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   [Additional counsel on signature page]
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9   UNITED STATES DISTRICT COURT
            NORTHERN DISTRICT OF CALIFORNIA
10   SAN JOSE DIVISION

11
   NICK PATTERSON, Individually and   )   Case No. 5:22-cv-03600-BLF
12 on Behalf of All Others Similarly   )
   Situated,   )
13   )   **JOSÉ LUIS VILLASENIN'S NOTICE OF**
)   **MOTION AND MOTION TO APPOINT HIM**
                          Plaintiff,   )   **AS LEAD PLAINTIFF AND TO APPROVE**
14   )   **HIS SELECTION OF LEAD COUNSEL**
15   v.   )
)   <u>**CLASS ACTION**</u>
16 TERRAFORM LABS, PTE. LTD.,   )
   JUMP CRYPTO, JUMP TRADING   )   Judge: Hon. Beth Labson Freeman
17 LLC, REPUBLIC CAPITAL,   )   Date: Thursday, November 17, 2022
   REPUBLIC MAXIMAL LLC, TRIBE   )   Time: 9:00 AM
18 CAPITAL, DEFINANCE   )   Courtroom: Courtroom 3, 5TH Floor
   CAPITAL/DEFINANCE   )
19 TECHNOLOGIES OY, GSR/GSR   )
   MARKETS LIMITED, THREE   )
20 ARROWS CAPITAL PTE. LTD.,   )
   NICHOLAS PLATIAS, and DO   )
21 KWON,   )
)
22   )
                          Defendants.   )
23   )

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27

NOTICE OF MOTION AND MOTION

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

STATEMENT OF ISSUES TO BE DECIDED

1.   Whether Mr. Villasenin should be appointed as Lead Plaintiff pursuant to the PSLRA. *See generally In re Cavanaugh*, 306 F.3d 726 (9th Cir. 2002); § IV.B, *infra*.

2.   Whether the Court should approve Mr. Villasenin's selection of Kahn Swick & Foti, LLC ("KSF") as Lead Counsel. *See generally In re Cohen*, 586 F.3d 703 (9th Cir. 2009); § V, *infra*.

MEMORANDUM OF POINTS AND AUTHORITIES

I.   INTRODUCTION

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

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

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

II.   PROCEDURAL BACKGROUND

On June 17, 2022, Nick Patterson filed the Complaint in the above-captioned action against eleven different Defendants, including: (i) Terraform Labs, PTE. LTD.; (ii) Jump Crypto; (iii) Jump Trading LLC; (iv) Republic Capital; (v) Republic Maximal LLC; (vi) Tribe Capital; (vii) DeFinance Capital/DeFinance Technologies Oy; (viii) GSR/GSR Markets Limited; (ix) Three Arrows Capital PTE. LTD.; (x) Nicholas Platias; and (xi) Do Kwon. *See* ¶¶ 8-21.[1] The Complaint brings claims on behalf of investors who purchased various Terra Tokens during the Class Period including, *inter alia*, LUNA. ¶¶ 1, 45-53.

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

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[1]   "¶" or "¶¶" refer to the corresponding paragraphs in the Class Action Complaint for Violations of the Federal Securities Laws (*see* ECF No. 1, "Complaint"). All capitalized terms have the same definitions as in the Complaint, unless otherwise stated. For any quoted materials, all emphasis has 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

28

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

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DOCKET ALARM

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