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5  
6 UNITED STATES DISTRICT COURT  
7 NORTHERN DISTRICT OF CALIFORNIA  
8 SAN FRANCISCO DIVISION  
9

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

Case No. 3:15-CV-03101 CRB

**DISTRIBUTION PLAN**

17  
18 **I. OVERVIEW**

19 1. This Distribution Plan (the “Plan”) was developed by the Securities and Exchange  
20 Commission (the “Commission”) in accordance with practices and procedures customary in Fair  
21 Fund administrations. This Plan provides for the distribution of a Fair Fund, comprised of  
22 disgorgement, prejudgment interest, and civil money penalties paid by Anthony Pollace, Lei (Lily)  
23 Lei, Yong (Michael) Chen, Entholpy EMC, Inc., and Bingqing Yang (collectively, the “Defendants”)  
24 in this proceeding and disgorgement paid by Hiroshi Fujigami and Wisteria Global, Inc. in a related  
25 administrative proceeding.

26 2. As described more specifically below, the Plan seeks to compensate investors who  
27 were harmed by the Defendants’ conduct alleged in the Complaint, in connection with investments in  
28 unregistered offerings. As calculated using the methodology detailed in the Plan of Allocation

1 (attached as Exhibit A), U.S. investors will be compensated for their losses arising from investments  
2 in unregistered offerings in Luca Barnett Shale Joint Venture, Luca Oil LLC, Luca To-Kalon Energy  
3 LLC, Luca I Limited Partnership, and Luca Oil II Joint Venture (the “Securities”) that were  
4 purchased between January 1, 2007 and December 31, 2014 (the “Relevant Period”). Based on  
5 information obtained by the Commission during its investigation and the review and analysis of  
6 applicable records, the Commission has reasonably concluded that it has all records necessary to  
7 identify U.S. investors. As a result, the Fair Fund is not being distributed according to a claims-made  
8 process.

9       3.       The Commission has custody of the Fair Fund and shall retain control of the assets of  
10 the Fair Fund. The Court retains jurisdiction over its implementation.

## 11 **II. BACKGROUND**

12       4.       On July 6, 2015, the SEC filed a Complaint against Luca International Group, LLC;  
13 Luca Resources Group, LLC; Luca Energy Fund, LLC; Entholpy EMC, Inc.; Bingqing Yang; Lei  
14 (Lily) Lei; Anthony V. Pollace; and Yong (Michael) Chen (collectively, the “Defendants”) and  
15 against Luca Operation, LLC; Luca Barnett Shale Joint Venture; Luca To-Kalon Energy, LLC; Luca  
16 Oil, LLC; Luca I, Limited Partnership; Luca Oil II Joint Venture; J&Q Int’l Trading, Inc.; Skyline  
17 Trading, LLC; and Xiang Long Zhou (collectively, the “Relief Defendants”). *See* Dkt. No. 1. The  
18 SEC alleged that, from 2007 through at least 2014, Defendant Yang through her wholly-owned  
19 management companies orchestrated a \$68 million affinity fraud which targeted the Chinese  
20 American community as well as investors in Asia to invest in unregistered offerings of a series of  
21 investment funds. *See id.* Defendants Yang and Lei represented to investors that their money would  
22 be invested in oil and gas drilling operations yielding annual rates of return of 20-30% and  
23 guaranteeing 12-15% returns to some investors. *See id.* Defendant Yang comingled investor funds  
24 and used new investor money to make sham profit payments to earlier investors while diverting  
25 millions of dollars for her personal use. *See id.*

26       5.       On June 20, 2016, the Court entered a final judgment as to Defendant Anthony V.  
27 Pollace finding him liable for a civil penalty of \$25,500. *See* Dkt. No. 173. On October 25, 2019, the  
28 Court entered a final judgment as to Defendant Lei (Lily) Lei finding her liable for disgorgement of

1 \$464,190 together with prejudgment interest of \$28,293 and a civil penalty of \$35,000. *See* Dkt. 291.  
2 On June 26, 2020, the Court entered a final judgment as to Defendants Yong (Michael) Chen and  
3 Entholpy EMC, Inc. finding them each jointly and severally liable for disgorgement of \$457,100  
4 together with prejudgment interest of \$27,775 and a civil penalty of \$35,000. *See* Dkt. No. 307. On  
5 June 9, 2021, the Court entered a final judgment as to Defendant Bingqing Yang for disgorgement of  
6 \$209,672 together with prejudgment interest of \$64,579 and a civil penalty of \$425,749. *See* Dkt.  
7 No. 325 (collectively, the “Final Judgments”).

8         6. In a related administrative proceeding, Wisteria Global, Inc. and Hiroshi Fujigami (the  
9 “Respondents”) were ordered to pay disgorgement of \$1,138,985 (the “Related Action”). The  
10 Commission created a fair fund (the “Wisteria Fair Fund”) and ordered that the Wisteria Fair Fund  
11 could be combined with any other fair fund created in a related civil injunctive action or proceeding.  
12 *See* Order Instituting Administrative and Cease-and-Desist Proceedings pursuant to Sections 15(b)  
13 and 21C of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial  
14 Sanctions and Cease-and-Desist Orders, Exchange Act Rel. No. 75362 (July 6, 2015), (Admin. Proc.  
15 File No. 3-16675).

16         7. The Commission holds \$650,500 paid by the Defendants pursuant to the Final  
17 Judgments and \$1,143,840.30 paid by the Respondents into the Wisteria Fair Fund. As of June 21,  
18 2024, the Fair Fund balance is \$1,990,496.29.

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

22         9. On July 13, 2023, the Court established a fair fund to hold all funds collected from the  
23 Defendants (the “Luca Fair Fund” or “Fair Fund”) and appointed KCC Class Action Services, LLC  
24 (“KCC”) as distribution agent (“Distribution Agent”) for the Fair Fund. *See* Dkt. No. 330. Any  
25 additional funds received pursuant to the outstanding judgments in this matter will be added to the  
26 Fair Fund. *See id.* The Wisteria Fair Fund has been combined with the Luca Fair Fund in this matter.  
27 The Luca Fair Fund has been deposited in an SEC-designated account at the United States Treasury,  
28 and any accrued interest will be added to the Fair Fund.

1 **III. DEFINITIONS**

2 As used in this Plan, the following definitions will apply:

3 10. **“Administrative Costs”** shall mean any administrative costs and expenses, including  
4 without limitation tax obligations, the fees and expenses of the Tax Administrator and the  
5 Distribution Agent, bond premium expenses, and investment and banking costs.

6 11. **“Certification Date”** means the date established in accordance with this Plan by  
7 which a Preliminary Claimant’s Certification Form must be postmarked or submitted electronically in  
8 order to receive consideration under the Plan. The Certification Date shall be sixty (60) days from  
9 the mailing of the Plan Notice.

10 12. **“Certification Form”** means the form that will be emailed or mailed to each  
11 Preliminary Claimant. The Certification Form will require confirmation of the name and mailing  
12 address of the Payee to which a Distribution Payment should be issued. The Certification Form will  
13 also require confirmation of the Recognized Loss listed in the Plan Notice. If the Preliminary  
14 Claimant disputes the amount of Recognized Loss listed in the Plan Notice, the Preliminary Claimant  
15 should follow the Dispute Process in paragraph 54. The Certification Form will require sufficient  
16 documentation reflecting any Preliminary Claimant’s purchases of the Securities including signed  
17 private placement or private offering memoranda and evidence of payment(s). The Certification  
18 Form will also require disclosure of any payments or compensation received in connection with these  
19 Securities. The Certification Form will require tax identification information from the Preliminary  
20 Claimant and a certification that the Preliminary Claimant is not an Excluded Party. The  
21 Certification Form may be accompanied by tax forms, as required, relating to the tax treatment of any  
22 distribution. The Certification Form will be available in English and Chinese translations.

23 13. **“Determination Notice”** means the notice sent by the Distribution Agent within forty-  
24 five (45) days of the Certification Date to all Preliminary Claimants that submitted a deficient  
25 Certification Form. The Determination Notice will provide to each Preliminary Claimant whose  
26 claim is deficient, in whole or in part, the reason(s) for the deficiency and in the event the claim is  
27 denied, the Determination Notice will state the reason(s) for such denial. The Determination Notice  
28 will also notify the Preliminary Claimant of the opportunity to cure any deficiency, request

1 reconsideration, or dispute the determination made by the Distribution Agent and provide instructions  
2 regarding what is required to do so.

3 14. **“Distribution Payment”** means a payment from the Fair Fund to a Payee in  
4 accordance with the terms of this Plan.

5 15. **“Eligible Claimant”** means a Preliminary Claimant, who is determined to have  
6 suffered a Recognized Loss pursuant to the Plan of Allocation, and who is not an Excluded Party or  
7 an Unresponsive Preliminary Claimant.

8 16. **“Excluded Party”** shall mean: (a) the Defendants or Respondents, and Defendants’ or  
9 Respondents’ advisers, agents, nominees, assigns, creditors, heirs, distributees, spouses, parents,  
10 children, or controlled entities; (b) the Distribution Agent, its employees, and those Persons assisting  
11 the Distribution Agent in its role as the Distribution Agent; (c) any purchaser or assignee of another  
12 Person’s right to obtain a recovery from the Fair Fund for value; provided, however, that this  
13 provision shall not be construed to exclude those Persons who obtained such a right by gift,  
14 inheritance or devise and (d) foreign investors in the Securities.

15 17. **“Fair Fund”** means the fund created by the Court pursuant to Section 308(a) of the  
16 Sarbanes-Oxley Act of 2002, for the benefit of investors harmed by Defendants’ violations alleged in  
17 the Complaint and includes the funds collected in the Related Action. Any additional funds collected  
18 from the Defendants or Relief Defendants, pursuant to the Final Judgments will be added to the Fair  
19 Fund.

20 18. **“Final Determination Notice”** shall mean the written notice sent by the Distribution  
21 Agent to: (a) all Preliminary Claimants who timely submitted a Certification Form, notifying the  
22 Preliminary Claimants of the Distribution Agent’s eligibility determination, and (b) those Preliminary  
23 Claimants who have not responded to the Plan Notice by returning a Certification Form and/or other  
24 requested documentation as described in paragraph 47 notifying the Preliminary Claimant that he,  
25 she, or it has been deemed an Unresponsive Preliminary Claimant. The Distribution Agent will not  
26 send a Final Determination Notice to a Preliminary Claimant, if his, her, or its Plan Notice was  
27 returned as “undeliverable.” The Final Determination Notice will further provide each Preliminary  
28 Claimant that is determined to be an Eligible Claimant with his, her, or its Recognized Loss. The

1 Final Determination Notice will constitute the Distribution Agent’s final ruling regarding the  
2 eligibility status of the claim and will be available in English and Chinese translations.

3 19. **“Net Available Fair Fund”** means the Fair Fund, plus any interest or earnings, less  
4 Administrative Costs.

5 20. **“Payee”** means an Eligible Claimant whose distribution amount is equal to or greater  
6 than \$10.00, as calculated in accordance with the Plan of Allocation, who is determined to receive a  
7 Distribution Payment.

8 21. **“Person”** means natural individuals as well as legal entities such as corporations,  
9 partnerships, or limited liability companies.

10 22. **“Plan Notice”** means a written notice from the Distribution Agent to each Preliminary  
11 Claimant regarding the Court’s approval of the Plan, including, as appropriate: a statement  
12 characterizing the distribution; a link to the approved Plan posted on the Commission’s website and  
13 instructions for requesting a copy of the Plan; the Certification Form, along with specification of any  
14 information needed from the Preliminary Claimant to prevent him, her, or it from being deemed an  
15 Unresponsive Preliminary Claimant; his, her or its Recognized Loss (if known); a description of the  
16 tax information reporting and other related tax matters; the procedure for the distribution as set forth  
17 in the Plan; and the name and contact information for the Distribution Agent as a resource for  
18 additional information or to contact with questions regarding the distribution. The Plan Notice will  
19 be available in English and Chinese translations.

20 23. **“Plan of Allocation”** means the methodology by which a Preliminary Claimant’s  
21 Recognized Loss is calculated. The Plan of Allocation is attached as Exhibit A.

22 24. **“Preliminary Claimant”** means a U.S. Investor, or their lawful U.S. successors,  
23 identified by the Distribution Agent based on its review and analysis of applicable records obtained  
24 by the Commission during its investigation, who may have suffered a loss arising from investments  
25 in the Securities during the Relevant Period. Preliminary Claimant also means a U.S. Investor who  
26 became aware of this Plan through the Summary Notice or other means, contacted the Distribution  
27 Agent and followed the procedures for requesting a Plan Notice as described in Paragraph 46.

28 25. **“Recognized Loss”** means the amount of loss calculated in accordance with the Plan

1 of Allocation.

2 26. **“Relevant Period”** means the period of time between January 1, 2007 and December  
3 31, 2014.

4 27. **“Securities”** refers to shares of unregistered offerings in Luca Barnett Shale Joint  
5 Venture, Luca Oil LLC, Luca To-Kalon Energy LLC, Luca I Limited Partnership, and Luca Oil II  
6 Joint Venture purchased by U.S. Investors during the Relevant Period.

7 28. **“Summary Notice”** means the notice published in print newspapers or internet media  
8 that shall include, at a minimum, a statement of the purpose of the Fair Fund and the Plan, the means  
9 of obtaining a Plan Notice and Certification Form. The Summary Notice will be published in print  
10 newspapers or equivalent internet media outlets one (1) time and will appear within ten (10) days of  
11 initial mailing of the Plan Notice. The Summary Notice will be available in English and Chinese  
12 translations.

13 29. **“Unresponsive Preliminary Claimant”** means a Preliminary Claimant whose  
14 address and/or email the Distribution Agent has not been able to verify and/or who does not timely  
15 respond to the Distribution Agent’s attempts to obtain information, including any information sought  
16 in the Plan Notice and Certification Form. Unresponsive Preliminary Claimants will not be eligible  
17 for a distribution under the Plan.

18 30. **“U.S. Investor”** means a Person who is a United States citizen, resident, or Green  
19 Card holder at this time of the purchase of the Securities.

#### 20 **IV. TAX COMPLIANCE**

21 31. The Tax Administrator shall handle the tax obligations of the Fair Fund. The Tax  
22 Administrator will be compensated for reasonable fees and expenses from the Fair Fund.

23 32. The Fair Fund constitutes a Qualified Settlement Fund (“QSF”) under Section 468B(g)  
24 of the Internal Revenue Code of 1986, as amended, 26 U.S.C. § 468B(g), and related regulations, 26  
25 C.F.R. §§ 1.468B-1 through 1.468B-5. The Tax Administrator is the administrator of such QSF for  
26 purposes of Treas. Reg. § 1.468B-2(k)(3)(I) and shall satisfy the tax-related administrative  
27 requirements imposed by Treas. Reg. § 1.468B-2, including, but not limited to:

28 (a) Obtaining a taxpayer identification number;

1 (b) Requesting funds necessary for the timely payment of all applicable taxes, the  
2 payment of taxes for which the Tax Administrator has received funds, and the  
3 filing of applicable returns; and

4 (c) Fulfilling any information reporting or withholding requirements imposed on  
5 distributions from the Fair Fund.

6 **V. DISTRIBUTION AGENT**

7 33. The Distribution Agent will be responsible for administering the Fair Fund in  
8 accordance with the Plan. This will include, among other things, taking reasonable steps to obtain  
9 accurate email or mailing information for Preliminary Claimants; establishing a website and staffing  
10 a call center to address inquiries regarding the Plan; producing and placing the Summary Notice in  
11 print newspapers and/or internet media outlets, disseminating the Plan Notice; preparing accountings;  
12 cooperating with the Tax Administrator appointed by the Court to satisfy any tax liabilities and to  
13 ensure compliance with income tax reporting requirements, including but not limited to Foreign  
14 Account Tax Compliance Act (FATCA); disbursing the Fair Fund in accordance with this Plan, as  
15 ordered by the Court; and researching and reconciling errors and reissuing payments, when possible.

16 34. To carry out the purposes of this Plan, the Distribution Agent is authorized to make  
17 and implement immaterial changes to the Plan upon agreement of the Commission staff. If a change  
18 is deemed to be material by the Commission staff, Court approval is required prior to implementation  
19 by amending the Plan.

20 35. The Distribution Agent may extend any procedural deadline contained in the Plan for  
21 good cause shown, if agreed upon by the Commission staff.

22 36. The Distribution Agent is entitled to rely on all outstanding rules of law and Court  
23 orders. The Distribution Agent will not be liable to anyone, except the Commission on behalf of the  
24 Fair Fund for a pecuniary loss to the Fair Fund, for any action taken or omitted by the Distribution  
25 Agent in connection with the Plan and all Preliminary Claimants will have no claims against the  
26 Distribution Agent, its employees, agents, and attorneys in connection with the Plan and the  
27 administration of the Fair Fund, and will be deemed enjoined from prosecuting or asserting any such  
28



1 claims, except upon a finding by this Court of gross negligence or reckless disregard of duty under  
2 this Plan.

3 37. The Distribution Agent is authorized to enter into agreements with third-parties as  
4 may be appropriate or necessary in the administration of the Fair Fund, provided such third-parties  
5 are not excluded pursuant to other provisions of this Plan. In connection with such agreements, the  
6 third-parties shall be deemed to be agents of the Distribution Agent under this Plan.

7 38. The Distribution Agent may be removed at any time by the Court and replaced with a  
8 successor. In the event the Distribution Agent decides to resign, it will first give written notice to the  
9 Commission staff and the Court of such intention, and such resignation will not be effective until the  
10 Court has appointed a successor. The Distribution Agent will then follow such instructions as such  
11 successor or the Court provides in turning over management of the Fair Fund.

12 39. The Distribution Agent will be entitled to payment from the Fair Fund of reasonable  
13 fees and expense incurred in the performance of its duties (including any such fees and expenses  
14 incurred by agents, consultants or third-parties retained by the Distribution Agent in furtherance of its  
15 duties).

## 16 **VI. PLAN PROCEDURES**

### 17 Specification and Notification of Preliminary Claimants

18 40. Using information obtained during its investigation, the Commission has identified the  
19 Preliminary Claimants. In addition, the Distribution Agent will publish a Summary Notice  
20 acceptable to the Commission staff in print newspapers or equivalent internet media outlet one (1)  
21 time and within ten (10) days of the initial mailing of the Plan Notice. The Summary Notice will be  
22 published in English and Chinese translation. To respond to the Summary Notice, U.S. Investors  
23 should follow the procedures to request a Plan Notice as described in Paragraph 46.

### 24 Procedures for Locating and Notifying Preliminary Claimants

25 41. Within forty-five (45) days of Court approval of the Plan, the Distribution Agent will:

- 26 (a) Establish and maintain a website, [www.LucaFairFund.com](http://www.LucaFairFund.com), devoted solely to  
27 the Fair Fund. The Fair Fund's website will make available a copy of the  
28 approved Plan, include a copy of the Plan Notice, the Certification Form and

1 related materials in downloadable form, and such other information that the  
2 Distribution Agent believes will be beneficial to Preliminary Claimants.

3 (b) Establish and maintain a toll-free telephone number, 866-575-0322, for  
4 Preliminary Claimants to call and speak to a live representative of the  
5 Distribution Agent during its regular business hours or, outside of such hours,  
6 to hear pre-recorded information about the Fair Fund.

7 (c) Establish and maintain a traditional mailing address, P.O. Box 301134, Los  
8 Angeles, CA 90030-1134, and an email address, info@LucaFairFund.com,  
9 which will be listed on all correspondence from the Distribution Agent to  
10 Preliminary Claimants as well as on the Fair Fund's website.

11 (d) Establish and maintain a case specific database of all Preliminary Claimants  
12 based upon information provided to and obtained by the Distribution Agent,  
13 including the last known physical and email addresses.

14 (e) Run a National Change of Address search to retrieve updated addresses for all  
15 records in the database, thereby ensuring the mailing information for  
16 Preliminary Claimants is up-to-date; and

17 (f) Send a Plan Notice and Certification Form to each Preliminary Claimant's last  
18 known email address (if known) and/or mailing address.

19 42. The Commission staff retains the right to review and approve any material posted on  
20 the Fair Fund's website, any communication with investors, and any scripts used in connection with  
21 communications with investors.

#### 22 Undeliverable Mail

23 43. The Distribution Agent will attempt to locate any Preliminary Claimant whose mailing  
24 is returned as undeliverable by the U.S. Postal Service or otherwise, including an advanced address  
25 search using commercially available resources, if feasible, and will document all such efforts. If  
26 another address is obtained, the Distribution Agent will then resend it the Preliminary Claimant's new  
27 address within ten (10) days of receipt of the returned mail. If the mailing is returned again, and the  
28 Distribution Agent, despite best practicable efforts, is unable to find a Preliminary Claimant's correct

1 address, the Distribution Agent, in its discretion, may deem such Preliminary Claimant an  
2 Unresponsive Preliminary Claimant.

3 44. The Distribution Agent, with Commission staff approval, may engage a third-party  
4 search firm to conduct more rigorous searches for U.S. Investors whose mailings are returned as  
5 undeliverable.

6 45. Any Preliminary Claimant who relocates or otherwise changes contact information  
7 after receipt of the Plan Notice must promptly communicate any change in address or contact  
8 information to the Distribution Agent.

9 Procedures to Request Plan Notice

10 46. Any U.S. Investor who does not receive a Plan Notice and Certification Form, but who  
11 is aware of this Plan (e.g., through other Preliminary Claimants or the Summary Notice) and believes  
12 they should be included as a Preliminary Claimant should contact the Distribution Agent within  
13 seventy-five (75) days from the approval of the Plan to establish that they should be considered a  
14 Preliminary Claimant. The Distribution Agent will send the U.S. Investor a Plan Notice and  
15 Certification Form requiring documentation within fifteen (15) days of being contacted by the U.S.  
16 Investor.

17 Certification Requirement and Failure to Respond to Plan Notice

18 47. In order to maintain classification as a Preliminary Claimant, a completed  
19 Certification Form, together with all required supporting documentations, must be signed by the  
20 Preliminary Claimant under penalty of perjury under the laws of the United States and returned to the  
21 Distribution Agent by the deadline stated in the Plan Notice, the Certification Date. The Certification  
22 Form must be executed by the Preliminary Claimant, unless the Distribution Agent accepts such  
23 Certification Form from a successor, heir, administrator, or other Person authorized to act on the  
24 Preliminary Claimant's behalf. Those authorized to act on behalf of Preliminary Claimants will be  
25 eligible to participate in the distribution to the same extent the original investor would have been  
26 eligible under the terms of the Plan.

27 48. The Distribution Agent will review all Certification Forms. Each Preliminary  
28 Claimant will have the burden of proof to establish their identity as a Preliminary Claimant, or his,

1 her, or its successor. The Distribution Agent will have the right to request, and the Preliminary  
2 Claimant will have the burden of providing to the Distribution Agent, any additional information  
3 and/or documentation deemed relevant by the Distribution Agent.

4 49. If a Preliminary Claimant fails to return the Certification Form and all supporting  
5 documentation within sixty (60) days from the mailing of the Plan Notice, the Distribution Agent will  
6 make no fewer than two (2) attempts to contact the Preliminary Claimant by mail, telephone or email,  
7 if known to the Distribution Agent. If a Preliminary Claimant fails to respond to the Distribution  
8 Agent's contact attempts as described in this paragraph, the Distribution Agent, in its discretion, may  
9 remove such Preliminary Claimant from the distribution and deem such Preliminary Claimant an  
10 Unresponsive Preliminary Claimant.

#### 11 Review of Certification Forms and Deficiency Process

12 50. The Distribution Agent will provide a Determination Notice within forty-five (45)  
13 days of the Certification Date to each Preliminary Claimant who has filed a deficient Certification  
14 Form with the Distribution Agent. The Determination Notice will provide to each Preliminary  
15 Claimant whose claim is deficient, in whole or in part, the reason(s) for the deficiency (e.g., failure to  
16 provide required information or documentation). In the event the claim is denied, in whole or in part,  
17 the Determination Notice will state the reason(s) for such denial. The Determination Notice will also  
18 notify the Preliminary Claimant of the opportunity to cure any deficiency, request reconsideration, or  
19 dispute the determination made by the Distribution Agent and provide instructions regarding what is  
20 required to do so.

21 51. Any Preliminary Claimant with a deficient claim will have thirty (30) days from the  
22 date of the Determination Notice to cure any deficiencies identified in the Determination Notice.

23 52. Any Preliminary Claimant seeking reconsideration of a denied claim must advise the  
24 Distribution Agent in writing within thirty (30) days of the date of the Determination Notice. All  
25 requests for reconsideration must include the necessary documentation to substantiate the basis upon  
26 which the Preliminary Claimant is requesting reconsideration of his, her, or its claim.

27 53. The Distribution Agent will have the authority, in its sole discretion, to waive  
28 technical claim deficiencies and approve claims on a case-by-case basis, or in groups of claims. All

1 determinations made by the Distribution Agent in accordance with the Plan in any dispute, request  
2 for reconsideration, or request to cure a deficient claim will be final and not subject to appeal.

### 3 Dispute Process

4 54. Disputes will be limited to the amount of the Preliminary Claimant's calculated  
5 Recognized Loss. Within sixty (60) days of the mailing of the Plan Notice and Certification Form,  
6 the Distribution Agent must receive a written communication detailing any dispute along with any  
7 supporting documentation. The Distribution Agent will investigate the dispute, and such  
8 investigation will include a review of the written dispute as well as any supporting documentation.

### 9 Final Determination Notices

10 55. Within one hundred seventy five (175) days of the initial mailing of the Plan Notices,  
11 the Distribution Agent will send a Final Determination Notice to (a) all Preliminary Claimants who  
12 timely submitted a Certification Form, notifying the Preliminary Claimants of the Distribution  
13 Agent's eligibility determination, and (b) those Preliminary Claimants who have not responded to the  
14 Plan Notice, as described in paragraph 47 above, notifying the Preliminary Claimant that he, she, or it  
15 has been deemed an Unresponsive Preliminary Claimant. The Distribution Agent will not send a  
16 Final Determination Notice to a Preliminary Claimant, if his, her, or its Plan Notice was returned as  
17 "undeliverable." The Final Determination Notice will further provide each Preliminary Claimant that  
18 is determined to be an Eligible Claimant with his, her, or its Recognized Loss. The Final  
19 Determination Notice will constitute the Distribution Agent's final ruling regarding the eligibility  
20 status of the claim and will be available in English and Chinese translations.

### 21 Distribution Methodology

22 56. The Distribution Agent will calculate each Preliminary Claimant's Recognized Loss in  
23 accordance with the Plan of Allocation. All Preliminary Claimants who are determined to have a  
24 Recognized Loss, and who are not deemed an Excluded Party or an Unresponsive Preliminary  
25 Claimant will be deemed an Eligible Claimant. All Eligible Claimants who are determined to receive  
26 a Distribution Payment will be deemed a Payee.

### 27 Establishment of a Reserve

28 57. Before determining the amount of funds available for distribution and calculating each

1 Payee's Distribution Payment, the Distribution Agent, in conjunction with the Tax Administrator,  
2 will establish a reserve to pay Administrative Costs and to accommodate any unexpected  
3 expenditures (the "Reserve").

4 58. After all Distribution Payments are made and Administrative Costs paid, any  
5 remaining amounts in the Reserve will become part of the Residual described in paragraph 78 below.

#### 6 Preparation of the Payment File

7 59. Within two hundred fifty (250) days of Court approval of the Plan, the Distribution  
8 Agent will compile and send to the Commission staff the Payee information, including the name,  
9 address, calculated Recognized Loss, and the amount of the Distribution Payment for all Payees (the  
10 "Payee List"). The Distribution Agent will also provide a Declaration to the Commission staff,  
11 representing that the Payee List: (a) was compiled in accordance with the approved Plan; (b) is  
12 accurate as to Payees' names, addresses, Recognized Losses and amounts of their Distribution  
13 Payment; (c) includes the number of Payees compensated; (d) the *pro-rata* applied, if any; (e) the  
14 percentage of Recognized Loss being compensated by the Fair Fund; (f) the total amount being  
15 distributed; and (g) provides all information necessary to make a payment to each Payee.

#### 16 The Escrow Account

17 60. Prior to the disbursement of funds from the Net Available Fair Fund, the Distribution  
18 Agent will establish an escrow account (the "Escrow Account") with a United States commercial  
19 bank that is a well-capitalized financial institution as defined by the Federal Reserve Act, Subpart D,  
20 12 C.F.R. 208.43 and that is not unacceptable to the Commission (the "Bank"), pursuant to an escrow  
21 agreement (the "Escrow Agreement") to be provided by Commission staff.

22 61. The Distribution Agent, pursuant to the Escrow Agreement, shall also establish with  
23 the Bank a separate deposit account (*e.g.*, controlled distribution account, managed distribution  
24 account, linked checking and investment account) (the "Distribution Account"), insured by the  
25 Federal Deposit Insurance Corporation ("FDIC") up to the guaranteed FDIC pass through limit. The  
26 Distribution Account shall be linked with the Escrow Account and shall be named, and records  
27 maintained, in accordance with the Escrow Agreement.

28 62. During the term of the Escrow Agreement, the portions of the Fair Fund transferred to

1 the Escrow Account (the “Escrow Property”) shall be invested and reinvested in short-term U.S.  
2 Treasury securities backed by the full faith and credit of the United States Government or an agency  
3 thereof. The investment shall be, of a type and term necessary to meet the cash liquidity  
4 requirements for payments to Payees and Administrative Costs, including investment or reinvestment  
5 in a bank account insured by the FDIC up to the guaranteed FDIC limit, or in money market mutual  
6 funds registered under the Investment Company Act of 1940 that invest 100% of their assets in direct  
7 obligations of the United States Government.

8       63. The Distribution Agent shall provide duplicate original bank and/or investment  
9 statements on any accounts established by the Distribution Agent to the Tax Administrator on a  
10 monthly basis and shall assist the Tax Administrator in obtaining mid-cycle statements, as necessary.

11       64. The Distribution Agent, in consultation with the Commission staff, shall work with the  
12 Bank on an ongoing basis to deposit or invest funds in the Escrow and Distribution Accounts so as to  
13 result in the maximum reasonable net return, taking into account the safety of such deposits or  
14 investments and tax implications; and to determine an allocation of funds between the Escrow and  
15 Distribution Account.

16       65. All interest, dividends, and/or income earned by the Escrow Property will accrue for  
17 the benefit of the Escrow Property. All Administrative Costs associated with the Escrow and  
18 Distribution Accounts will be the responsibility of the Fund Administrator, who may be reimbursed  
19 for said costs as provided in this Plan. No such Administrative Costs may be paid to the Bank, its  
20 agents, and/or its affiliates from the Escrow Property.

#### 21       Distribution of the Fair Fund

22       66. Upon the Commission’s staff’s receipt, review, and acceptance of the Payee List and  
23 Declaration from the Distribution Agent, the Commission will petition the Court for authority to  
24 disburse funds from the Net Available Fair Fund to the Bank in accordance with the Payee List for  
25 distribution by the Distribution Agent in accordance with the Plan. The Payee List shall, upon  
26 request, be made available to the Court under seal. All disbursements will be made pursuant to a  
27 Court Order.

28       67. Upon issuance of an order to disburse by this Court, the Commission staff will direct

1 the transfer of funds in accordance with the Payee List to the Bank. The Distribution Agent will then  
2 use its best efforts to commence mailing Distribution Payment checks and/or effect electronic  
3 payments within ten (10) business days of the release of the funds into the Escrow Account. All  
4 efforts will be coordinated to limit the time between the Escrow Account's receipt of the funds and  
5 the issuance of Distribution Payments.

6 68. All checks will be issued by the Distribution Agent from the Distribution Account.  
7 All checks will bear a stale date of one hundred and twenty (120) days from the date of issuance.  
8 Checks that are not negotiated by the stale date will be voided, and the Bank will be instructed to stop  
9 payment on those checks. A Payee's claim will be extinguished if he, she, or it fails to negotiate his,  
10 her or its check by the stale date, and the funds will remain in the Fair Fund, except as provided in  
11 paragraph 72.

12 69. All Distribution Payments will be preceded or accompanied by a communication that  
13 includes, as appropriate: (a) a statement characterizing the distribution; (b) a statement that the tax  
14 treatment of the distribution is the responsibility of each Payee and that the Payee should consult his,  
15 her or its tax advisor for advice regarding the tax treatment of the distribution; (c) a statement that  
16 checks will be void and cannot be reissued after one hundred and twenty (120) days from the date the  
17 original check was issued; and (d) contact information for the Distribution Agent for questions  
18 regarding the Distribution Payment. The letter or other mailings to Payees characterizing a  
19 Distribution Payment will be prepared by the Tax Administrator and submitted to the Commission  
20 staff for review and approval.

21 70. All Distribution Payments, either on their face or in the accompanying mailing, will  
22 clearly indicate that the money is being distributed from the Fair Fund established by the Court to  
23 compensate investors for harm as a result of securities law violations.

24 Post Distribution; Handing of Returned or Uncashed Checks; and Reissues

25 71. The Distribution Agent shall use its best efforts to make use of commercially available  
26 resources and other reasonably appropriate means to locate all Payees whose checks are returned to  
27 the Distribution Agent as "undeliverable." If new address information becomes available, the  
28 Distribution Agent will repackage the distribution check and send it to the new address. If new



1 address information is not available after a diligent search (and in no event no later than one hundred  
2 and twenty (120) days after the initial mailing of the original check) or if the distribution check is  
3 returned again, the check shall be voided, and the Distribution Agent shall instruct the issuing  
4 financial institution to stop payment on such check. If the Distribution Agent is unable to find a  
5 Payee's correct address, the Distribution Agent, in its discretion, may remove such Payee from the  
6 distribution and the allocated Distribution Payment will remain in the Fair Fund for distribution, if  
7 feasible, to the remaining Payees.

8       72. The Distribution Agent will reissue checks or electronic payments to Payees upon the  
9 receipt of a valid, written request from the Payee if prior to the initial stale date. In cases where a  
10 Payee is unable to endorse a Distribution Payment check as written (*e.g.*, name changes, IRA  
11 custodian changes, or recipient is deceased) and the Payee or a lawful representative requests the  
12 reissuance of a Distribution Payment check in a different name, the Distribution Agent will request,  
13 and must receive, documentation to support the requested change. The Distribution Agent will  
14 review the documentation to determine the authenticity and propriety of the change request. If, in the  
15 discretion of the Distribution Agent, such change request is properly documented, the Distribution  
16 Agent will issue an appropriately redrawn Distribution Payment to the requesting party. In no event  
17 will a check be reissued after the stale date of the original check without good cause found by the  
18 Distribution Agent.

19       73. The Distribution Agent will work with issuing financial institution and maintain  
20 information about uncashed checks and any returned items due to non-delivery, insufficient  
21 addresses, and/or other deficiencies. The Distribution Agent is responsible for researching and  
22 reconciling errors and reissuing payments when possible. The Distribution Agent is also responsible  
23 for accounting for all payments. The amount of all uncashed and undelivered payments will continue  
24 to be held in the Fair Fund.

25       74. The Distribution Agent will make and document its best efforts to contact Payees to  
26 follow-up on the status of uncashed distribution checks over \$100 (other than those returned as  
27 "undeliverable") and take appropriate action to follow-up on the status of uncashed checks at the  
28

1 request of Commission staff. The Distribution Agent may reissue such checks, subject to the time  
2 limits detailed herein.

3 75. At the discretion of the Distribution Agent, certain costs that were not factored into the  
4 Reserve, such as bank fees for the return of a payment, may reduce the Payee's Distribution Payment.  
5 In such situations, the Distribution Agent will immediately notify the Tax Administrator of the  
6 reduction in the Distribution Payment.

#### 7 Receipt of Additional Funds

8 76. Should any additional funds be received pursuant to Commission or Court order,  
9 agreement, or otherwise, prior to the Court's termination of the Fair Fund, such funds will be added  
10 to the Fair Fund and distributed, if feasible, in accordance with the Plan.

#### 11 Disposition of Undistributed Funds

12 77. If funds remain following the initial distribution and payment of all Administrative  
13 Costs, the Distribution Agent, in consultation with the Commission staff, may seek subsequent  
14 distribution(s) of any available remaining funds. All subsequent distributions shall be made in a  
15 manner that is consistent with this Plan and pursuant to a Court Order.

16 78. A residual within the Fair Fund will be established for any amounts remaining after  
17 the final disbursement to Payees from the Fair Fund and the payment of all Administrative Costs (the  
18 "Residual"). The Residual may include funds from, among other things, amounts remaining in the  
19 Reserve, distribution checks that have not been cashed, checks or electronic payments that were not  
20 delivered or were returned to the Commission, and tax refunds for overpayment of taxes or for waiver  
21 of IRS penalties.

22 79. All funds remaining in the Residual that are infeasible to distribute to investors will be  
23 returned to the Commission and held pending a final accounting.

#### 24 Administrative Costs

25 80. Pursuant to prior court orders, all Administrative Costs will be paid from the Fair  
26 Fund and reported to the Court in the final accounting of the Fair Fund referenced below.

1           Filing of Reports and Accountings

2           81.     The Distribution Agent shall provide to Commission staff, a progress report, pursuant  
3 to and in a format to be provided by Commission staff, within forty-five (45) days of Court approval  
4 of this Plan and shall provide additional progress reports within twenty (20) days after the end of  
5 every quarter thereafter, and a final report when its duties are completed. These reports will be filed  
6 with the Court.

7           82.     The progress reports shall inform the Court and the Commission staff of the activities  
8 and status of Fair Fund during the relevant reporting period, and once funds are transferred to the  
9 Bank it will specify, at a minimum: (a) the location of the account(s) comprising the Fair Fund; and  
10 (b) an interim accounting of all monies in the Fair Fund as of the most recent month-end, including  
11 the value of the account(s), all monies earned or received into the account(s), funds distributed to  
12 Payees, and any monies expended from the Fair Fund to satisfy any fees, costs, taxes and other  
13 expenses incurred in the implementation of this Plan.

14           83.     Upon completion of all distributions to Payees and payment of all Administrative  
15 Costs, pursuant to the procedures described above, the Distribution Agent will submit to the  
16 Commission staff a final accounting, on a standardized form provided by the Commission staff. The  
17 Distribution Agent will also submit a report to the Commission staff containing the final distribution  
18 statistics regarding distributions to individuals and entities, and such other information requested by  
19 the Commission staff. Upon completion of the final accounting, the SEC staff will file a motion with  
20 this Court to approve the final accounting, which will include a recommendation as to the final  
21 disposition of the Residual, consistent with Section 21(d)(3), (5), and (7) of the Exchange Act, and  
22 *Liu v. SEC*, 140 S. Ct. 1936 (2020).<sup>1</sup> If distribution of the Residual to investors is infeasible, the  
23 Commission may recommend the transfer of the Residual to the general fund of the U.S. Treasury  
24  
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26  
27 <sup>1</sup> 15 U.S.C. § 78u(d)(3), (5), and (7). Section 21(d)(7) was added to the Exchange Act by Section 6501(a) of the  
28 National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, enacted January 1, 2021. The relevant  
provisions of the NDAA apply “to any action or proceeding that is pending on, or commenced on or after, the date of” the  
NDAA’s enactment. NDAA, Section 6501(b).

1 subject to Section 21F(g)(3) of the Exchange Act.<sup>2</sup>

2 Wind-down and Document Retention

3 84. The Distribution Agent will shut down the website, P.O. Box and customer service  
4 telephone line(s) established specifically for the administration of the Fair Fund six (6) months after  
5 the transfer of any remaining funds to the Commission, or at such earlier time as the Distribution  
6 Agent determines with the concurrence of the Commission staff.

7 85. The Distribution Agent will retain all materials submitted by Preliminary Claimants in  
8 either paper or electronic form for a period of six (6) years from the date of approval of a final  
9 accounting. Materials maintained in electronic form must be accessible and readable for the duration  
10 of retention. Pursuant to the Commission staff's direction, the Distribution Agent will either turn  
11 over to the Commission or destroy all materials, including documents in any media, upon expiration  
12 of this period.

13 Termination of the Fair Fund

14 86. The Fair Fund will be eligible for termination and the Distribution Agent will be  
15 eligible for discharge after all of the following have occurred: (a) a final report and accounting, in a  
16 standard accounting format provided by the Commission staff, has been submitted by the Distribution  
17 Agent and approved by the Court; (b) all Administrative Costs have been paid; and (c) the Court has  
18 approved the Commission's recommendation as to the final disposition of the Residual consistent  
19 with Section 21(d)(3), (5), and (7) of the Exchange Act and *Liu v. SEC*, 140 S. Ct. 1936 (2020).<sup>3</sup>

20 87. Once the Commission staff has reviewed and accepted the final accounting, the  
21 Commission will petition the Court for an order, as appropriate, approving the final accounting,  
22 discharging the Distribution Agent, disposing of the Residual, and terminating the Fair Fund.

23 88. Once the Fair Fund has been terminated, no further claims will be allowed, and no  
24 additional payments will be made whatsoever.

25 \_\_\_\_\_  
26 <sup>2</sup> Section 21F(g)(3) of the Exchange Act, 15 U.S.C. §78u-6(g)(3), provides, in relevant part, that any monetary sanction  
27 of \$200 million or less collected by the SEC in any judicial action brought by the SEC under the securities laws that is not  
added to a disgorgement fund or Fair Fund or otherwise distributed to victims, plus investment income, shall be deposited  
or credited into the SEC Investor Protection Fund.

28 <sup>3</sup> See footnote 1.

**Exhibit A****PLAN OF ALLOCATION**

This Plan of Allocation is designed to compensate U.S. Investors<sup>4</sup> based on their losses arising from investments in unregistered offerings in Luca Barnett Shale Joint Venture, Luca Oil LLC, Luca To-Kalon Energy LLC, Luca I Limited Partnership, and Luca Oil II Joint Venture (the “Securities”) purchased between January 1, 2007 and December 31, 2014 (the “Relevant Period”). Preliminary Claimants who did not purchase Securities during the Relevant Period or who are an Excluded Party are ineligible to recover under this Plan.

The Distribution Agent will calculate the amount of loss (“Recognized Loss”) as follows:

- A. The sum of investment amounts made for purchases of the Securities during the Relevant Period, net of any payments received in connection with these investments.
- B. If the Recognized Loss calculates to a negative number, reflecting a gain, then the Recognized Loss will be \$0.00.

Any Preliminary Claimant who suffered a Recognized Loss pursuant to this Plan of Allocation, and who is not an Excluded Party or an Unresponsive Preliminary Claimant, as defined in the Plan, will be deemed an Eligible Claimant.

**Additional Provisions**

**Allocation of Funds:** Because the Net Available Distribution Fund is less than the sum of the Recognized Losses of all Eligible Claimants, each Eligible Claimant’s distribution amount will equal his, her or its “*Pro Rata Share*” of the Net Available Distribution Fund. The distribution amount will be subject to the “Minimum Distribution Amount.”

**Pro Rata Share:** A *Pro Rata Share* computation is intended to measure Eligible Claimants’ Recognized Losses against one another. The Distribution Agent shall determine each Eligible Claimant’s *Pro Rata Share* as the ratio of his, her, or its Recognized Loss to the sum of Recognized Losses of all Eligible Claimants.

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<sup>4</sup> All capitalized terms used herein but not defined shall have the same meanings ascribed to them in the Plan.

1        Minimum Distribution Amount: The Minimum Distribution Amount will be \$10.00. An  
2 Eligible Claimant whose distribution amount is less than the Minimum Distribution Amount will be  
3 deemed ineligible and his, her or its distribution amount will be reallocated on a *pro-rata* basis to  
4 Eligible Claimants whose distribution amounts are greater than or equal to the Minimum Distribution  
5 Amount.

6        Payee: An Eligible Claimant whose distribution amount equals or exceeds the Minimum  
7 Distribution Amount will be deemed a Payee.

8        Distribution Payment: Each Payee will receive a Distribution Payment equal to his, her, or its  
9 distribution amount.

10       Offset for Prior Recovery: To avoid payment of a windfall, the Distribution Payment will be  
11 no larger than the Payee's Recognized Loss minus the amount of any compensation for the loss that  
12 resulted from the purchase of Securities that was received from another source including the  
13 bankruptcy, *In re Luca International Group LLC et al.*, Case No. 15-34221 (Bankr. S.D. Tex.) to the  
14 extent known to the Distribution Agent.