

THE ROSEN LAW FIRM, P.A.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NICK PATTERSON, Individually and on
Behalf of All Others Similarly Situated,

Plaintiff,

v.

TERRAFORM LABS, PTE. LTD., JUMP
CRYPTO, JUMP TRADING LLC,
REPUBLIC CAPITAL, REPUBLIC
MAXIMAL LLC, TRIBE CAPITAL,
DEFINANCE CAPITAL/DEFINANCE
TECHNOLOGIES OY, GSR/GSR
MARKETS LIMITED, THREE ARROWS
CAPITAL PTE. LTD., NICHOLAS
PLATIAS, and DO KWON,

Defendants.

) Case No. 5:22-cv-03600-BLF

)
) **NOTICE OF MOTION AND**
) **MOTION OF MOVANT MICHAEL**
) **TOBIAS FOR APPOINTMENT AS**
) **LEAD PLAINTIFF AND APPROVAL**
) **OF COUNSEL; MEMORANDUM OF**
) **POINTS AND AUTHORITIES IN**
) **SUPPORT THEREOF**

) CLASS ACTION

) Judge: Beth Labson Freeman
) Hearing: December 15, 2022
) Time: 9:00 AM
) Ctrm: 3 – 5th Floor (San Jose)

NOTICE OF MOTION AND MOTION

1
2 PLEASE TAKE NOTICE that on December 15, 2022 at 9:00 AM before the Honorable
3 Beth Labson Freeman in the San Jose Courthouse, 3 – 5th Floor, 280 South 1st Street, San Jose,
4 CA 95113, Movant Michael Tobias (“Movant”) will and does move this Court for an order
5 granting the Motion: (a) appointing Movant as Lead Plaintiff; and (b) approving Movant’s
6 selection of The Rosen Law Firm, P.A. as Lead Counsel. This Motion is brought pursuant to
7 Section 27 of the Securities Act of 1933 (“Securities Act”) and Section 21D(a)(3)(B) of the
8 Securities Exchange Act of 1934 (the “Exchange Act”) on the grounds that: (1) Movant should
9 be appointed Lead Plaintiff for the class of purchasers of Terra Tokens including between May
10 20, 2021 and May 25, 2022, inclusive (the “Class Period”), as Movant has timely made this
11 Motion and is the “most adequate plaintiff” and otherwise satisfies the pertinent requirements of
12 Rule 23 of the Federal Rules of Civil Procedure; and (2) that Movant’s selection of The Rosen
13 Law Firm, P.A. as Lead Counsel should be approved as the firm is well-qualified with extensive
14 experience in cases of this type.

15 In support of this Motion, Movant files herewith a memorandum of points and authorities,
16 the Declaration of Laurence M. Rosen with exhibits, the certification of Laurence M. Rosen
17 pursuant to LR 3-7(d), a certification pursuant to LR 3-15, and a proposed order.

MEMORANDUM OF POINTS AND AUTHORITIES

18
19 Movant Michael Tobias (“Movant”), respectfully submits this memorandum in support of
20 his motion for an Order, pursuant to Section 27 of the Securities Act and Section 21D(a)(3)(B) of
21 the Exchange Act as amended by the Private Securities Litigation Reform Act of 1995 (the
22 “PSLRA”):

23 (1) appointing Movant as Lead Plaintiff for all persons other than those excluded¹ who
24 were purchasers of Terra Tokens between May 20, 2021 and May 25, 2022, inclusive (the “Class
25

26 ¹ Excluded from the Class are: (a) Defendants; (b) Defendants’ affiliates, agents, employees,
27 officers, and directors; (c) Plaintiffs’ counsel and Defendants’ counsel; and (d) the judge assigned
28 to this matter, the judge’s staff, and any member of the judge’s immediate family. Movant

1 Period”), seeking to recover damages caused by Defendants’ violations of the federal securities
2 laws, and non-securities violations of provisions of the Racketeer Influenced and Corrupt
3 Organizations Act (“RICO”) and California law (the “Class”); and

4 (2) appointing The Rosen Law Firm, P.A. (“Rosen Law”) as Lead Counsel for the
5 Class.

6 **I. STATEMENT OF ISSUES TO BE DECIDED**

- 7 1. Whether the Court should appoint Movant as the Lead Plaintiff; and
8 2. Whether the Court should approve Movant’s selection of Rosen Law as Lead
9 Counsel.

10 **II. STATEMENT OF FACTS**

11 This action was commenced on June 17, 2022 in the United States District Court Northern
12 District of California against Defendants for claims under Sections 5, 12(a)(1), and 15 of the
13 Securities Act, Section 10(b) of the Exchange Act, and non-securities violations of provisions of
14 the Racketeer Influenced and Corrupt Organizations Act (“RICO”) and California law (the
15 “Class”). On June 20, 2022, a PSLRA early notice advising potential Class members of, among
16 other things, the claims alleged in the action and the 60-day deadline for Class members to move
17 to be appointed as lead plaintiff was issued. A copy of the early notice is attached as Exhibit 1 to
18 the Declaration of Laurence M. Rosen filed herewith (“Rosen Decl.” or “Rosen Declaration”).

19 TerraForm Labs Pte. Ltd. (“TFL”) operates the Terra blockchain and its related protocol
20 which hosts, supports, and funds decentralized financial applications and products known
21 collectively as the Terra ecosystem. TFL’s primary focus is developing, marketing, and selling a
22 suite of digital assets and financial products within the Terra ecosystem, including the native and
23 governance tokens within the Terra ecosystem, so-called “stablecoins,” a bevy of financial
24 products such as “mirrored assets,” bonded assets, liquidity pool tokens, along with various
25 protocols (*e.g.*, Anchor, Mirror, etc.) to support and facilitate their sale. These digital assets are
26 collectively referred to as the “Terra Tokens” and are worth tens of billions of dollars in total

27 _____
28 reserves the right to modify, change, or expand the various class definitions set forth above, based
on discovery and further investigation.

1 market cap. All of TFL’s decentralized applications are designed to manufacture a reason to use
2 the Terra Tokens since there is no purpose for these digital assets other than as investments.

3 TFL repeatedly touted the stability of UST as an “algorithmic” stablecoin that is paired to
4 the Terra ecosystem’s native token LUNA and the sustainability of the Anchor Protocol—a type
5 of high-yield savings account whereby investors can “stake” or deposit UST with TFL in
6 exchange for a guaranteed 20% APY interest rate. As a part of this promotional campaign, TFL
7 formed the Luna Foundation Guard—a group six venture capital groups that promised to support
8 and fund the Terra ecosystem and to “defend the peg” in the event that high volatility caused the
9 UST/LUNA pair to become untethered. The Luna Foundation Guard and its members acted on
10 behalf of TFL to promote the stability of UST and mislead investors into believing that (1) the
11 Luna Foundation Guard’s reserve pool would be sufficient to defend the peg against a proverbial
12 run on the bank by UST/LUNA investors, and (2) that the Luna Foundation Guard would be able
13 to maintain interest payments from the Anchor Protocol through a well-capitalized “Anchor Yield
14 Reserve” fund.

15 Then, between May 6, 2022 and May 9, 2022, structural infirmities specific to the Terra
16 ecosystem exposed a crack in UST's ability to maintain its peg to \$1. The truth regarding the
17 stability and sustainability of the UST/LUNA pair and the Anchor Protocol could not be hidden
18 any longer from investors, and within a week, the price of UST and LUNA collapsed by
19 approximately 91% and 99.7%, respectively.

20 As a result of Defendants’ wrongful acts and omissions, and the precipitous decline in the
21 market value of Terra Tokens, Movant and other Class members have suffered significant losses
22 and damages.

23 **III. ARGUMENT**

24 **A. MOVANT SHOULD BE APPOINTED LEAD PLAINTIFF**

25 The PSLRA directs courts to consider any motion to serve as lead plaintiff filed by class
26 members in response to a published notice of the class action by the later of (i) 90 days after the
27

1 date of publication of the notice; or (ii) as soon as practicable after the Court decides any pending
2 motion to consolidate. 15 U.S.C. § 77z-1(a)(3)(B); 15 U.S.C. § 78u-4(a)(3)(B).

3 The PSLRA provides a “rebuttable presumption” that the most “adequate plaintiff” to
4 serve as Lead Plaintiff is the “person or group of persons” that:

5 (aa) has either filed the complaint or made a motion in response to a notice ...;

6 (bb) in the determination of the Court, has the largest financial interest in the relief
7 sought by the class; and

8 (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil
9 Procedure.

10 15 U.S.C. § 77z-1(a)(3)(B)(iii)(I); 15 U.S.C. § 78u-4(a)(3)(B)(iii); *In re Cavanaugh*, 306 F.3d
11 726, 729-30 (9th Cir. 2002).

12 As set forth below, Movant satisfies the above criteria, having the largest financial interest
13 of any movant in this litigation, and is therefore the most adequate plaintiff and should be
14 appointed as Lead Plaintiff.

15 **1. Movant Is Willing to Serve as Class Representative**

16 Movant timely filed the instant motion in response to a PSLRA early notice, and filed
17 herewith a PSLRA certification attesting that Movant is willing to serve as a representative of the
18 Class and is willing to provide testimony at deposition and trial, if necessary. *See Rosen Decl.*,
19 Ex. 2. Accordingly, Movant satisfies the first requirement to serve as Lead Plaintiff for the Class.

20 **2. Movant Has the Largest Financial Interest in the Action**

21 The PSLRA requires a court to adopt a rebuttable presumption that “the most adequate
22 plaintiff ... is the person or group ... that ... has the largest financial interest in the relief sought
23 by the class.” 15 U.S.C. § 77z-1(a)(3)(B)(iii); 15 U.S.C. § 78u-4(a)(3)(B)(iii); *Cavanaugh*, 306
24 F.3d at 730. While the PSLRA does not specify precisely how to calculate the “largest financial
25 interest,” the movant’s approximate losses in the subject securities is the best measure.
26 *Richardson*, 2007 WL 1129344 at * 4 (citing cases).

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