

Ramzi Abadou (SBN 222567)
KAHN SWICK & FOTI, LLP
580 California Street, Suite 1200
San Francisco, California 94104
Telephone: (415) 459-6900
Facsimile: (504) 455-1498
ramzi.abadou@ksfcounsel.com

*Proposed Lead Counsel and Counsel
for Movant, José Luis Villasenín*

[Additional counsel on signature page]

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

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

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

**JOSÉ LUIS VILLASENIN’S NOTICE OF
MOTION AND MOTION TO APPOINT HIM
AS LEAD PLAINTIFF AND TO APPROVE
HIS SELECTION OF LEAD COUNSEL**

CLASS ACTION

Judge: Hon. Beth Labson Freeman
Date: Thursday, November 17, 2022
Time: 9:00 AM
Courtroom: Courtroom 3, 5TH Floor

1 **NOTICE OF MOTION AND MOTION**

2 PLEASE TAKE NOTICE that on November 17, 2022 at 9:00 AM, or as soon thereafter as the
3 matter may be heard, before the Honorable Beth Labson Freeman of the United States District Court
4 for the Northern District of California, San Jose Courthouse, Courtroom 3 – 5th Floor, 280 South 1st
5 Street, San Jose, California 95113, José Luis Villasenin will and hereby does move for an order: (i)
6 appointing him as Lead Plaintiff pursuant to the Private Securities Litigation Reform Act of 1995
7 (“PSLRA”); and (ii) approving his selection of Kahn Swick & Foti, LLC as Lead Counsel for the
8 putative class. This motion is based on this Notice of Motion and Motion, the Memorandum of Points
9 and Authorities in Support Thereof, the attached declaration and exhibits, the pleadings on file in this
10 action, oral argument, and such other matters as the Court may consider in hearing this motion.

11 **STATEMENT OF ISSUES TO BE DECIDED**

- 12 1. Whether Mr. Villasenin should be appointed as Lead Plaintiff pursuant to the PSLRA.
13 *See generally In re Cavanaugh*, 306 F.3d 726 (9th Cir. 2002); § IV.B, *infra*.
- 14 2. Whether the Court should approve Mr. Villasenin’s selection of Kahn Swick & Foti,
15 LLC (“KSF”) as Lead Counsel. *See generally In re Cohen*, 586 F.3d 703 (9th Cir. 2009); § V, *infra*.

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I. INTRODUCTION**

18 Mr. Villasenin respectfully submits this memorandum of law in support of his motion to: (i)
19 appoint him as lead plaintiff in the above-referenced action pursuant to Section 10(b) of the Securities
20 Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78j(b), as amended by the PSLRA, 15 U.S.C.
21 § 78u-4, and Securities and Exchange Commission (“SEC”) Rule 10b-5 promulgated thereunder, 17
22 C.F.R. § 240.10b-5, Sections 5, 12(a)(1) and 15 of the Securities Exchange Act of 1933 (the “Securities
23 Act), 15 U.S.C. §§ 77e, 77l(a)(1), and 77o, respectively, as amended by the PSLRA, 15 U.S.C. § 77z-
24 1; and (ii) approve his selection of KSF as Lead Counsel for the putative class. *See In re Cavanaugh*,
25 306 F.3d 726 (9th Cir. 2002).

26 As described in the Certification and Loss Chart attached to the Declaration of Ramzi Abadou
27 in Support of Mr. Villasenin’s Motion to Appoint Him as Lead Plaintiff and to Approve His Selection

1 of Lead Counsel (“Abadou Decl.”) (Exhibits A & B), Mr. Villasenin suffered losses of approximately
 2 \$192,000 from his purchases of LUNA cryptocurrency tokens between May 20, 2021 and May 25,
 3 2022, inclusive (“Class Period”). To the best of his knowledge, this loss represents the largest financial
 4 interest of any investor seeking to be appointed lead plaintiff. In addition, Mr. Villasenin’s
 5 Certification and Declaration demonstrate his awareness of the fiduciary duties associated with serving
 6 as a lead plaintiff. *See* Abadou Decl., Ex’s. A & C. Hence, Mr. Villasenin also satisfies the applicable
 7 typicality and adequacy requirements of Rule 23. Accordingly, he seeks an order: (i) appointing him
 8 as Lead Plaintiff in this action pursuant to Sections 10(b) of the Exchange Act and Sections 5, 12(a)(1)
 9 and 15 of the Securities Act; and (ii) approving his selection of KSF as Lead Counsel for the putative
 10 class.

11 **II. PROCEDURAL BACKGROUND**

12 On June 17, 2022, Nick Patterson filed the Complaint in the above-captioned action against
 13 eleven different Defendants, including: (i) Terraform Labs, PTE. LTD.; (ii) Jump Crypto; (iii) Jump
 14 Trading LLC; (iv) Republic Capital; (v) Republic Maximal LLC; (vi) Tribe Capital; (vii) DeFinance
 15 Capital/DeFinance Technologies Oy; (viii) GSR/GSR Markets Limited; (ix) Three Arrows Capital
 16 PTE. LTD.; (x) Nicholas Platias; and (xi) Do Kwon. *See* ¶¶ 8-21.¹ The Complaint brings claims on
 17 behalf of investors who purchased various Terra Tokens during the Class Period including, *inter alia*,
 18 LUNA. ¶¶ 1, 45-53.

19 Notice of this action was published on June 20, 2022 through *BusinessWire*, a widely circulated
 20 national business-oriented wire service, triggering the sixty-day window for putative class members
 21 to seek appointment as lead plaintiff. *See* Abadou Decl., Ex. D; *see also* 15 U.S.C. § 78u-4(a)(3)(A)(i);
 22 15 U.S.C. § 77z-1(a)(3)(A)(i); *Yen Hoang v. Contextlogic, Inc.*, 2022 U.S. Dist. LEXIS 88146, at *10-

24 ¹ “¶” or “¶¶” refer to the corresponding paragraphs in the Class Action Complaint for Violations
 25 of the Federal Securities Laws (*see* ECF No. 1, “Complaint”). All capitalized terms have the same
 26 definitions as in the Complaint, unless otherwise stated. For any quoted materials, all emphasis has
 27 been added and internal citations omitted unless otherwise indicated.

1 11 (N.D. Cal. 2022) (“A notice was published in *Business Wire* [. . .] contain[ing] all required
2 information [. . .] the Court finds that the PSLRA’s notice requirement was satisfied.”) (Freeman, J.).

3 **III. STATEMENT OF FACTS**

4 This putative class action brings seven causes of action against Defendants, alleging: (i)
5 violations of Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder; (ii)
6 violations of Sections 5 and 12(a)(1) of the Securities Act; (iii) violations of Section 15 of the
7 Securities Act of 1933; (iv) California common law claims for aiding and abetting; (v) common law
8 conspiracy claims; (vi) violations of the Racketeer Influenced and Corrupt Organizations Act
9 (“RICO”), 18 U.S.C. §§ 1961, *et seq.*; and (vii) unjust enrichment/restitution claims. ¶¶ 169-262.
10 These claims are brought on behalf of a putative class of investors who purchased Terra Tokens
11 between May 20, 2021 and May 25, 2022, inclusive (the “Class Period”) and were damaged thereby
12 (the “Class”). ¶ 1.

13 TerraForm Labs (the “Company” or “TFL”) operates the Terra blockchain and its related
14 protocol which hosts, supports, and funds a community of decentralized financial applications and
15 products collectively dubbed the “Terra ecosystem.” ¶ 2. Within the Terra ecosystem, TFL develops,
16 hosts, and markets a suite of digital assets and financial products called “Terra Tokens.” *Id.* Tokens
17 are contractually-based financial products, created and permanently uploaded to a given blockchain.
18 *Id.* at n.2. Investors who purchase them expect that buying, selling, or exchanging these tokens will
19 function according to the terms of the original contract and similar to other tokens on the same
20 blockchain. *Id.* The Terra Tokens include, *inter alia*, native and governance tokens, so-called
21 “stablecoins,” “mirrored assets,” bonded assets, liquidity pool tokens, and other protocols geared
22 toward supporting and facilitating their sales. ¶ 2. At their highest peak, the various Terra Tokens were
23 worth tens of billions of dollars in total market capitalization. *Id.* However, despite bearing all the
24 hallmarks of an investment contract and meeting the definition of a security under the *Howey* test,
25 none of the Terra Tokens were registered as such with the SEC. ¶¶ 3-4, 61-79.

26 In addition to selling unregistered securities throughout the Class Period, Defendants also made
27 several false and misleading statements regarding their largest Terra ecosystem digital assets—UST

1 and LUNA—to induce investors into purchasing these tokens at inflated prices. ¶ 4. For example, as
2 part of a promotional campaign TFL repeatedly touted UST’s stability as an “algorithmic” stablecoin
3 paired to LUNA and the sustainability of its Anchor Protocol—a type of high-yield savings account
4 whereby investors could “stake” (*i.e.*, a locked-up deposit made in exchange for rewards) their UST
5 tokens with TFL in exchange for a guaranteed 20% APY interest rate. ¶¶ 5, 55. TFL, in turn, would
6 lend out the staked UST to interested borrowers. ¶ 55. In return, TFL would receive interest payments
7 and use of the borrowers’ collateral. *Id.* Co-founders of a rival stablecoin called Maker DAO, however,
8 derided UST as a “ponzi” and predicted on December 30, 2021 that “UST will collapse in a death
9 spiral with LUNA hyper-inflating to try to cover the peg[,]” prompting dismissive retorts from
10 Defendant Do Kwon. ¶ 36. Subsequently, when the head of research at Arcane Crypto tweeted his
11 opinion that UST was not sustainable, Defendant Kwon made similar put downs and insults. ¶ 119.

12 Cryptocurrency markets are incredibly volatile, sometimes with intraday price swings of 10%
13 occurring within a matter of hours. ¶ 46. Certain currencies called “stablecoins” attempt to solve this
14 problem by attempting to tie (or “peg”) their market values to an external collateral with greater
15 stability, such as U.S. dollars, gold, or another financial instrument. *Id.* On or around January 19, 2022,
16 TFL attempted to do so here by announcing it had formed the “Luna Foundation Guard” (a group of
17 six venture capital firms), which promised to support and fund the Terra ecosystem and “defend the
18 peg” in the event that high volatility caused the UST/LUNA pairing to become untethered. ¶¶ 1, 5, 38-
19 42. The announcement specifically downplayed the “misconception” that algorithmic stablecoins were
20 “unsustainable.” ¶ 39. The Luna Foundation Guard was originally funded with a 50 million LUNA
21 gift from TFL, followed by a \$1 billion private token sale for “use in establishing a UST Forex Reserve
22 denominated in Bitcoin” to serve as collateral for the TFL stablecoins. ¶¶ 43-44. Other rounds of
23 funding would follow. ¶ 44.

24 Members of the Luna Foundation Guard included Defendants Jump Crypto, Jump Trading
25 LLC, Republic Capital, Republic Maximal LLC, Tribe Capital, DeFinance Capital/DeFinance
26 Technologies Oy, GSR/GSR Markets Limited, and Three Arrows Capital Pte. Ltd. ¶ 1. These entities
27 acted on behalf of TFL to promote the stability of UST, and misled investors into believing that Luna

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.