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9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**
11 **WESTERN DIVISION**

12 SECURITIES AND EXCHANGE
13 COMMISSION,

14 Plaintiff,

15 vs.

16 MARCUS A. LUNA, NORRELL L.
17 WALKER, PAUL L. GOMEZ, and
DUSTIN S. SMITH,

18 Defendants.

Case No.: CV-16-07333 BRO (SKx)

**FINAL JUDGMENT AS TO
DEFENDANT MARCUS A. LUNA**

1 Plaintiff Securities and Exchange Commission (“SEC” or “Commission”) filed
2 a Motion for Entry of Final Judgment by Default Against Defendant Marcus A. Luna
3 (“Defendant” or “Luna”) pursuant to Rule 55 of the Federal Rules of Civil Procedure.
4 The Court, having considered the SEC’s motion, the memorandum of points and
5 authorities filed in support of the motion, the declarations and all other documents
6 filed in support of the motion, and all other evidence and argument presented
7 regarding the motion, finds that:

8 **I.**

9 IT IS ORDERED that the SEC’s Motion for Entry of Final Judgment by
10 Default Against Defendant Marcus A. Luna is hereby GRANTED.

11 **II.**

12 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendant is
13 permanently restrained and enjoined from violating, directly or indirectly, Section
14 10(b) of the Securities Exchange Act of 1934 (the “Exchange Act”) [15 U.S.C. §
15 78j(b)] and Rule 10b-5 promulgated thereunder [17 C.F.R. § 240.10b-5], by using
16 any means or instrumentality of interstate commerce, or of the mails, or of any
17 facility of any national securities exchange, in connection with the purchase or sale of
18 any security:

- 19 (a) to employ any device, scheme, or artifice to defraud;
20 (b) to make any untrue statement of a material fact or to omit to state a
21 material fact necessary in order to make the statements made, in the light
22 of the circumstances under which they were made, not misleading; or
23 (c) to engage in any act, practice, or course of business which operates or
24 would operate as a fraud or deceit upon any person.

25 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as
26 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also
27 binds the following who receive actual notice of this Final Judgment by personal
28 service or otherwise: (a) Defendant’s officers, agents, servants, employees, and

1 attorneys; and (b) other persons in active concert or participation with Defendant or
2 with anyone described in (a).

3 **III.**

4 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
5 Defendant is permanently restrained and enjoined from violating Section 17(a) of the
6 Securities Act of 1933 (the “Securities Act”) [15 U.S.C. § 77q(a)] in the offer or sale
7 of any security by the use of any means or instruments of transportation or
8 communication in interstate commerce or by use of the mails, directly or indirectly:

- 9 (a) to employ any device, scheme, or artifice to defraud;
10 (b) to obtain money or property by means of any untrue statement of a
11 material fact or any omission of a material fact necessary in order to
12 make the statements made, in light of the circumstances under which
13 they were made, not misleading; or
14 (c) to engage in any transaction, practice, or course of business which
15 operates or would operate as a fraud or deceit upon the purchaser.

16 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as
17 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also
18 binds the following who receive actual notice of this Final Judgment by personal
19 service or otherwise: (a) Defendant’s officers, agents, servants, employees, and
20 attorneys; and (b) other persons in active concert or participation with Defendant or
21 with anyone described in (a).

22 **IV.**

23 IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that
24 Defendant is permanently restrained and enjoined from violating Section 5 of the
25 Securities Act [15 U.S.C. § 77e] by, directly or indirectly, in the absence of any
26 applicable exemption:

- 27 (a) Unless a registration statement is in effect as to a security, making use of
28 any means or instruments of transportation or communication in

1 interstate commerce or of the mails to sell such security through the use
2 or medium of any prospectus or otherwise;

3 (b) Unless a registration statement is in effect as to a security, carrying or
4 causing to be carried through the mails or in interstate commerce, by any
5 means or instruments of transportation, any such security for the purpose
6 of sale or for delivery after sale; or

7 (c) Making use of any means or instruments of transportation or
8 communication in interstate commerce or of the mails to offer to sell or
9 offer to buy through the use or medium of any prospectus or otherwise
10 any security, unless a registration statement has been filed with the
11 Commission as to such security, or while the registration statement is the
12 subject of a refusal order or stop order or (prior to the effective date of
13 the registration statement) any public proceeding or examination under
14 Section 8 of the Securities Act [15 U.S.C. § 77h].

15 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as
16 provided in Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also
17 binds the following who receive actual notice of this Final Judgment by personal
18 service or otherwise: (a) Defendant's officers, agents, servants, employees, and
19 attorneys; and (b) other persons in active concert or participation with Defendant or
20 with anyone described in (a).

21 V.

22 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant
23 is liable for disgorgement of \$13,331,883, representing profits gained as a result of
24 the conduct alleged in the Complaint, together with prejudgment interest thereon in
25 the amount of \$402,476, for a total of \$13,734,359. That amount includes
26 Defendant's joint and several liability with defendants Norrell L. Walker, Paul L.
27 Gomez, and Dustin S. Smith for any amounts that they are ordered to pay as
28 disgorgement and prejudgment interest in this action. Defendant shall satisfy this

1 obligation by paying \$13,734,359 to the Securities and Exchange Commission within
2 14 days after entry of this Final Judgment. Defendant's disgorgement and
3 prejudgment interest obligation shall be credited by any amounts that Defendant is
4 ordered to pay as restitution in *U.S. v. Luna*, Case No. CR-16-0012-AG-1, pending in
5 the Central District of California.

6 Defendant may transmit payment electronically to the Commission, which will
7 provide detailed ACH transfer/Fedwire instructions upon request. Payment may also
8 be made directly from a bank account via Pay.gov through the SEC website at
9 <http://www.sec.gov/about/offices/ofm.htm>. Defendant may also pay by certified
10 check, bank cashier's check, or United States postal money order payable to the
11 Securities and Exchange Commission, which shall be delivered or mailed to

12 Enterprise Services Center
13 Accounts Receivable Branch
14 6500 South MacArthur Boulevard
15 Oklahoma City, OK 73169

16 and shall be accompanied by a letter identifying the case title, civil action number,
17 and name of this Court; Marcus Luna as a defendant in this action; and specifying
18 that payment is made pursuant to this Final Judgment.

19 Defendant shall simultaneously transmit photocopies of evidence of payment
20 and case identifying information to the Commission's counsel in this action. By
21 making this payment, Defendant relinquishes all legal and equitable right, title, and
22 interest in such funds and no part of the funds shall be returned to Defendant. The
23 Commission shall send the funds paid pursuant to this Final Judgment to the United
24 States Treasury. The Commission may enforce the Court's judgment for
25 disgorgement and prejudgment interest by moving for civil contempt (and/or through
26 other collection procedures authorized by law) at any time after 14 days following
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1 entry of this Final Judgment. Defendant shall pay post judgment interest on any
2 delinquent amounts pursuant to 28 U.S.C. § 1961.

3 **VI.**

4 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the SEC
5 has determined to forgo seeking a civil penalty against Defendant, and the claim for a
6 civil penalty against Defendant is hereby DISMISSED.

7 **VII.**

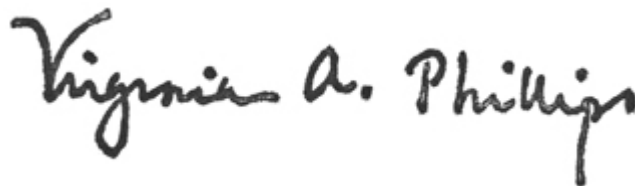
8 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court
9 shall retain jurisdiction of this matter for the purposes of enforcing the terms of this
10 Final Judgment.

11 **VIII.**

12 There being no just reason for delay, pursuant to Rule 54(b) of the Federal
13 Rules of Civil Procedure, the Clerk is ordered to enter this Final Judgment forthwith
14 and without further notice.

15 IT IS SO ORDERED.

16 DATED: October 5, 2017



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18 By: _____

19 Honorable Beverly R. O'Connell
20 United States District Court Judge
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