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6 UNITED STATES DISTRICT COURT  
7 NORTHERN DISTRICT OF CALIFORNIA  
8 SAN FRANCISCO DIVISION  
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10 SECURITIES AND EXCHANGE COMMISSION,  
11 Plaintiff,  
12  
13 vs.  
14 LUCA INTERNATIONAL GROUP, LLC, ET AL.,  
15 Defendants and Relief Defendants.  
16

Case No. 3:15-CV-03101 CRB

**PLAINTIFF’S MOTION TO ESTABLISH A  
FAIR FUND, APPOINT A DISTRIBUTION  
AGENT, AND AUTHORIZE THE SEC TO  
APPROVE PAYMENTS OF FEES AND  
EXPENSES OF DISTRIBUTION AGENT  
WITHOUT FURTHER COURT ORDER**

**Hearing Date: TBD  
Time:  
Courtroom: 6  
Judge: Charles R. Breyer**

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18 Plaintiff Securities and Exchange Commission (the “Commission” or “SEC”) respectfully  
19 moves this Court for an Order to: (i) establish a Fair Fund (the “Fair Fund”) pursuant to Section  
20 308(a) of Sarbanes-Oxley Act of 2002, as amended by the Dodd-Frank Act of 2010 [15 U.S.C.  
21 §7246], (ii) appoint KCC Class Action Services, LLC (“KCC”) as distribution agent (“Distribution  
22 Agent”) of the Fair Fund, and (iii) authorize the Commission to approve and arrange for payment of  
23 fees and expenses of the Distribution Agent from the Fair Fund without further Court order. The  
24 creation of a Fair Fund and appointment of a Distribution Agent is a necessary precursor to creating a  
25 plan, proposing a plan and ultimately distributing any funds. The Commission will work with the  
26 Distribution Agent to propose a plan and will return to the Court to move for approval of the  
27 proposed plan. The Commission submits a proposed order contemporaneously filed herewith.  
28

**Background**

On July 6, 2015, the SEC filed a Complaint against Luca International Group, LLC; Luca Resources Group, LLC; Luca Energy Fund, LLC; Entholpy EMC, Inc.; Bingqing Yang; Lei (Lily) Lei; Anthony V. Pollace; and Yong (Michael) Chen (collectively, the “Defendants”) and against Luca Operation, LLC; Luca Barnett Shale Joint Venture; Luca To-Kalon Energy, LLC; Luca Oil, LLC; Luca I, Limited Partnership; Luca Oil II Joint Venture; J&Q Int’l Trading, Inc.; Skyline Trading, LLC; and Xiang Long Zhou (collectively, the “Relief Defendants”). *See* Dkt. No. 1.

On June 20, 2016, the Court entered a final judgment as to Defendant Anthony V. Pollace finding him liable for a civil penalty of \$25,500.<sup>1</sup> *See* Dkt. No. 173. On October 25, 2019, the Court entered a final judgment as to Defendant Lei (Lily) Lei finding her liable for disgorgement of \$464,190 together with prejudgment interest of \$28,293 and a civil penalty of \$35,000. *See* Dkt. 291. On June 26, 2020, the Court entered a final judgment as to Defendants Yong (Michael) Chen and Entholpy EMC, Inc. finding them each jointly and severally liable for disgorgement of \$457,100 together with prejudgment interest of \$27,775 and a civil penalty of \$35,000. *See* Dkt. No. 307. On June 9, 2021, the Court entered a final judgment as to Defendant Bingqing Yang for disgorgement of \$209,672 together with prejudgment interest of \$64,579 and a civil penalty of \$425,749. *See* Dkt. No. 325.<sup>2</sup>

The Commission holds \$650,500 paid by the Defendants pursuant to the Final Judgments, in an SEC-designated account at the United States Department of the Treasury.

**A. Establishment of a Fair Fund**

To facilitate any ultimate distribution, the Commission moves the Court to establish a Fair

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<sup>1</sup> On July 26, 2016, the Court entered final judgment as to Defendants Luca International Group, LLC; Luca Resources Group, LLC; Luca Energy Fund, LLC; and Relief Defendant Luca Operation, LLC finding them each jointly and 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.

<sup>2</sup> In a related Commission action, *In the Matter of Wisteria Global, Inc., et al.*, Admin. Proc. File No. 3-16675, the Commission ordered \$1,138,985.00 in disgorgement in accordance with its Order Instituting Administrative and Cease-and-Desist Proceedings Pursuant to Sections 15(b) and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions and Cease-and-Desist Orders, Exchange Act Rel. No. 75362 (July 6, 2015). The Judgment was paid in full. Pursuant to that Order, the funds paid may be added to or combined with any other fair fund created in a related civil injunctive action or any proceeding arising from the same or substantially similar facts.

1 Fund”) for the funds collected from Defendants and the funds from the parallel proceedings,  
2 Wisteria Global and any future funds collected from the Defendants and/or Relief Defendants,  
3 pursuant to Section 308(a) of the Sarbanes-Oxley Act, as amended, which provides in relevant part:

4 If in any judicial or administrative action brought by the Commission under the  
5 securities laws...the Commission obtains an order requiring disgorgement against  
6 any person for a violation of such laws..., or such person agrees in settlement of  
7 any such action to such disgorgement, and the Commission also obtains pursuant  
8 to such laws a civil penalty against such person, the amount of such civil penalty  
shall, on the motion or at the direction of the Commission, be added to and  
become part of the disgorgement fund for the benefit of the victims of such  
violation.

9 *See* 15 U.S.C. § 7246(a).

10 Each of the Final Judgments entered against the Defendants expressly authorize the Commission  
11 to “propose a plan to distribute the Fund subject to the Court’s approval.” The Commission brought this  
12 action under the securities laws and Defendants paid disgorgement and a civil penalty pursuant to the  
13 Final Judgments. Accordingly, the requirements of Section 308(a) of the Sarbanes-Oxley Act of 2002,  
14 as amended, have been satisfied, and the Court should establish a Fair Fund to facilitate ultimate  
15 distribution of the funds in the Fair Fund to investors harmed by Defendants’ conduct alleged in the  
16 Complaint.

17 The creation of the Fair Fund is a necessary precursor to creating a plan of distribution for court  
18 approval and ultimately distributing any funds. The Fair Fund will be comprised of the combined  
19 balances of the Luca and Wisterial Global funds. The combined balance as of June 15, 2023 is  
20 \$2,018,402.12.

21 **B. Appointment of a Distribution Agent**

22 The Commission also requests an Order appointing KCC as the Distribution Agent for the Fair  
23 Fund to facilitate the development of a distribution plan and the ultimate handling of any distribution in  
24 this case. If appointed, KCC will work with the Commission’s staff in formulating a distribution plan  
25 and obtaining the Court’s approval of the plan, as well as determining the identities of injured investors  
26 and investor harm, establishing a claims process to evaluate and verify claims, fielding inquiries from  
27 investors and overseeing the ultimate distribution of the Fair Fund. Once a distribution plan is approved,  
28 KCC will submit quarterly progress reports to the Commission staff. When the distribution of funds has

1 | been completed, a final accounting report in a format to be provided by Commission staff will be  
2 | submitted for court approval.

3 |       KCC is very qualified for the tasks required of a distribution agent and will be fair, efficient,  
4 | cost-effective and timely in its efforts. KCC has administered more than 7,000 settlements and has  
5 | handled numerous large distributions for the Commission in the past, including having prepared and  
6 | administered the distribution plan in the *SEC v. Bank of America*, 09-civ-6829 (S.D.N.Y) and 10-civ-  
7 | 0215 (S.D.N.Y). It has experience in drafting and finalizing distribution plans, defining eligibility and  
8 | the measure of damages, collecting and validating information from claimants, remitting payments and  
9 | handling all related audit, review and reporting processes.

10 | **C.     Authorize Commission to Pay Distribution Agent Fees and Expenses**

11 |       In an effort to make timely payment to the Distribution Agent for services provided, the  
12 | Commission further requests that the Commission staff be authorized to approve and arrange for  
13 | payment of fees and expenses of the Distribution Agent from the Fair Fund without further Court  
14 | order. The Commission staff follows a rigorous process for reviewing and approving invoices before  
15 | payment is made. The Commission's Office of Distributions requires and reviews, in a multi-step  
16 | process, detailed invoices from the Distribution Agent that describes the work performed, the billing  
17 | rate, and the time expended on each task. If the Court authorizes the Commission staff to approve  
18 | and arrange for payment of all future Distribution Agent fees and expenses from the Fair Fund  
19 | without further Court order, the Commission staff will use its expertise in distributions and  
20 | knowledge of this specific distribution to review all proposed charges. The SEC staff will approve  
21 | and arrange for payment only of appropriate and properly documented fees and expenses of the  
22 | Distribution Agent. All payments of Distribution Agent fees and expenses will be reported to this  
23 | Court in the final accounting of the Fair Fund once the distribution is complete.

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

3  
4 Dated: June 23, 2023

Respectfully submitted,

5  
6 /s/ Jennifer A. Cardello

Jennifer A. Cardello (Mass Bar No. 657253)

Attorney for Plaintiff

SECURITIES AND EXCHANGE COMMISSION

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**CERTIFICATE OF SERVICE**

1  
2 I, Jennifer A. Cardello, am a citizen of the United States, over 18 years of age and am a party  
3 to this action. I hereby certify that on June 23, 2023, I caused the foregoing document to be  
4 electronically filed with the clerk of the court for the U.S. District Court of Northern District of  
5 California, San Francisco Division, using the electronic case filing system of the court. The electronic  
6 case filing system sends a “Notice of Electronic Filing” to all attorneys of record who have consented  
7 in writing to accept this Notice as service of this document by electronic means.

8  
9 /s/ Jennifer A. Cardello

10 Jennifer A. Cardello  
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