the nearly one-year period in which the purported Acting CFO was falsely represented as the company's Acting CFO, L&L raised approximately $750,000 from investors using stock purchase agreements in which L&L expressly attested to the accuracy of its public filings and private placement documents that referred the investor to publicly available additional information about the company.

F. L&L Makes Materially False and Misleading Statements on NASDAQ Application to Gain NASDAQ Listing

36. In approximately September 2009, L&L completed an application to become listed on the NASDAQ. As part of the application process, NASDAQ requested a variety of information, including confirmation that the company had made all of the required Sarbanes-Oxley certifications.

37. L&L, in a communication from Lee, confirmed that the company had made all of the required Sarbanes-Oxley certifications. L&L misled NASDAQ in this communication because it did not inform NASDAQ that its required CFO Sarbanes-Oxley certifications for its 2008 Form 10-K or its three 2009 Form 10-Qs were false. As a result, L&L gained listing on NASDAQ in February 2010.

PROPOSED CONCLUSIONS OF LAW

38. As a result of the conduct described above, L&L violated Section 10(b) of the Exchange Act and Rule 10b-5 thereunder, which prohibits fraudulent conduct in connection with the purchase or sale of securities.

39. As a result of the conduct described above, L&L violated Section 17(a) of the Securities Act, which prohibits fraudulent conduct in the offer or sale of securities.

40. As a result of the conduct described above, L&L violated Section 13(a) of the Exchange Act and Rules 13a-1 and 13a-13 thereunder, which requires issuers of registered securities to file factually accurate annual and quarterly reports. Also, L&L violated Rule 12b-20 of the Exchange Act, which requires the addition to such reports of further material information necessary to make the required report statements not misleading.

41. As a result of the conduct described above, L&L violated Rule 13a-14 of the Exchange Act, which requires, among other things, that principal executive and financial officers certify that based on their knowledge, the issuer's financial statements are accurate, and that they have disclosed all fraud, whether or not material, involving management to the company's auditors and Audit Committee.

42. As a result of the conduct described above, L&L violated Rule 13a-15 of the Exchange Act, which requires on a quarterly basis each issuer's management, with the assistance of the company's Chief Executive Officer and Chief Financial Officer, or persons performing similar functions, to evaluate the effectiveness of the company's internal disclosure controls.

43. As a result of the conduct described above, L&L violated Section 302 of Regulation S-T of the Exchange Act, which requires that (i) a signatory to an electronic filing actually sign the

signature page before or at the time of the electronic filing; (ii) the filer retain the original executed document for five years; and (iii) that the filer provide the Commission staff with a copy of the document upon request.

LEGAL ANALYSIS

A. L&L Violated Securities Act Section 17(a) and Exchange Act Section 10(b) and Rule 10b-5 Thereunder

Section 17(a) of the Securities Act prohibits fraud in the offer or sale of securities, and Section 10(b) of the Exchange Act and Rule 10b-5 prohibit fraud in connection with the purchase or sale of securities. Specifically, these antifraud provisions prohibit: (1) using any device, scheme, or artifice to defraud; (2) making material misstatements of fact or statements that omit material facts;[2] or (3) engaging in any act, practice or course of business which operates or would operate as a fraud or deceit. To establish a violation of Section 17(a)(1) of the Securities Act, Section 10(b) of the Exchange Act, and Rule 10b-5, the Commission must prove that the defendant acted with scienter. *Aaron v. SEC*, 446 U.S. 680, 695 (1980). To establish scienter, there must be a showing that the defendant acted with "intent to deceive, manipulate or defraud." *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 193 (1976). Recklessness satisfies the scienter requirement. *Aaron*, 446 U.S. at 701-702.

Essentially the same elements are required to establish a violation under Securities Act Section 17(a)(2), "though no showing of scienter is required for the SEC to obtain an injunction under subsections (a)(2) or (a)(3)." *SEC v. Monarch Funding Corp.*, 192 F.3d 295, 308 (2d Cir.

---

[2] Securities Act Section 17(a)(2) requires that a person obtain money or property by means of any untrue statement of material fact.

1999); *see also SEC v. Better Life Club of America, Inc.*, 995 F. Supp. 167, 175 (D.D.C. 1998) (citing *Aaron*, 446 U.S. at 691, 701).

1. Liability Under Exchange Act Section 10(b) and Rule 10b-5(b) Thereunder and Securities Act Section 17(a)(2)

a. False Statements and Scienter

L&L's 2008 Form 10-K and 2009 Form 10-Qs contain several false statements that serve as predicates for liability against L&L. The chart below summarizes the false statements contained in each of the above filings and the evidence of scienter for each of those false statements.

Filing	False Statements and Omissions	Scienter Evidence
2008 Form 10-K	Announcement of the purported Acting CFO as Acting CFO. (OIP ¶¶ 11, 13) Representation that Lee's brother had performed the functions of L&L's CEO. (OIP ¶¶ 11-12) Lee's brother and the purported Acting CFO's certifications, pursuant to SOX 302 and 906, in which they attested to the accuracy of the filings and the appropriateness of the internal controls. (OIP ¶¶ 11, 14-15) Disclosure that the CEO and CFO at the time had evaluated the effectiveness of the company's internal disclosure controls and found that such disclosure controls were effective. (OIP ¶¶ 11, 15-16) Omission of Dickson Lee's role in running the company. (OIP ¶¶ 11-12)	Lee's scienter can be imputed to the company. While he did not sign the filing, Lee reviewed it prior to its issuance. At this time, Lee knew that the purported Acting CFO had rejected the offer to become L&L's Acting CFO and that Lee's brother did not perform the duties of CEO.
1Q09, 2Q09, and 3Q09 Form 10-Qs	The purported Acting CFO's certifications and disclosure that CEO and CFO at the time had evaluated the effectiveness of the company's internal disclosure controls and found that such disclosure controls were effective. (OIP ¶¶ 18-20, 22-24)	Lee's scienter can be imputed to the company. Lee signed each of the Form 10-Qs and, at the time, he knew the purported Acting CFO had rejected the Acting CFO position.

b. Materiality

L&L's misstatements and omissions were material. A misstatement or omission is material if there is "a substantial likelihood that a reasonable shareholder would consider it important in making an investment decision." *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976); *see also Basic, Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988). The misrepresentations concerning the purported Acting CFO and Lee's brother were material for at least three reasons: (1) because of the importance a reasonable investor would place on a company having a CFO and CEO performing the functions of those positions; (2) because of management's central role in the misrepresentations; and (3) because the filings contained forged signatures.

L&L misrepresented that the company had both a CEO and CFO performing the requisite due diligence to certify that L&L's financial statements were accurate, its filings contained no untrue statements of material fact, and that the company had adequate internal controls, when this was not true. OIP ¶¶ 11-16, 18-20, 22-24. Knowing that there were not separate executives performing these crucial functions would have been material to a reasonable investor.

The misrepresentations were also material because Dickson Lee's central role in making the misrepresentations demonstrated a serious deficit of integrity of L&L's management. In *Gebhardt v. ConAgra*, 335 F.3d 824, 829-30 (8th Cir. 2003), the court held that management's role in a misrepresentation is a fact that can be considered when assessing materiality, as "management integrity" may be material. Lee was the company's founder and served as L&L's Chairman of the Board and Chief Executive Officer from August 2008 until the time that this proceeding was filed. OIP ¶ 2. Lee previously served as CEO from 1995 through July 2007 and Chairman at various periods. *Id.* The fact that false statements were made at the direction of L&L's Chairman and

CEO highlights serious problems with the integrity of L&L's management and would have been material to reasonable investors.

Finally, the fact that the purported Acting CFO's signature was placed on L&L's filings without her permission would also have been important to reasonable investors. In *United States v. Wheeler*, Wheeler forged the signatures of officers and directors on the registration statement. 29 F.3d 637, at *1 (9th Cir. 1994) (unpublished). Wheeler argued that there was insufficient evidence of materiality to support his conviction for securities fraud, but the court held otherwise, stating, "Investors might want to know that two or three director/officers did not sign the documents and likely did not read them." *Id.* at *1.

It would have been important to reasonable investors' decisions to invest in L&L that (1) L&L did not have a CEO and CFO performing the requisite due diligence to certify that L&L's financial statements were accurate, its filings contained no untrue statements of material fact, and that the company had adequate internal controls; (2) L&L's management was directly involved in false statements; and (3) that L&L's SEC filings contained forged signatures. As a result, L&L's misstatements were material.

c. "In Connection With"

L&L's fraud was in connection with the offer, purchase, and sale of securities. The "in connection with" requirement is a broad and flexible standard. *See SEC v. Zandford*, 535 U.S. 813, 819 (2002); *SEC v. Gorsek*, 222 F. Supp. 2d 1099, 1111 (C.D. Ill. 2001) ("[T]he meaning of [in connection with] in SEC actions remains as broad and flexible as is necessary to accomplish the statue's purpose of protecting investors ... essentially the Defendants' actions must merely 'touch' the sale of securities or in some way influence an investment decision"). Here, L&L made

misrepresentations in Forms 10-K and 10-Q filed with the Commission. OIP ¶¶ 11-16, 18-20, 22-24. These filings "were plainly designed to reach investors." *SEC v. Wolfson*, 539 F.3d 1249, 1263 (10th Cir. 2008). Moreover, during the nearly one-year period in which the purported Acting CFO was falsely represented as the company's Acting CFO, L&L solicited investors using stock purchase agreements in which L&L expressly attested to the accuracy of its public filings and private placement documents that referred the investor to publicly available additional information about the company. OIP ¶ 35. The "in connection with" requirement is, therefore, easily met here.

d. Money or Property for 17(a)(2) Liability

L&L also violated Securities Act Section 17(a)(2) because it obtained – in the offer or sale of securities – money or property by means of the above false statements. In particular, from August 2008 to June 2009, L&L raised approximately $750,000 from various investors through either stock purchase agreements in which L&L attested to the accuracy of its filings or private placement documents that directed investors to obtain additional information about the company through publicly available documents, including L&L's false SEC filings. OIP ¶ 35.

2. Scheme Liability Under Section 17(a)(1) and (3) of the Securities Act and Subsections (a) and (c) of Exchange Act Rule 10b-5

L&L also violated Sections 17(a)(1) and (3) of the Securities Act and subsections (a) and (c) of Exchange Act Rule 10b–5, commonly referred to as the "scheme liability" provisions. The Supreme Court provided guidance on the acts that could form the basis of scheme liability pursuant to Rule 10b-5(a) and (c) in *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148 (2008), holding that "it would be erroneous" to "suggest there must be a specific oral or written statement before there could be liability under § 10(b) or Rule 10b-5" and that "[c]onduct itself can be deceptive . . . ." *Id.* at 158. The Commission, in interpreting the scope of Rule 10b-5(a) and (c),

has concluded "that to employ a 'deceptive' device or to commit a 'deceptive' act is to engage in conduct that gives rise to a false appearance of fact." *John P. Flannery*, Securities Act Release No. 9689, Exchange Act Release No. 73840, Investment Advisers Act Release No. 3981, 2014 WL 7145625, at *12 n.52. (Dec. 15, 2014).

L&L's repeated misstatements in SEC filings and to NASDAQ in order to obtain listing may also form the basis for scheme liability. In *Flannery*, the Commission held that "[i]t would require a wholly arbitrary reading of [the] terms ['device,' 'scheme,' 'artifice to defraud,' and deceptive 'act' as they are used in Rule 10b-5(a) and (c)] to construe them as *excluding* the making, drafting, or devising of a misstatement." *Id.* The Commission explained, "we have never suggested that the subsections of Rule 10b-5 must be read exclusively, such that conduct that falls within the purview of one— *e.g.*, misstatements, within subsection (b)—cannot also fall within another. To the contrary, we have explicitly advised that we consider the subsections of the rule 'mutually supporting rather than mutually exclusive.'" *Id.* (quoting *Cady, Roberts & Co.*, Exchange Act Release No. 6668, 40 SEC Docket 907, 1961 WL 60638, at *4 (Nov. 8, 1961)). The false statements that form the basis of L&L's liability pursuant to Section 10(b) and Rule 10b-5(b) and Securities Act Section 17(a)(2), may also, therefore, form the basis of L&L's scheme liability.

But L&L, through Lee, also engaged in deceptive conduct separate and apart from the misstatements that form the basis of its liability pursuant to Section 10(b) and Rule 10b-5(b) and Section 17(a)(2). L&L engaged in conduct to make it appear that other persons – namely Lee's brother and the purported Acting CFO – were responsible for and performed critical aspects of L&L's business when that was not true. There were two primary purposes to the scheme – one, to raise money from investors, and two, to have L&L gain listing on NASDAQ. L&L was successful

on both of those fronts and carried out the scheme through deceptive conduct separate from the underlying misstatements claims.

In particular, Lee created a false letter from Lee's brother ostensibly confirming the purported Acting CFO's acceptance of the Acting CFO position (OIP ¶¶ 30-31); instructed Kiang to conceal that the purported Acting CFO never served as the company's Acting CFO (OIP ¶ 33); lied to L&L's board members regarding the purported Acting CFO (OIP ¶ 34); and arranged for the purported Acting CFO's digital signature to be placed on L&L's certifications without her authorization, which enabled L&L to represent to NASDAQ that its Sarbanes-Oxley certifications were complete. OIP ¶¶ 14-15, 19, 24. The foregoing knowing, deceptive acts also demonstrate Lee's scienter, which is imputed to L&L.

B. Violations of Exchange Act Rule 13a-14

Rule 13a–14 requires that certain reports, including 10–K and 10-Q reports, be accompanied by certifications. *See* 17 C.F.R. § 240.13a–14. Specifically, "[e]ach principal executive and principal financial officer of the issuer . . . must sign a certification." *Id.* Rule 13a-14 is also violated by the filing of false certifications. *See, e.g., SEC v. Subaye*, __F. Supp. 2d __, 2014 WL 448414 (S.D.N.Y. Feb. 4, 2014) (allegations of filing a false certification stated a claim for a 13a-14 violation). L&L violated Exchange Act Rule 13a-14 because its 2008 Form 10-K and three 2009 Form 10-Qs did not actually contain the certification of L&L's principal financial officer. Instead, the company's filings included certifications made in the purported Acting CFO's name when, in fact, she was not L&L's principal financial officer, did not perform the functions of a principal financial officer, and had not consented to the use of her name in that capacity. OIP ¶¶ 11, 14-16, 18-19, 22.

C. Violations of Exchange Act Rule 13a-15

L&L violated Exchange Act Rule 13a-15(b), which requires on a quarterly basis each issuer's management, with the assistance of the company's CEO and CFO, or persons performing similar functions, to evaluate the effectiveness of the company's internal disclosure controls. 17 C.F.R. § 240.13a-15(b). In connection with its 2008 Form 10-K, and three subsequent 2009 Form 10-Qs, L&L had no CFO in place to provide any assistance to these evaluations, as the purported Acting CFO – who L&L had represented as the company's Acting CFO – never served in that capacity. OIP ¶¶ 11, 13-16, 18-19, 22.

D. Violation of Exchange Act Section 13(a) and Rules 12b-20, 13a-1 and 13a-13

At all relevant times, L&L was a reporting company subject to the provisions of Section 13(a) of the Exchange Act. OIP ¶ 1. Section 13(a) and Rules 13a-1 and 13a-13 require issuers to file accurate annual and quarterly reports. 15 U.S.C. § 78m(a); 17 C.F.R. §§ 240.13a-1, 240.13a-13. Rule 12b-20 also requires disclosure of such additional material information as may be necessary to make the required statements not misleading. 17 C.F.R. § 240.12b-20. Implicit in these provisions is the requirement that the information reported be true, correct, and complete. *See SEC v. IMC International, Inc.*, 384 F. Supp. 889, 893 (N.D. Texas), *aff'd mem.*, 505 F.2d 733 (5th Cir. 1974). No showing of scienter is necessary to establish an issuer's violation of the corporate reporting provisions set forth in Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13. *SEC v. McNulty*, 137 F.3d 732, 736 (2d Cir. 1998); *SEC v. Wills,* 472 F. Supp. 1250, 1268 (D.D.C. 1978). Consequently, an issuer violates the reporting provisions if it files materially inaccurate reports or omits material information necessary to render the statements made

in the reports not misleading. *See SEC v. Koenig*, 469 F.2d 198, 200 (2d Cir. 1972); *see also Kaufman & Broad, Inc. v. Belzberg,* 522 F. Supp. 35, 42 (S.D.N.Y. 1981).

L&L, in its 2008 Form 10-K and three 2009 Form 10-Qs, materially misrepresented the purported Acting CFO as L&L's Acting CFO, and its 2009 Form 10-K included Lee's false certification that he had disclosed all fraud, whether or not material, involving management to the company's external auditors and the company's Audit Committee. OIP ¶¶ 11, 13, 18-19, 22, 25. Accordingly, L&L violated Section 13(a) of the Exchange Act and Rules 12b-20, 13a-1, and 13a-13.

E. Section 302 of Regulation S-T

Section 302 of Regulation S-T of the Exchange Act requires that (1) a signatory to an electronic filing actually sign the signature page either before or at the time of the electronic filing; (2) the filer retain the original executed document for five years, and (3) that the filer provide the Commission staff with a copy of the document upon request. 17 C.F.R. § 232.302. L&L violated Section 302, as the purported Acting CFO never signed the certifications for the 2008 Form 10-K or the subsequent Form 10-Qs, and Lee's brother never signed the certification for the 2008 Form 10-K. OIP ¶¶ 14-15, 18-19, 22, 24. Despite the Division's requests, L&L has never produced any signature pages for the purported Acting CFO. OIP ¶ 24.

AUTHORITY FOR SANCTIONS SOUGHT

The Division respectfully request that the Court issue an order against L&L ordering: (1) disgorgement of $750,000, plus prejudgment interest of $160,772, for a total amount of $910,772; (2) a third-tier civil penalty of $2,250,000; and (3) a cease-and-desist order for each of the violations alleged by the Division.

A. Disgorgement of $750,000

The Division is seeking disgorgement of $750,000, the amount of money raised from investors by L&L during the period when it was engaging in the fraudulent scheme. Disgorgement is an equitable remedy designed both to deprive a wrongdoer of his unjust enrichment and, just as importantly, to deter others from violating the securities laws. *SEC v. Blatt,* 583 F.2d 1325, 1335 (5th Cir. 1978); *SEC v. First City Fin. Corp.,* 890 F.2d 1215, 1230 (D.C. Cir. 1989); *SEC v. Manor Nursing Ctrs., Inc.*, 458 F.2d 1082, 1103-1104 (2d Cir. 1972) ("effective enforcement of the federal securities laws requires that the SEC be able to make violations unprofitable").

The Court "has broad discretion not only in determining whether or not to order disgorgement but also in calculating the amount to be disgorged." *SEC v. First Jersey,* 101 F.3d 1450, 1475 (2d Cir. 1996). The Division need only show a "reasonable approximation of a defendant's ill-gotten gains." *SEC v. Calvo*, 378 F.3d 1211, 1217 (11th Cir. 2004). "The [Division's] burden for showing 'the amount of assets subject to disgorgement … is light: Exactitude is not a requirement.'" *SEC v. ETS Payphones, Inc.*, 408 F.3d 727, 735 (11th Cir. 2005). As the D.C. Circuit has explained, "[r]ules for calculating disgorgement must recognize that separating legal from illegal profits exactly may at times be a near-impossible task." *SEC v. First City Fin. Corp.*, 890 F.2d 1215, 1231 (D.C. Cir. 1989).

In cases such as this one involving fraud directly in connection with offers and sales of securities, a reasonable approximation of ill-gotten gains is all of the proceeds from those sales. *See SEC v. Platform Wireless Int'l Corp.*, 617 F.3d 1072, 1096 (9th Cir. 2010) ("total proceeds . . . [is] a reasonable approximation of the profits obtained from [defendants'] unlawful sales."); *Manor Nursing Ctrs., Inc.*, 458 F.2d at 1104 ("We hold that it was appropriate for the district court to order

[defendants] to disgorge the proceeds received in connection with the [securities] offering."); *SEC v. Tourre*, 4 F. Supp. 3d 579, 590 (noting that the "upward limit" of disgorgement is based on the amount received from investors even if a large portion of those funds then went to third parties: "The Second Circuit has upheld the disgorgement of all profits received, even though a portion of those profits were later transferred to another party. . . ."); *SEC v. Interlink Data Network of Los Angeles, Inc.*, No. 93-3073, 1993 WL 603274, *12 (C.D. Cal. Nov. 15, 1993) (ordering disgorgement of gross amount received from fraudulent securities offering); *SEC v. Robinson*, No. 00-Civ-7452 RMB AJP, 2002 WL 1552049, *9 (S.D.N.Y. Jul. 16, 2002) ("[I]t is appropriate to order disgorgement of the entire (gross) proceeds received in connection with the offering.").

As alleged in the OIP and deemed true by virtue of L&L's default, during the relevant period, the company raised approximately $750,000 from investors. OIP ¶ 35. In particular, pursuant to stock purchase agreements that contained false representations concerning the accuracy of L&L's public filings, L&L raised a total of approximately $450,000 from two institutional investors; and pursuant to private placement agreements that expressly directed investors to learn more about L&L through publicly-available information about the company, such as its false public filings, L&L raised an additional $300,000 from eight different investors. *Id.* It is thus appropriate for the Court to order L&L to disgorge the $750,000 it raised during the period of its fraud.

B. <u>Prejudgment Interest of $160,772</u>

Defendants should be ordered to pay prejudgment interest on any disgorgement amount ordered by the Court. Ordering a wrongdoer to pay prejudgment interest is consistent with the equitable purpose of the remedy of disgorgement:

> It comports with the fundamental notions of fairness to award prejudgment interest. The defendants had the benefit of nearly $2 million dollars for the nine and one-half years between the fraud and today's disgorgement order. In order to deprive the defendants of their unjust enrichment, the court orders the defendants to disgorge . . . prejudgment interest.

SEC v. Hughes Capital,Corp. 917 F. Supp. 1080, 1085 (D.N.J. 1996). Applying this logic here, an award of prejudgment interest against L&L is appropriate, since it will have had the benefit of $750,000 obtained by fraudulent means until the Court enters its order.

The IRS underpayment of federal income tax rate as set forth in 26 U.S.C. § 6621(a)(2) is appropriate for calculating prejudgment interest in SEC enforcement actions. That rate of interest "reflects what it would have cost to borrow the money from the government and therefore reasonably approximates one of the benefits the defendant derived from its fraud." *First Jersey*, 101 F.3d at 1476.

From August 2008 to June 2009, L&L raised approximately $750,000 from various investors through fraudulent means. OIP ¶ 35. Using the IRS underpayment of federal income tax rate calculated from June 30, 2009 through the date of this filing, the amount of prejudgment interest on $750,000 is $160,772. *See* Exhibit C, L&L PJI Calculation.

C. Third-Tier Penalty of $2,250,000

The Division seeks a civil penalty of $2,250,000 against L&L. Under Securities Act Section 8A and Exchange Act Section 21B, the Commission may impose a monetary penalty if a respondent has willfully violated provisions of these Acts or the rules thereunder, so long as such a penalty is in the public interest. Pursuant to Exchange Act Section 21B(c), in considering whether a penalty is in the public interest, the Commission may consider the following factors: (1) fraud; (2) harm to others; (3) unjust enrichment; (4) prior violations; (5) need for deterrence; and (6) such other matters as justice may require. *See also* Securities Act Section 8A(g).

Here, the factual allegations deemed to be true by virtue of L&L's default show that: (1) L&L committed fraud in willful violation of Securities Act Section 17(a), Exchange Act Section 10(b) and Rule 10b-5; (2) innocent investors were defrauded by L&L; and (3) L&L was unjustly enriched through the $750,000 it raised by virtue of its false statements, omissions, and other deceptive conduct. Moreover, penalties are appropriate to send a message to, among others, similarly-situated issuers with offshore operations that conduct like L&L's cannot be tolerated.

Where, as here, misconduct (1) involved fraud, deceit, manipulation, or deliberate or reckless disregard of a regulatory requirement, and (2) directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act of omission, a "third-tier" penalty is appropriate. *See* 15 U.S.C. §77t(d)(2). Third-tier penalties are appropriate here in light of L&L's fraudulent conduct and the fact that such conduct directly resulted in substantial losses to those who invested in L&L.

For purposes of monetary penalties, a distinct violation occurs *each time* a respondent violates the securities laws. *See SEC v. Lazare Indus., Inc.,* 294 F. App'x. 711, 715 (3d Cir. 2008) (each sale of unregistered stock was a separate violation); *SEC v. Coates,* 137 F. Supp. 2d 413, 430 (S.D.N.Y. 2001) (calculating penalty by multiplying number of misrepresentations by penalty amount); *SEC v. Tourre,* 4 F. Supp. 2d 579, 593-494 (S.D.N.Y. 2014) (calculating $650,000 penalty based on each misstatement).

In calculating L&L's penalty, the Division requests that the Court count each of L&L's false public filings – three occurring in 2008 and one occurring in late March 2009 – as separate violations. The applicable amount for violations occurring in 2008 was $500,000 and the

applicable amount for violations occurring after March 3, 2009 was $725,000, which equals a possible statutory maximum penalty of $2.25 million. *See* 17 C.F.R. §201.1001-.1004.

D. Cease-and-Desist Order

Securities Act Section 8A and Exchange Act Section 21C empower the Commission to order a person who has been found to have violated or caused any violation of those Acts, to cease and desist from committing or causing such violations and any future violations. In deciding whether to issue a cease-and-desist order, the court may consider several factors including the seriousness of the violation, the isolated or recurrent nature of the violation, the respondent's state of mind, the sincerity of the respondent's assurances against future violations, the respondent's recognition of the wrongful nature of his or her conduct, the respondent's opportunity to commit future violations, whether the violation is recent, the degree of harm to investors or the marketplace resulting from the violation, and the remedial function to be served by the cease-and-desist order in the context of any other sanctions being sought in the same proceedings. *KPMG Peat Marwick LLP,* File No. 3-9500, 2001 SEC LEXIS 98, *116 (Jan. 19, 2001), *aff'd sub nom KPMG v. SEC,* 289 F.3d 109 (D.C. Cir. 2002). This inquiry is a flexible one, and no one factor controls. *Id.* It is undertaken not to determine whether there is a "reasonable likelihood" of future violations but to guide the court's discretion. *Id.*

"Absent evidence to the contrary," a single past violation ordinarily suffices to establish a risk of future violations. *Id.* at *102-03 ("evidence showing that a respondent violated the law once probably also shows a risk of repetition that merits our ordering him to cease and desist"). The showing necessary to demonstrate the likelihood of future violations is "significantly less than that required for an injunction." *Id.* at *114.

The following factors, among others, weigh in favor of imposing a cease-and-desist order against L&L: (1) the repeated false statements and deceptive conduct engaged in by L&L through Lee were egregious; (2) the conduct was willful; (3) investors were directly harmed by L&L's fraud; and (4) L&L engaged in no remediation. For these reasons, a cease-and-desist order is appropriate on each of the claims brought by the Division.

CONCLUSION

L&L's conduct violated the antifraud provisions of the Securities Act and the Exchange Act. The Court should find him so liable and impose an order of disgorgement of $750,000, prejudgment interest of $160,772, civil penalties of $2,250,000, and a cease-and-desist order for each of the violations alleged against L&L.

Dated: May 29, 2015

Respectfully Submitted,

Cheryl L. Crumpton
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549
202-551-4459
[redacted]

Counsel for Division of Enforcement

EXHIBIT A

FILED ENTERED
LODGED RECEIVED

JAN 22 2015

AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

Hon. Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff, v. L&L ENERGY, INC., Defendant.	NO. CR14-024RAJ **PLEA AGREEMENT**

The United States of America, by and through Annette L. Hayes, Acting United States Attorney for the Western District of Washington, and Katheryn Kim Frierson, Assistant United States Attorney for said District, L&L Energy, Inc., and its attorney, Mark Bartlett, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c):

1. **The Charge**. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters a plea of guilty to one count of Securities Fraud, as charged in Count 6 of the Superseding Indictment, in violation of Title 18, United States Code, Section 1348.

By entering this plea of guilty, Defendant hereby waives all objections to the form of the charging document. Defendant further understands that before entering

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

this guilty plea, Defendant's authorized representative will be placed under oath. Any statement given by Defendant's authorized representative under oath may be used by the United States in a prosecution for perjury or false statement.

2. **Elements of the Offense**. The elements of the offense of Securities Fraud, as charged in Count 6 of the Superseding Indictment, in violation of Title 18, United States Code, Section 1348, are as follows:

First, an agent, employee, or servant of the defendant corporation, L&L Energy, Inc., acting on behalf of L&L Energy, Inc., knowingly executed a scheme or plan to defraud or a scheme or plan for obtaining money or property by means of false or fraudulent pretenses, representations, or promises;

Second, the scheme or plan to defraud or to obtain money or property was in connection with a security of a publicly traded company, specifically L&L Energy, Inc.;

Third, the statements made or facts omitted as part of the scheme or plan were material; and

Fourth, the defendant's agent, employee or servant acted with the intent to defraud.

3. **The Penalties**. Defendant understands that the statutory penalties applicable to the offense of Securities Fraud, as charged in Count 6, are as follows: a maximum fine of (a) five hundred thousand dollars ($500,000), or (b) twice the gross gain or loss from the offense; a period of probation of at least one (1) year and up to five (5) years; and a four hundred dollar ($400.00) special assessment. Defendant agrees that the special assessment shall be paid at or before the time of sentencing.

Defendant agrees that any monetary penalty the Court imposes, including the special assessment, fine, costs, or restitution, is due and payable immediately, and

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

further agrees to cooperate with the United States Attorney's Office in providing financial information.

4. **Rights Waived by Pleading Guilty.** Defendant understands that by pleading guilty, Defendant knowingly and voluntarily waives the following rights:

a. The right to plead not guilty and to persist in a plea of not guilty;

b. The right to a speedy and public trial before a jury of peers;

c. The right to the effective assistance of counsel at trial;

d. The right to be presumed innocent until guilt has been established beyond a reasonable doubt at trial;

e. The right to confront and cross-examine witnesses against Defendant at trial;

f. The right to compel or subpoena witnesses to appear on the Defendant's behalf at trial; and

g. The right to appeal a finding of guilt or any pretrial rulings.

5. **Ultimate Sentence**. Defendant acknowledges that no one has promised or guaranteed what sentence the Court will impose.

6. **Statement of Facts**. The parties agree on the following facts. Defendant admits that, by and through the actions of its employee, agent and servant, specifically, Dickson Lee, it is guilty of the charged offense:

a. At all times relevant to the charged offense, L&L Energy, Inc. (hereinafter, "L&L") was a Nevada corporation that claimed to be engaged in various aspects of the coal business within the People's Republic of China. L&L was a public reporting company subject to the United States Securities and Exchange Commission's (the "SEC") periodic filing requirements pursuant to a registration under Section 12 of the Securities Exchange Act of 1934. L&L shares were also publicly traded. In 2008, L&L's stock was quoted on the Over-the-Counter Bulletin Board ("OTCBB"). In

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

February 2010, L&L commenced trading on the NASDAQ under the ticker symbol "LLEN." L&L maintained its U.S. headquarters in Tukwila, Washington.

b. DICKSON LEE was the Chief Executive Officer ("CEO") of L&L. LEE has held the office of CEO for most of L&L's history. In July 2007, LEE voluntarily resigned the title of CEO, but in truth retained day to day control over the company. In August 2008, LEE formally reassumed the title of CEO.

c. Beginning sometime in 2008, LEE sought to have L&L stock qualify for listing on a national exchange, such as the NASDAQ. In order to do so, LEE was aware that L&L had to maintain compliance with SEC reporting requirements, including providing with each annual and quarterly report certifications by the CEO and the Chief Financial Officer ("CFO") that, among other things, attested to the accuracy of the reports and assured the public that any fraud involving management have been disclosed. These certifications are known as Section 302 and Section 906 Certifications.

d. Sometime in May or June 2008, after the resignation of L&L's previous CFO, N.L., a Hong Kong resident and a prior employee of L&L, was offered the position of interim CFO. In July 2008, N.L. declined to accept the job. Thereafter, N.L. did no work for L&L in any capacity.

e. After July 2008, however, LEE continued to make and caused to be made false representations that N.L. was L&L's acting CFO. In furtherance of the scheme, LEE submitted and caused to be submitted to the SEC from L&L's Tukwila office the following L&L annual and quarterly reports containing false and fraudulent representations about N.L. and her work as CFO, including false CFO Section 302 and 906 Certifications that were purportedly signed by N.L., when, in fact, N.L. had no involvement with the annual and quarterly filings in any capacity and had not signed any Section 302 or 906 Certifications:

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

Date of Filing	Submission
Aug 14, 2008	L&L Annual Report (Form 10-K) for fiscal year ended April 30, 2008
Sept 15, 2008	L&L Quarterly Report (Form 10-Q) for quarter ended July 31, 2008
Dec 22, 2008	L&L Quarterly Report (Form 10-Q) for quarter ended October 31, 2008
March 23, 2009	L&L Quarterly Report (Form 10-Q) for quarter ended January 31, 2009

f. In about May 2009, N.L. discovered that L&L had submitted false annual and quarterly reports with the SEC regarding her role. N.L. contacted LEE and threatened to report her findings to the SEC. On about July 30, 2009, LEE entered into a settlement agreement with N.L. whereby in exchange for her silence regarding the false filings, L&L agreed to pay her money and stock owed to her by the company for past work.

g. Shortly after signing the agreement, LEE caused the filing of L&L's annual report for the fiscal year ended April 30, 2009, in which the company failed to disclose the truth about N.L., failed to disclose the existence of the settlement agreement with N.L., and furthermore, included a certification by LEE in which he falsely certified that he had disclosed all fraud involving management.

h. Finally, in September 2009, L&L submitted its application for listing on the NASDAQ. As part of the application process, NASDAQ requested that L&L confirm in writing that the company was in compliance with all SEC reporting requirements, including the submission of all section 302 and 906 certifications. On

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

approximately November 19, 2009, LEE responded in writing and falsely assured NASDAQ that the company was in compliance. As a result, in February 2010, L&L was accepted for listing and debuted on the NASDAQ.

7. **United States Sentencing Guidelines**. Defendant understands and acknowledges that the Court must consider the sentencing range calculated under the United States Sentencing Guidelines and possible departures under the Sentencing Guidelines together with the other factors set forth in Title 18, United States Code, Section 3553(a), including: (1) the nature and circumstances of the offense; (2) the history and characteristics of the defendant; (3) the need for the sentence to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense; (4) the need for the sentence to afford adequate deterrence to criminal conduct; (5) the need for the sentence to protect the public from further crimes of the defendant; (6) the need to provide the defendant with educational and vocational training, medical care, or other correctional treatment in the most effective manner; (7) the kinds of sentences available; (8) the need to provide restitution to victims; and (9) the need to avoid unwarranted sentence disparity among defendants involved in similar conduct who have similar records. Accordingly, Defendant understands and acknowledges that:

a. The Court will determine applicable Defendant's Sentencing Guidelines range at the time of sentencing;

b. After consideration of the Sentencing Guidelines and the factors in 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the maximum term authorized by law;

c. The Court is not bound by any recommendation regarding the sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines range offered by the parties or the United States Probation Department, or by any stipulations or agreements between the parties in this Plea Agreement; and

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

d. Defendant may not withdraw his guilty plea solely because of the sentence imposed by the Court.

8. **Sentencing Recommendation**. Pursuant to Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure, the parties agree to jointly recommend at the time of sentencing that the Court impose, as part of its sentence, the following:

a. Defendant will be placed on organizational probation for a period of five (5) years pursuant to USSG § 8D1.1 and 8D1.2 ; and

b. Defendant will agree to never list or offer on any United States securities exchange its securities or otherwise offer for sale by means of private placement its securities to anyone in the United States.

9. **Restitution.** Pursuant to 18 U.S.C. § 3663A(c)(3)(B), the parties agree and the United States will recommend that restitution is not applicable in this case because determining complex issues of fact related to identifying particular victims and the amount of those victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process. The parties agree that determining whether and how much any particular individual investor lost in terms of share price due to the failure of the company to be truthful about the existence of a CFO would overly complicate and prolong the sentencing process that it would unreasonably burden the Court and the sentencing process.

10. **Application of the Agreement.** This Agreement shall bind Defendant and its subsidiaries and affiliates, including all subsidiaries and affiliates, and all successors in interest, if applicable, and all successors and assigns. Defendant shall provide immediate notice to the United States Attorney's Office of any of the following: any corporate name changes; and purchase, sale or reorganization or divestiture; or any other change impacting upon or affecting this Plea Agreement. No change in name, change in

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

1
2 corporate or individual control, business reorganization, change in ownership, merger,
3 change of legal status, sale or purchase of assets, or similar action shall alter Defendant's
4 responsibilities under this Agreement. Defendant understands and agrees that it shall not
5 engage in any action to seek to avoid the obligations and conditions set forth in this
6 Agreement.
7 11. **Corporate Authorization.** Defendant represents that it is authorized to
8 enter into this Agreement and to bind itself and any subsidiaries to the terms of this
9 Agreement. On or before the date of entry and filing of the Plea Agreement, defendant
10 shall provide to the United States Attorney's Office and the Court a written statement
11 certifying that Defendant corporation is authorized to enter into and comply with all the
12 provisions of this Plea Agreement; that a representative of L&L has been authorized by
13 Defendant to enter a guilty plea and attend the sentencing hearing on behalf of
14 Defendant; and that Defendant and its authorized representative have observed all
15 required corporate formalities for such authorizations.
16 12. **Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,
17 the United States Attorney's Office for the Western District of Washington agrees to
18 dismiss and not to prosecute Defendant for any additional offenses known to it as of the
19 time of this Agreement that are based upon evidence in its possession at this time, and
20 that arise out of the conduct giving rise to this investigation. In this regard, Defendant
21 recognizes the United States has agreed not to prosecute all of the criminal charges the
22 evidence establishes were committed by Defendant solely because of the promises made
23 by Defendant in this Agreement. Defendant agrees, however, that for purposes of
24 preparing the Presentence Report, the United States Attorney's Office will provide the
25 United States Probation Office with evidence of all conduct committed by Defendant.
26 Defendant agrees that any charges to be dismissed before or at the time of
27 sentencing were substantially justified in light of the evidence available to the United
28

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant with a basis for any future claims under the "Hyde Amendment," Pub.L. No. 105-119 (1997).

13. **Breach, Waiver, and Post-Plea Conduct.** Defendant further understands that if, after the date of this Agreement, Defendant should engage in illegal conduct, the United States is free under this Agreement to file additional charges against Defendant or to seek a sentence that takes such conduct into consideration by requesting the Court to apply additional adjustments or enhancements in its Sentencing Guidelines calculations in order to increase the applicable advisory Guidelines range, and/or by seeking an upward departure or variance from the calculated advisory Guidelines range. Under these circumstances, the United States is free to seek such adjustments, enhancements, departures, and/or variances even if otherwise precluded by the terms of the plea agreement.

14. **Waiver of Appeal**. In addition to the right to appeal any pretrial rulings which are waived by a plea of guilty, as part of this Plea Agreement and on the condition that the Court imposes a sentence that it within or below the Sentencing Guidelines range that is determined by the Court at the time of sentencing, Defendant waives to the full extent of the law:

a. Any right conferred by Title 18, United States Code, Section 3742 to appeal the sentence, including any restitution order imposed; and

b. Any right to bring a collateral attack against the conviction and sentence, including any restitution order imposed, except as it may relate to the effectiveness of legal representation.

If Defendant breaches this Plea Agreement at any time by appealing or collaterally attacking (except as to effectiveness of legal representation) the conviction or sentence in any way, the United States may prosecute Defendant for any counts,

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

including those with mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea Agreement.

15. **Voluntariness of Plea.** Defendant, through its authorized representative, agrees that it has entered into this Plea Agreement freely and voluntarily and that no threats or promises, other than the promises contained in this Plea Agreement, were made to induce Defendant to enter this plea of guilty.

16. **Statute of Limitations.** In the event this Agreement is not accepted by the Court for any reason, or Defendant has breached any of the terms of this Plea Agreement, the statute of limitations shall be deemed to have been tolled from the date of the Plea Agreement to: (1) thirty (30) days following the date of non-acceptance of the Plea Agreement by the Court; or (2) thirty (30) days following the date on which a breach of the Plea Agreement by Defendant is discovered by the United States Attorney's Office.

//

//

//

//

//

//

//

//

//

//

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

17. **Completeness of Agreement.** The United States and Defendant acknowledge that these terms constitute the entire Plea Agreement between the parties. This Agreement binds only the United States Attorney's Office for the Western District of Washington. It does not bind any other United States Attorney's Office or any other office or agency of the United States, or any state or local prosecutor.

Dated this 22nd day of January, 2015.

For L&L ENERGY, INC.:

MARK BARTLETT
Authorized Corporate Representative
on Behalf of Defendant L&L Energy, Inc.

MARK BARTLETT
Attorney for Defendant

KATHERYN KIM FRIERSON
Assistant United States Attorney

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

EXHIBIT B

FILED ENTERED
LODGED RECEIVED
SEP 23 2014
AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

Hon. Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff, v. DICKSON LEE, Defendant.	NO. CR14-024RAJ **PLEA AGREEMENT**

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Katheryn Kim Frierson, Assistant United States Attorney for said District, Dickson Lee, and his attorney, Russell Aoki, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c):

1. **Waiver of Indictment**. Defendant, having been advised of the right to be charged by Indictment, agrees to waive that right and enter a plea of guilty to the charge brought by the United States Attorney in a Superseding Information.

2. **The Charges**. Defendant, having been advised of the right to have this matter tried before a jury, agrees to waive that right and enters pleas of guilty to two counts of Securities Fraud, as charged in Count 1 and Count 2, both in violation of Title 18, United States Code, Section 1348.

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

1 By entering these pleas of guilty, Defendant hereby waives all objections to the
2 form of the charging document. Defendant further understands that before entering his
3 guilty pleas, he will be placed under oath. Any statement given by Defendant under oath
4 may be used by the United States in a prosecution for perjury or false statement.
5 3. **Elements of the Offense**. The elements of the offense of Securities Fraud,
6 as charged in both Count 1 and Count 2, in violation of Title 18, United States Code,
7 Section 1348, are as follows:
8 First, the defendant knowingly executed a scheme or plan to defraud or a
9 scheme or plan for obtaining money or property by means of false or fraudulent
10 pretenses, representations, or promises;
11 Second, the scheme or plan to defraud or to obtain money or property was
12 in connection with a security of a publicly traded company, specifically L&L Energy,
13 Inc.;
14 Third, the statements made or facts omitted as part of the scheme or plan
15 were material; and
16 Fourth, the defendant acted with the intent to defraud.
17 4. **The Penalties**. Defendant understands that the statutory penalties
18 applicable to the offense of Securities Fraud, as charged in Count 1 and Count 2, are as
19 follows: For each count, a maximum term of imprisonment of up to 25 years, a fine of up
20 to $250,000, a period of supervision following release from prison of up to 5 years, and a
21 mandatory special assessment of $100 dollars. If a probationary sentence is imposed, the
22 probation period can be for up to five (5) years. Defendant agrees that the special
23 assessment shall be paid at or before the time of sentencing.
24 Defendant understands that supervised release is a period of time following
25 imprisonment during which he will be subject to certain restrictive conditions and
26 requirements. Defendant further understands that if supervised release is imposed and he
27 violates one or more of the conditions or requirements, Defendant could be returned to
28 prison for all or part of the term of supervised release that was originally imposed. This

UNITED STATES ATTORNEY
700 STEWART STREET, SUITE 5220
SEATTLE, WASHINGTON 98101
(206) 553-7970

EXHIBIT C

U.S. Securities and Exchange Commission

Division of Enforcement

Prejudgment Interest Report

L&L Energy PJI Calculation

Quarter Range	Annual Rate	Period Rate	Quarter Interest	Principal+Interest
Violation Amount				$750,000.00
07/01/2009-09/30/2009	4%	1.01%	$7,561.64	$757,561.64
10/01/2009-12/31/2009	4%	1.01%	$7,637.88	$765,199.52
01/01/2010-03/31/2010	4%	0.99%	$7,547.17	$772,746.69
04/01/2010-06/30/2010	4%	1%	$7,706.30	$780,452.99
07/01/2010-09/30/2010	4%	1.01%	$7,868.68	$788,321.67
10/01/2010-12/31/2010	4%	1.01%	$7,948.01	$796,269.68
01/01/2011-03/31/2011	3%	0.74%	$5,890.21	$802,159.89
04/01/2011-06/30/2011	4%	1%	$7,999.62	$810,159.51
07/01/2011-09/30/2011	4%	1.01%	$8,168.18	$818,327.69
10/01/2011-12/31/2011	3%	0.76%	$6,187.90	$824,515.59
01/01/2012-03/31/2012	3%	0.75%	$6,150.08	$830,665.67
04/01/2012-06/30/2012	3%	0.75%	$6,195.95	$836,861.62
07/01/2012-09/30/2012	3%	0.75%	$6,310.76	$843,172.38
10/01/2012-12/31/2012	3%	0.75%	$6,358.35	$849,530.73
01/01/2013-03/31/2013	3%	0.74%	$6,284.20	$855,814.93
04/01/2013-06/30/2013	3%	0.75%	$6,401.03	$862,215.96
07/01/2013-09/30/2013	3%	0.76%	$6,519.77	$868,735.73
10/01/2013-12/31/2013	3%	0.76%	$6,569.07	$875,304.80
01/01/2014-03/31/2014	3%	0.74%	$6,474.86	$881,779.66
04/01/2014-06/30/2014	3%	0.75%	$6,595.23	$888,374.89
07/01/2014-09/30/2014	3%	0.76%	$6,717.57	$895,092.46
10/01/2014-12/31/2014	3%	0.76%	$6,768.37	$901,860.83
01/01/2015-03/31/2015	3%	0.74%	$6,671.30	$908,532.13
04/01/2015-04/30/2015	3%	0.25%	$2,240.22	$910,772.35

Prejudgment Violation Range	Quarter Interest Total	Prejudgment Total
07/01/2009-04/30/2015	**$160,772.35**	**$910,772.35**